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1976 EDITION

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THE UNITED STATES, ENACTED DURING THE
95TH CONGRESS AND 96TH CONGRESS, FIRST SESSION

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VOLUME THREE

TITLE 42—THE PUBLIC HEALTH AND WELFARE

TO

TITLE 50—WAR AND NATIONAL DEFENSE

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TITLES OF UNITED STATES CODE

*1. General Provisions.
2. The Congress.
*3. The President.
*4. Flag and Seal, Seat of Government, and the States.
*5. Government Organization and Employees.
*6. Surety Bonds.
7. Agriculture.
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48. Territories and Insular Possessions.
‡49. Transportation.
50. War and National Defense; and Appendix.

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*This title has been enacted as law.
† This title has been eliminated by the enactment of Title 10.
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PREFACE

This third supplement to the 1976 edition of the United States Code has been prepared and published pursuant to section 285b of Title 2 of the Code. It contains the additions to and changes in the general and permanent laws of the United States enacted during the Ninety-fifth Congress and the Ninety-sixth Congress, First Session. This supplement together with the 1976 edition establishes prima facie those laws in effect on January 8, 1980, except that Titles 1, 3, 4, 5, 6, 9, 10, 11, 13, 14, 17, 18, 23, 28, 32, 35, 37, 38, 39, 44, and subtitle IV of 49, having been enacted into law, establish legal evidence of the law contained in those titles.

This supplement continues the practice of setting out notes captioned "Section referred to in other sections". These notes have been inserted following each section that is referred to in the text of another section, indicating the section that contains the internal reference. In addition, there is included in the Tables a Table of Internal References which consolidates all internal references contained in the individual "Section referred to in other sections" notes appearing in this supplement.

This supplement has been prepared and published under the supervision of Edward F. Willett, Jr., Law Revision Counsel of the House of Representatives, with the assistance of the West Publishing Company of St. Paul, Minnesota, which assisted in preparing all prior editions and supplements of the Code. Grateful acknowledgment is made of the cooperation by all who have helped in this work, particularly by the staffs of the publishing company and of the Office of the Law Revision Counsel, and by the Government Printing Office.

Thomas P. O'Neill Jr.

Speaker of the House of Representatives

WASHINGTON, D.C., *January 8, 1980.*

PREFACE

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§ 88. Discharge of cargo of vessel in quarantine

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§§ 90, 91

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§§ 97, 98

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

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§ 191. Bureau established

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§§ 192 to 194

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

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  - (c) Centers for assessments, multidisciplinary research, evaluations, and demonstrations.
  - (d) Review requirements.
  - (e) Cooperation and consultation.
  - (f) National Council on Health Care Technology.
  - (g) Listing of health care technologies under development or likely to be used in practice of medicine.
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242o. Health conferences; publication of health educational information [New].

242p. National disease prevention data profile [New].

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  - (b) Applications.
  - (c) Application approval; annual review; ineffective operation of program; failure of substantial compliance.
  - (d) Funding requirements.
  - (e) Payments.
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  - (g) Recordkeeping; examination and audit.
  - (h) Other grant funds; persons who object to being treated.
  - (i) Report.
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  - (a) Grants.
  - (b) Applications.
  - (c) Amount of grants.
  - (d) Recordkeeping; examination and audit.
  - (e) Technical assistance.
  - (f) Report to Congress.
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247b-1. Demonstration and evaluation of optimal methods for organizing and delivering comprehensive preventive health services to defined populations [New].
  - (a) Program authority.
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247b-2. Deterrence of smoking and alcohol beverage use among children and adolescents [New].
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  (b) Compliance with requirements for project grants.
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  (b) Grants; application for grant; requisite determinations for approval; priority applications; uses of grants.
  (c) Technical and other nonfinancial assistance.
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  (a) Definitions.
  (b) Priority areas for project and program assistance; assignment and determination of priorities; approval of application for grant to area without migratory agricultural workers.
  (c) Grants pursuant to assigned priorities to public and nonprofit private entities for projects to plan and develop centers; costs includable and criteria for grants; grants or contracts with public and nonprofit private entities for projects to plan and develop programs in areas without centers and specified migratory population; scope of programs for grants or contracts; number of grants or contracts; determination of amount of grants.
  (d) Grants for centers in high impact areas; programs in areas in which no migrant health center exists; health services provided on a prepaid basis; two-grant maximum; maximum amount of grant; payments.
  (e) Contracts with public and private entities for implementation and enforcement of environmental health standards and projects and studies related to environmental health hazard problems.
  (f) Approval of application as prerequisite for grant or contract; form and manner of submission and contents of application; determination of entity as center as prerequisite for approval of application; criteria for determination; priorities for applications; improvements of private property; nonapplicability of statutory provisions to contracts.
  (g) Technical and other nonfinancial assistance for centers or public or private nonprofit entities operating as centers without determination of status; resources list.
  (h) Authorization of appropriations; minimum obligation of funds for inpatient and outpatient hospital services; establishment of general policies by governing boards.

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Sec.

255. Home health services.
  (a) Grant authority; demonstration projects and programs; applications; authorization of appropriations.
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SUBPART IV—RESEARCH AND DEMONSTRATION PROJECTS IN PRIMARY CARE [NEW]

256. Primary care research and demonstration projects.
  (a) Grant and contract authority.
  (b) Demonstration and research areas.
  (c) Non-alternative authority for project; coordination.
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  (e) Report to Congress.
  (f) "Medical underserved population" defined.
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256a. Technical assistance demonstration grants and contracts.
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282. Powers and duties of Secretary; implementation authorities [New].

283. National Cancer Program components [New].

284. Cancer control programs; establishment and support; scope [New].

285. Duties and functions of Director of Institute; implementation authorities [New].

286. Scientific review of research grants and programs by peer review groups; grant procedures and criteria [New].

286a. National cancer research and demonstration centers; establishment; supportive provisions; cooperative agreements for Federal payment of basic operating support; uses of Federal payments; support limitations; definition; period and extensions of support [New].

286b. National Cancer Advisory Board; establishment, membership, etc.; powers and functions [New].

286c. President's Cancer Panel; establishment, membership, etc.; functions [New].

286d. Gifts and donations [New].

286e. Funding [New].
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289*l*-6. Availability of appropriations [New].

289*l*-7. Other statutory, etc., authorities unaffected [New].

289*l*-8. Experts and consultants; employment authority; expense reimbursement requirements [New].

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- 294y-1. Indian Health Scholarships [New].
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SUBCHAPTER VI—NURSE TRAINING

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- 300a-22. Definitions.
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  - (a) Priority applicants.
  - (b) Factors determining amount of grant.
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- 300a-41. Coordination of policies and programs.
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PART A—GENETIC DISEASES

- 300b-6. Applied technology [New].

PART B—SUDDEN INFANT DEATH SYNDROME

- 300c-12. Sudden infant death syndrome research and research reports [New].
  - (a) Adequate amounts for identification and prevention progress.
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Sec.

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SUBCHAPTER XI—HEALTH MAINTENANCE ORGANIZATIONS

- 300e-4a. Loans and loan guarantees for acquisition and construction of ambulatory health care facilities [New].
  - (a) Loan and loan guarantee authority.
  - (b) Limit on principal of loans; cumulative total; amounts provided in advance in appropriation acts.
  - (c) Definitions.
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  - (a) National Health Maintenance Organization Intern Program.
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- 300e-17. Financial disclosure [New].
  - (a) Financial information reported to Secretary.
  - (b) "Party in interest" defined.
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- 300j-3a. Grants to public sector agencies [New].
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SUBCHAPTER XIII—NATIONAL HEALTH PLANNING AND DEVELOPMENT

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- 300m-6. Certificate of need program [New].
  - (a) Determination of need for equipment and services; criteria for review of application; timetable for delivery of equipment and services; withdrawal of certificate; maximum amount of capital expenditures; review of changes.
  - (b) Exemption from certificate; conditions; sale, lease, or acquisition of facility or equipment; subsidiary health maintenance organization or ambulatory or health care facility; approval of application.
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SUBCHAPTER XIV—HEALTH RESOURCES DEVELOPMENT

PART A—LOANS AND LOAN GUARANTEES

Sec.
- 300q. Loan and loan guarantee authority.
  - (a) Covered projects: duration; payment of principal and interest on loans for covered projects: payments for reduction of interest rate.
  - (b) Amount of loans for medical facilities projects and such projects in urban or rural poverty areas.
  - (c) Limitation on cumulative total of principal of outstanding loans.
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- 300q-1. Repealed.
- 300q-2. General provisions.
  - (a) Loan guarantees; criteria for approval; recovery of payments by United States; modification, etc., of terms and conditions; incontestability.
  - (b) Loans; criteria for approval; terms and conditions; waiver of recovery of payments by United States.
  - (c) Sale of loans; authority; amount; agreements with purchasers; deposit of proceeds.
  - (d) Loan and loan guarantee fund; establishment; amounts authorized to be appropriated; issuance, purchase, and sale of notes, obligations, etc.; interest rates; public debt transactions.
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PART B—PROJECT GRANTS

- 300r. Grants for construction or modernization projects.
  - (a) Authority; objectives; eligible grantees; maximum amounts; authorization of appropriations; availability of unobligated funds.
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PART C—GENERAL PROVISIONS

- 300s. General regulations [New].
- 300s-1. Medical facility project applications [New].
  - (a) Submissions.
  - (b) Form; required provisions; waiver; projects subject to requirements.
- 300s-1a. Recovery by United States of proceeds from sale or transfer or termination of use of facility constructed, modernized, or converted with project funds; amount recoverable; waiver.
- 300s-2. State supervision or control of operations of facilities receiving funds.
- 300s-3. Definitions.
- 300s-4. Reporting and audit requirements for recipients.
  - (a) Filing of financial statement with appropriate State Agency; form and contents.
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  - (c) Filing of financial statement with Secretary; form and contents.

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- 300s-5. Availability of technical and other nonfinancial assistance to eligible applicants.
- 300s-6. Enforcement of assurances [New].

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- 300t. Development grants for health systems agencies.
  - (a) Eligible recipients; purpose of grants.
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PART E—PROGRAM TO ASSIST AND ENCOURAGE VOLUNTARY DISCONTINUANCE OF UNNEEDED HOSPITAL SERVICES AND CONVERSION OF UNNEEDED HOSPITAL SERVICES TO OTHER HEALTH SERVICES NEEDED BY THE COMMUNITY

- 300t-11. Grants and assistance for establishment of program [New].
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  - (a) Terms and conditions; determination of amount; authorized uses.
  - (b) Application; submission and approval; form; required provisions; review by health systems agency; basis of State Agency's recommendations; urban or rural poverty population considerations; approval by Secretary: restrictions and special considerations.
  - (c) Certification of protective arrangements for employment benefits and interests; guidelines; satisfactory arrangement determinations.
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  - (e) Hospital defined.
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  - (a) Excess hospital capacity defined; particular activities.
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- 300t-14. Authorization of appropriations [New].

SUBCHAPTER XV—HEALTH INFORMATION AND HEALTH PROMOTION

- 300u-6. Project grants to State Councils on Physical Fitness for physical fitness improvement [New].
  - (a) Grant authority.
  - (b) Membership of State Councils.
  - (c) Duties of State Councils.
  - (d) Amount of grants.
  - (e) Supplanting of non-Federal funds prohibited.
  - (f) Allocation of funds.
  - (g) Project descriptions.
- 300u-7. Project grants for physical fitness improvement and research projects [New].
  - (a) Research; model projects.
  - (b) Projects encompassed.
  - (d) Authorization of appropriations.
- 300u-8. National program on sports medicine research [New].
  - (a) Project grants.
  - (b) Clearinghouse on Sports Medicine Research.
  - (c) Authorization of appropriations.
- 300u-9. Conference on Education in Lifetime Sports [New].

SUBCHAPTER XVI—PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIOR RESEARCH [NEW]

Sec.
300v. Commission.
  (a) Establishment; composition; appointment of members; vacancies.
  (b) Terms of members.
  (c) Chairman.
  (d) Meetings.
  (e) Compensation; travel expenses, etc.
300v-1. Duties of Commission.
  (a) Studies and investigations; priority and order; report to President and Congress.
  (b) Recommendations to agencies; subsequent administrative requirements.
  (c) Report on protection of human subjects; scope; submission to President, etc.
  (d) Annual report; scope; submission to President, etc.
  (e) Publication and dissemination of reports.
  (f) Definitions.
300v-2. Administrative provisions.
  (a) Hearings.
  (b) Appointment and compensation of staff personnel; procurement and compensation of temporary and intermittent services; detail of personnel from other Federal agencies.
  (c) Contracting authority.
  (d) Informational requirements and prohibitions.
  (e) Support services from Administrator of General Services.
300v-3. Authorization of appropriations; termination of Commission.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 217a-1, 300a-7, 300a-29, 1320a-1, 2689n, 3509 of this title; title 18 section 42; title 20 section 3286.

SUBCHAPTER I—ADMINISTRATION

§ 201. Definitions

When used in this chapter—

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Except as provided in sections 246(g)(4)(B), 247c(c)(1), 254d(h)(3), 263(5), 264(d), 292a(9), 300a(c), 300d(2), 300f(13), and 300n(1) of this title, the term "State" includes, in addition to the several States, only the District of Columbia, Guam, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands.

[*See main edition for text of* (*g*) *to* (*q*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 107, 91 Stat. 386; Oct. 4, 1979, Pub. L. 96-79, title II, § 203(e)(2), 93 Stat. 635.)

AMENDMENTS

1979—Subsec. (f). Pub. L. 96-79 deleted from the enumeration of excepted sections reference to section 300s-3(1) of this title.

1977—Subsec. (f). Pub. L. 95-83 expanded definition of "State" to include American Samoa and the Trust Territory of the Pacific Islands.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-79 effective Oct. 1, 1979, see section 204 of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

SHORT TITLE OF 1979 AMENDMENTS

Pub. L. 96-142, title I, § 101, Dec. 12, 1979, 93 Stat. 1067, provided that: "This title [amending sections 295g-9, 300d-1, 300d-3, 300d-5, 300d-6, 300d-8, and 300d-21 of this title and enacting provisions set out as a note under section 295g-9 of this title] may be cited as the 'Emergency Medical Services Systems Amendments of 1979'."

Pub. L. 96-142, title II, § 201, Dec. 12, 1979, 93 Stat. 1070, provided that: "This title [enacting section 300c-12 and amending section 300c-11 of this title] may be cited as the 'Sudden Infant Death Syndrome Amendments of 1979'."

Section 1(a) of Pub. L. 96-79 provided that: "This Act [enacting sections 300m-6, 300s, 300s-1, 300s-6, and 300t-11 to 300t-14 of this title, amending sections 201, 246, 300k-1 to 300k-3, 300*l* to 300*l*-5, 300m to 300m-5, 300n, 300n-1, 300n-3, 300n-5, 300q, 300q-2, 300r, 300s-3, 300s-5, 300t, 1396b, 2689t, and 4573 of this title and section 1176 of Title 21, Food and Drugs, repealing sections 300*o* to 300*o*-3, 300p to 300p-3, 300q-1, and former section 300s of this title, redesignating former section 300s-1 as 300s-1a of this title, and enacting provisions set out as notes under sections 300k-1, 300*l*, 300*l*-1, 300*l*-4, 300*l*-5, 300m, 300m-6, 300n, 300q, and 300t-11 of this title] may be cited as the 'Health Planning and Resources Development Amendments of 1979'."

Pub. L. 96-76, title I, § 101(a), Sept. 29, 1979, 93 Stat. 579, provided that: "This title [enacting section 297-1 of this title, amending sections 296, 296d, 296e, 296k to 296m, 297 to 297c, 297e, and 297j of this title, and enacting provisions set out as notes under sections 296 and 297j of this title] may be cited as the 'Nurse Training Amendments of 1979'."

Pub. L. 96-76, title III, § 301, Sept. 29, 1979, 93 Stat. 584, provided that: "This title [amending sections 204, 206, 207, 209, 210-1, 210b, 211, 212, 213a, 215, and 218a of this title and sections 201, 415, and 1006 of Title 37, Pay and Allowances of the Uniformed Services, and enacting provisions set out as a note under section 206 of this title] may be cited as the 'Public Health Service Administrative Amendments of 1979'."

SHORT TITLE OF 1978 AMENDMENTS

Pub. L. 95-626, § 1(a), Nov. 10, 1978, 92 Stat. 3551, provided that: "This Act [which enacted sections 242p, 247, 247a, 247b-1, 254a-1, 255, 256, 256a, 300a-21 to 300a-29, 300a-41, 300b-6, and 300u-6 to 300u-9 of this title, amended sections 218, 246, 247b, 247c, 247e, 254a, 254b, 254c, 254k, 294t, 294u, 295h-1, 300b, 300b-3, 300c-21, 300c-22, 300d-2, 300d-3, 300d-5, 300d-6, 300e-12, 300e-14a, 300u-5, 1396b, and 4846 of this title, repealed sections 256, 4801, 4811, 4844, and 4845 of this title, enacted provisions set out as notes under this section and sections 246, 247a, 247c, 254a-1, 254b to 254d, 256, 256a, 289b, 289d, 300a-21, 300d-2, and 300d-3 of this title, and amended provisions set out as notes under sections 300b and 1395x of this title] may be cited as the 'Health Services and Centers Amendments of 1978'."

Pub. L. 95-626, title I, part A, § 101, Nov. 10, 1978, 92 Stat. 3551, provided that: "This part [enacting section 256a of this title, amending sections 218, 247e, 254b, 254c, 255, 300e-12, 300e-14a, and 1396b of this title, repealing section 256 of this title, and enacting provisions set out as notes under sections 254b, 254c, and 256a of this title] may be cited as the 'Migrant and Community Health Centers Amendments of 1978'."

Pub. L. 95-626, title I, part B, § 111, Nov. 10, 1978, 92 Stat. 3562, provided that: "This part [enacting sections 254a-1 and 256 of this title, amending sections 294t and 294u of this title, and enacting provisions set out as notes under sections 254a-1, 254d, and 256 of this title] may be cited as the 'Primary Health Care Act of 1978'."

Pub. L. 95-626, title II, § 200, Nov. 10, 1978, 92 Stat. 3570, provided that: "This title [enacting sections 247, 247a, 255, and 300b-6 of this title, amending sections 246, 247b, 247c, 300b, 300b-3, 300c-21, 300c-22, 300d-2, 300d-3, 300d-5, 300d-6, and 4846 of this title, repealing sections 4801, 4811, 4844, and 4845 of this title, enacting provisions set out as notes under sections 246, 247a, 247c, 289d, 300d-2, and 300d-3 of this title, and amending provisions set out as notes under sections 300b and 1395x of this title] may be cited as the 'Health Services Extension Act of 1978'."

Pub. L. 95-623, § 1(a), Nov. 9, 1978, 92 Stat. 3443, provided that: "This Act [enacting sections 229c, 242n, and 4362a of this title, amending sections 210, 242b, 242c, 242k, 242m, 242*o*, 289k, 289*l*-1, 292e, 292h, 292i, 294t, 295f-1, 295f-2, 295g-2, 295g-8, 295h-2, 7411, 7412, 7417, and 7617 of this title, repealing section 280c of this title, enacting provisions set out as a note under section 242m of this title, and amending provisions set out as notes under sections 292h, 295h-4, and 296 of this title] may be cited as the 'Health Services Research, Health Statistics, and Health Care Technology Act of 1978'."

Pub. L. 95-622, title II, § 201(a), Nov. 9, 1978, 92 Stat. 3420, provided that: "This title [enacting sections 289*l*-6 to 289*l*-8 of this title, amending sections, 241, 248, 277, 280b, 281 to 286g, 287a to 287d, 287g, 287i, 289c-6, 289*l* to 289*l*-2, 289*l*-4, 4541, 4573, and 4585 of this title, and enacted provisions set out as notes under sections 241, 286b, 286f, 289a, and 289*l*-1 of this title] may be cited as the 'Biomedical Research and Research Training Amendments of 1978'."

Pub. L. 95-559, § 1(a), Nov. 1, 1978, 92 Stat. 2131, provided that: "This Act [enacting sections 300e-4a, 300e-16, and 300e-17 of this title, amending sections 300e, 300e-1, 300e-3, 300e-4, 300e-5, 300e-7, 300e-8, 300e-9, 300e-11 to 300e-13, 1320a-1, 1396a, and 1396b of this title, and enacting provisions set out as notes under sections 300e-3, 300e-4, 300e-16, and 1396a of this title] may be cited as the "Health Maintenance Organization Amendments of 1978'."

SHORT TITLE OF 1977 AMENDMENTS

Pub. L. 95-190, § 1, Nov. 16, 1977, 91 Stat. 1393, provided that: "This Act [enacting sections 300j-10 and 7625a of this title, amending sections 300f, 300g-1, 300g-3, 300g-5, 300h, 300h-1, 300j to 300j-2, 300j-4, 300j-6, 300j-8, 7410, 7411, 7413, 7414, 7416, 7419, 7420, 7426, 7472 to 7475, 7478, 7479, 7502, 7503, 7506, 7521, 7522, 7525, 7541, 7545, 7549, 7602, 7604, 7607, 7623, and 7626 of this title, enacting provisions set out as notes under section 300f of this title, and section 5108 of Title 5, Government Organization and Employee, and amending provisions set out as notes under sections 300f, 7401, and 7502 of this title] may be cited as the 'Safe Drinking Water Amendments of 1977'."

Section 101 of Pub. L. 95-83 provided that: "This title [amending sections 201, 242m, 300e-8, 300k-3, 300*l* to 300*l*-5, 300m, 300m-2, 300m-4, 300m-5, 300n-3, 300n-5, 300*o*-1 to 300*o*-3, 300p, 300p-3, 300q, 300q-2, 300r, 300s-3, 300t, and 1396b of this title, and enacting provisions set out as a note under section 1396b of this title] may be cited as the 'Health Planning and Health Services Research and Statistics Extension Act of 1977'."

Section 201 of Pub. L. 95-83 provided that: "This title [amending sections 280b, 286b, 286c, 286d, 286f, 286g, 287c, 287d, 287f, 287h, 287i, and 289*l*-1 of this title] may be cited as the 'Biomedical Research Extension Act of 1977'."

Section 301 of Pub. L. 95-83 provided that: "This title [enacting section 294y-1 of this title, amending sections 210, 246, 247d, 254c, 292g, 292h, 293a, 294d, 294e, 294h, 294i, 294j, 294n, 294r, 294s, 294w, 294z, 295f-1, 295g-1, 295g-9, 295h-5, 295h-5c, 296e, 296m, 297, 300, 300a-1, 300a-2, 300a-3, 300c-11, 300c-21, 300c-22, 701, 2689a to 2689e, 2689h, 2689p, 2689q, 4572, 4573, and 4577 of this title, sections 1101 and 1182 of Title 8, Aliens and Nationality, sections 1112 and 1176 of Title 21, Food and Drugs, and section 1614 of Title 25, Indians, enacting provisions set out as notes under sections 242b, 242*l*, 294d, 294i, 294n, 294r, 294t, 294y-1, 294z, 295f-1, 295g-1, 295h-5, and 296m of this title and sections 1101 and 1182 of Title 8, and amending provisions set out as notes under sections 289k-2, 1395x, and 1396b of this title] may be cited as the 'Health Services Extension Act of 1977'."

SHORT TITLE OF 1971 AMENDMENTS

Pub. L. 92-218, § 1, Dec. 23, 1971, 85 Stat. 778, provided that: "This Act [which enacted sections 286a to 286g and 289*l* of this title, amended sections 218(a), (b), 241(d), (i), 282, 283(b), (c), and 284 of this title, and enacted provisions set out as notes under sections 281, 286 and 289*l* of this title] may be cited as 'The National Cancer Act of 1971'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 18 sections 3651, 4209.

§ 202. Administration and supervision of Service

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 204. Commissioned corps; composition; appointment of Regular and Reserve officers; appointment and status of warrant officers

There shall be in the Service a commissioned Regular Corps and, for the purpose of securing a reserve for duty in the Service in time of national emergency, a Reserve Corps. All commissioned officers shall be citizens and shall be appointed without regard to the civil-service laws and compensated without regard to chapter 51 and subchapter III of chapter 53 of title 5. Commissioned officers of the Reserve Corps shall be appointed by the President and commissioned officers of the Regular Corps shall be appointed by him by and with the advice and consent of the Senate. Commissioned officers of the Reserve Corps shall at all times be subject to call to active duty by the Surgeon General, including active duty for the purpose of training and active duty for the purpose of determining their fitness for appointment in the Regular Corps. Warrant officers may be appointed to the Service for the purpose of providing support to the health and delivery systems maintained by the Service and any warrant officer appointed to the Service shall be considered for purposes of this chapter and title 37 to be a commissioned officer within the commissioned corps of the Service.

(As amended Sept. 29, 1979, Pub. L. 96-76, title III, § 302(a), 93 Stat. 584.)

AMENDMENTS

1979—Pub. L. 96-76 added provisions relating to appointment and status of warrant officers.

§ 206. Assignment of officers

[*See main edition for text of* (*a*)]

(b) Assistant Surgeons General

The Surgeon General shall assign eight commissioned officers from the Regular Corps to be, respectively, the Director of the National Institutes of Health, the Chief of the Bureau of State Services, the Chief of the Bureau of Medical Services, the Chief Medical Officer of the United States Coast Guard, the Chief Dental Officer of the Service, the Chief Nurse Officer of the Service, the Chief Pharmacist Officer of the Service, and the Chief Sanitary Engineering Officer of the Service, and while so serving they shall each have the title of Assistant Surgeon General.

(c) Creation of temporary positions as Assistant Surgeons General

(1) The Surgeon General, with the approval of the Secretary, is authorized to create special temporary positions in the grade of Assistant Surgeons General when necessary for the proper staffing of the Service. The Surgeon General may assign officers of either the Regular Corps or the Reserve Corps to any such temporary position, and while so serving they shall each have the title of Assistant Surgeon General.

(2) Except as provided in this paragraph, the number of special temporary positions created by the Surgeon General under paragraph (1) shall not on any day exceed 1 per centum of the highest number, during the ninety days preceding such day, of officers of the Regular Corps on active duty and officers of the Reserve Corps on active duty for more than thirty days. If on any day the number of such special temporary positions exceeds such 1 per centum limitation, for a period of not more than one year after such day, the number of such special temporary positions shall be reduced for purposes of complying with such 1 per centum limitation only by the resignation, retirement, death, or transfer to a position of a lower grade, of any officer holding any such temporary position.

[*See main edition for text of* (*d*)]

(As amended Sept. 29, 1979, Pub. L. 96-76, title III, §§ 302(b), 303, 93 Stat. 584.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-76, § 302(b), added provisions relating to assignment of the Chief Nurse Officer and the Chief Pharmacist Officer, and substituted "eight" for "six".

Subsec. (c). Pub. L. 96-76, § 303, designated existing provisions as par. (1) and, as so designated, struck out provisions relating to the maximum number of special temporary positions, and added par. (2).

EFFECTIVE DATE OF 1979 AMENDMENT

Section 314 of Pub. L. 96-76 provided that: "The amendments made by sections 303, 304, 305, 306, 307, and 313 [amending sections 206, 207, 209, 210b, and 211 of this title and sections 201, 415, and 1006 of Title 37, Pay and Allowances of the Uniformed Services] shall take effect on October 1, 1979."

§ 207. Grades, ranks, and titles of commissioned corps

(a) Grades of commissioned officers

The Surgeon General, during the period of his appointment as such, shall be of the same grade as the Surgeon General of the Army; the Deputy Surgeon General and the Chief Medical Officer of the United States Coast Guard, while assigned as such, shall have the grade corresponding with the grade of major general; and the Chief Dental Officer, while assigned as such, shall have the grade as is prescribed by law for the officer of the Dental Corps selected and appointed as Assistant Surgeon General of the Army. Assistant Surgeons General, while assigned as such, shall have the grade corresponding with either the grade of brigadier general or the grade of major general, as may be determined by the Secretary after considering the importance of the duties to be performed: *Provided*, That the number of Assistant Surgeons General having a grade higher than that corresponding to the grade of brigadier general shall at no time exceed one-half of the number of positions created by subsection (b) of section 206 of this title or pursuant to subsection (c) of section 206 of this title. The grades of commissioned officers of the Service shall correspond with grades of officers of the Army as follows:

[*See main edition for text of* (*1*) *to* (*4*)]

(5) Officers of the assistant grade—first lieutenant;

(6) Officers of the junior assistant grade—second lieutenant;

(7) Chief warrant officers of (W-4) grade—chief warrant officer (W-4);

(8) Chief warrant officers of (W-3) grade—chief warrant officer (W-3);

(9) Chief warrant officers of (W-2) grade—chief warrant officer (W-2); and

(10) Warrant officers of (W-1) grade—warrant officer (W-1).

(b) Titles of medical officers

The titles of medical officers of the foregoing grades shall be respectively (1) medical director, (2) senior surgeon, (3) surgeon, (4) senior assistant surgeon, (5) assistant surgeon, and (6) junior assistant surgeon. The President is authorized to prescribe titles, appropriate to the several grades, for commissioned officers of the Service other than medical officers. All titles of the officers of the Reserve Corps shall have the suffix "Reserve."

(c) Repealed. Pub. L. 96-76, title III, § 304(b), Sept. 29, 1979, 93 Stat. 584

(d) Maximum number in grade for each fiscal year

Within the total number of officers of the Regular Corps authorized by the appropriation Act or Acts for each fiscal year to be on active duty, the Secretary shall by regulation prescribe the maximum number of officers authorized to be in each of the grades from the warrant officer (W-1) grade to the director grade, inclusive. Such numbers shall be determined after considering the anticipated needs of the Service during the fiscal year, the funds available, the number of officers in each grade at the beginning of the fiscal year, and the anticipated appointments, the anticipated promotions based on years of service, and the anticipated retirements during the fiscal year. The number so determined for any grade for a fiscal year may not exceed the number limitation (if any) contained in the appropriation Act or Acts for such year. Such regulations for each fiscal year shall be prescribed as promptly as possible after the appropriation Act fixing the authorized strength of the corps for that year, and shall be subject to amendment only if such authorized strength or such number limitation is thereafter changed. The maxima established by such regulations shall not require (apart from action pursuant to other provisions of this chapter) any officer to be separated from the Service or reduced in grade.

(As amended Dec. 19, 1977, Pub. L. 95-215, § 8(b), 91 Stat. 1507; Sept. 29, 1979, Pub. L. 96-76, title III, § 304, 93 Stat. 584.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-76, § 304(a), added pars. (7) to (10).

Subsec. (c). Pub. L. 96-76, § 304(b), struck out subsec. (c), setting forth the grade and pay and allowances as director for a commissioned officer below the grade of director assigned to serve as chief of a division.

Subsec. (d). Pub. L. 96-76, § 304(c), substituted "warrant officer (W-1)" for "junior assistant".

1977—Subsec. (b)(6). Pub. L. 95-215 directed that "junior assistant" be substituted for "senior assistant", requiring no change in the text of subsec. (b)(6) as presently carried.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-76 effective Oct. 1, 1979, see section 314 of Pub. L. 96-76, set out as an Effective Date of 1979 Amendment note under section 206 of this title.

§ 209. Appointment of personnel

(a) Original appointments to Regular and Reserve Corps; limitation on appointment and call to active duty

(1) Except as provided in subsections (b) and (e) of this section, original appointments to the Regular Corps may be made only in the warrant officer (W-1), chief warrant officer (W-2), chief warrant officer (W-3), chief warrant officer (W-4), junior assistant, assistant, and senior assistant grades and original appointments to a grade above junior assistant shall be made only after passage of an examination, given in accordance with regulations of the President, in one or more of the several branches of medicine, dentistry, hygiene, sanitary engineering, pharmacy, nursing, or related scientific specialties in the field of public health.

[*See main edition for text of* (2) *and* (3); (b) *to* (*i*)]

(As amended Sept. 29, 1979, Pub. L. 96-76, title III, § 305, 93 Stat. 585.)

AMENDMENTS

1979—Subsec. (a)(1). Pub. L. 96-76 added applicability to warrant officers and chief warrant officers.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-76 effective Oct. 1, 1979, see section 314 of Pub. L. 96-76, set out as an Effective Date of 1979 Amendment note under section 206 of this title.

§ 210. Pay and allowances

[*See main edition for text of* (a) *and* (b)]

(c) Members of national advisory or review councils or committees

Members of the National Advisory Health Council and members of other national advisory or review councils or committees established under this chapter, including members of the Technical Electronic Product Radiation Safety Standards Committee and the Board of Regents of the National Library of Medicine, but excluding ex officio members, while attending conferences or meetings of their respective councils or committees or while otherwise serving at the request of the Secretary, shall be entitled to receive compensation at rates to be fixed by the Secretary, but at rates not exceeding the daily equivalent of the rate specified at the time of such service for grade GS-18 of the General Schedule, including traveltime; and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

[*See main edition for text of* (d) *to* (*f*)]

(g) Positions in professional, scientific and executive service; compensation; appointment

The Secretary is authorized to establish and fix the compensation for, within the Public Health Service, not more than one hundred and seventy-nine positions, of which not less than one hundred and fifteen shall be for the National Institutes of Health, not less than five shall be for the National Institute on Alcohol Abuse and Alcoholism for individuals engaged in research on alcohol abuse and alcoholism, not less than ten shall be for the National Center for Health Services Research, not less than twelve shall be for the National Center for Health Statistics, and not less than seven shall be for the National Center for Health Care Technology, in the professional, scientific, and executive service, each position being established to effectuate those research and development activities of the Public Health Service which require the services of specially qualified scientific, professional and administrative personnel: *Provided*, That the rates of compensation for positions established pursuant to the provisions of this subsection shall not be less than the minimum rate of grade 16 of the General Schedule nor more than (1) the highest rate of grade 18 of the General Schedule, or (2) in the case of two such positions, the rate specified, at the time the service in the position is performed, for level II of the Executive Schedule (5 U.S.C. 5313) and such rates of compensation for all positions included in this proviso shall be subject to the approval of the Director of the Office of Personnel Management. Positions created pursuant to this subsection shall be included in the classified civil service of the United States, but appointments to such positions shall be made without competitive examination upon approval of the proposed appointee's qualifications by the Director of the Office of Personnel Management or such officers or agents as it may designate for this purpose.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 312, 91 Stat. 398; Nov. 9, 1978, Pub. L. 95-623, § 11(a), 92 Stat. 3455; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 3607, 92 Stat. 3783; July 10, 1979, Pub. L. 96-32, § 7(g), 93 Stat. 84.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-32 substituted "section 5703 of title 5" for "section 5703(b) of title 5".

1978—Subsec. (g). Pub. L. 95-623 increased the limitation on establishment of positions to one hundred and seventy-nine from one hundred and fifty-five and required minimum number of positions for certain National Centers: ten, National Center for Health Services Research; twelve, National Center for Health Statistics; and seven, National Center for Health Care Technology.

1977—Subsec. (g). Pub. L. 95-83 increased the limitation on establishment of positions to one hundred and fifty-five from one hundred and fifty and required not less than five for the National Institute on Alcohol Abuse and Alcoholism for individuals engaged in research on alcohol abuse and alcoholism.

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 210-1. Annual and sick leave

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Repealed. Pub. L. 96-76, title III, § 311, Sept. 29, 1979, 93 Stat. 586

[*See main edition for text of* (*d*)]

(As amended Sept. 29, 1979, Pub. L. 96-76, title III, § 311, 93 Stat. 586.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-76, struck out subsec. (c), which set forth limitations on the granting of annual leave under subsec. (a) of this section.

§ 210b. Professional categories

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Maximum number of officers in each category

Within the limits fixed by the Secretary in regulations under section 207(d) of this title for any fiscal year, the Surgeon General shall determine for each category in the Regular Corps the maximum number of officers authorized to be in each of the grades from the warrant officer (W-1) grade to the director grade, inclusive.

[*See main edition for text of* (*d*) *to* (*f*)]

(As amended Sept. 29, 1979, Pub. L. 96-76, title III, § 306, 93 Stat. 585.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-76 substituted "warrant officer (W-1)" for "assistant".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-76 effective Oct. 1, 1979, see section 314 of Pub. L. 96-76, set out as an Effective Date of 1979 Amendment note under section 206 of this title.

§ 211. Promotion of commissioned officers

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Permanent promotions to qualified officers on length of service

Officers of the Regular Corps, found pursuant to subsection (c) of this section to be qualified, shall be given permanent promotions based on length of service, as follows:

(1) Officers in the warrant officer (W-1) grade, chief warrant officer (W-2) grade, chief warrant officer (W-3) grade, chief warrant officer (W-4) grade, and junior assistant grade shall be promoted at such times as may be prescribed in regulations of the President.

[*See main edition for text of* (*2*); (*e*) *and* (*f*)]

(g) Separation from service upon failure of promotion

If, for reasons other than physical disability, an officer of the Regular Corps in the warrant officer (W-1) grade or junior assistant grade is found pursuant to subsection (c) of this section not to be qualified for promotion he shall be separated from the Service. If, for reasons other than physical disability, an officer of the Regular Corps in the chief warrant officer (W-2), chief warrant officer (W-3), assistant, senior assistant, or full grade, after having been twice examined for promotion (other than promotion to a restricted grade), fails to be promoted—

(1) if in the chief warrant officer (W-2) or assistant grade he shall be separated from the Service and paid six months' basic pay and allowances;

(2) if in the chief warrant officer (W-3) or senior assistant grade he shall be separated from the Service and paid one year's basic pay and allowances;

[*See main edition for text of* (*3*); (*h*) *to* (*m*)]

(As amended Sept. 29, 1979, Pub. L. 96-76, title III, § 307, 93 Stat. 585.)

AMENDMENTS

1979—Subsec. (d)(1). Pub. L. 96-76, § 307(a), added applicability to warrant officers and chief warrant officers.

Subsec. (g). Pub. L. 96-76, § 307(b), in provision preceding par. (1), added applicability to separation from the Service of warrant officers and chief warrant officers subsequent to one examination or two examinations, respectively, in par. (1), added applicability to a chief warrant officer (W-2), and in par. (2), added applicability to a chief warrant officer (W-3).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-76 effective Oct. 1, 1979, see section 314 of Pub. L. 96-76, set out as an Effective Date of 1979 Amendment note under section 206 of this title.

§ 212. Retirement of commissioned officers

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Crediting of part of year

For the purpose of determining the number of years by which a percentage of the basic pay of an officer is to be multiplied in computing the amount of his retired pay pursuant to section 211(g)(3) of this title or paragraph (4) of subsection (a) of this section, a part of a year that is six months or more is counted as a whole year, and a part of a year that is less than six months is disregarded.

[*See main edition for text of (f)*]

(As amended Sept. 29, 1979, Pub. L. 96-76, title III, § 308, 93 Stat. 585.)

AMENDMENTS

1979—Subsec. (e). Pub. L. 96-76 struck out requirement respecting active service for purposes of credit.

§ 213a. Rights, benefits, privileges, and immunities for commissioned officers or beneficiaries; exercise of authority by Secretary or designee

(a) Commissioned officers of the Service or their surviving beneficiaries are entitled to all the rights, benefits, privileges, and immunities now or hereafter provided for commissioned officers of the Army or their surviving beneficiaries under the following provisions of title 10:

[*See main edition for text of (1) to (11)*]

(12) Section 1552, Correction of military records: claims incident thereto.

(13) Section 1553, Review of discharge or dismissal.

(14) Section 1554, Review of retirement or separation without pay for physical disability.

[*See main edition for text of (b)*]

(As amended Sept. 29, 1979, Pub. L. 96-76, title III, § 312, 93 Stat. 586.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-76 added cls. (12) to (14).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 215. Detail of Service personnel

[*See main edition for text of (a) and (b)*]

(c) Congressional committees and nonprofit educational, research, or other institutions engaged in health activities for special studies and dissemination of information

The Surgeon General may detail personnel of the Service to any appropriate committee of the Congress or to nonprofit educational, research[1] or other institutions engaged in health activities for special studies of scientific problems and for the dissemination of information relating to public health.

(d) Availability of funds; reimbursement by State; detailed services deemed service for computation of pay, promotion, etc.

Personnel detailed under subsections (b) and (c) of this section shall be paid from applicable appropriations of the Service, except that, in accordance with regulations such personnel may be placed on leave without pay and paid by the State, subdivision, or institution to which they are detailed. In the case of detail of personnel under subsections (b) or (c) of this section to be paid from applicable Service appropriations, the Secretary may condition such detail on an agreement by the State, subdivision, or institution concerned that such State, subdivision, or institution concerned shall reimburse the United States for the amount of such payments made by the Service. The services of personnel while detailed pursuant to this section shall be considered as having been performed in the Service for purposes of the computation of basic pay, promotion, retirement, compensation for injury or death, and the benefits provided by section 213 of this title.

(As amended Sept. 29, 1979, Pub. L. 96-76, title III, § 309, 93 Stat. 585.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-76, § 309(a), added provisions authorizing detail of personnel to appropriate committees of Congress.

Subsec. (d). Pub. L. 96-76, § 309(b), added provisions relating to agreements by States, etc., for reimbursement upon detail of personnel.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254d, 2004b of this title.

§ 217a. Advisory councils or committees

TERMINATION OF ADVISORY COMMITTEES; REPORT BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE TO CONGRESSIONAL COMMITTEES RELATING TO TERMINATION

Pub. L. 93-641, § 6, Jan. 4, 1975, 88 Stat. 2275, provided that:

[*See main edition for text of (a)*]

"(b) The Secretary of Health, Education, and Welfare shall report, within one year after the date of the enactment of the Act [Jan. 4, 1975], to the Committee on Labor and Public Welfare [now Committee on Labor and Human Resources] of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives (1) the purpose and use of each advisory committee established by or pursuant to the Public Health Service Act, the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 and (2) his recommendations respecting the termination of each such advisory committee."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 256a of this title.

§ 217a-1. Advisory committees; prohibition of consideration of political affiliations

All appointments to advisory committees established to assist in implementing the Public Health Service Act [42 U.S.C. 201 et seq.], the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 [42 U.S.C. 2689 et seq., 6000 et seq.], and the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [42 U.S.C. 4541 et seq.], shall be made without regard to political affiliation.

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[1] So in original. Probably should be followed by a comma.

(Pub. L. 94-278, title X, § 1001, Apr. 22, 1976, 90 Stat. 415.)

REFERENCES IN TEXT

The Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, referred to in text, is Pub. L. 88-164, Oct. 31, 1963, 77 Stat. 284, as amended, which is classified principally to subchapter III (§ 2689 et seq.) of chapter 33 and chapter 75 (§ 6000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

§ 217b. Volunteer services

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 218. National Advisory Councils

(a) National Advisory Health Council, National Advisory Mental Health Council, National Advisory Council on Alcohol Abuse and Alcoholism, and National Advisory Dental Research Council; composition; qualifications; appointment and tenure

The National Advisory Health Council, the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Dental Research Council shall each consist of the Surgeon General, who shall be chairman, the chief medical officer of the Veterans' Administration or his representative and a medical officer designated by the Secretary of Defense, who shall be ex officio members; and twelve members appointed without regard to the civil-service laws by the Surgeon General with the approval of the Secretary of Health, Education, and Welfare. The twelve appointed members of each such council shall be leaders in the fields of fundamental sciences, medical sciences, or public affairs, and six of such twelve shall be selected from among leading medical or scientific authorities who, in the case of the National Advisory Health Council, are skilled in the sciences related to health, and in the case of the National Advisory Mental Health Council, the National Advisory Council on Alcohol Abuse and Alcoholism, and the National Advisory Dental Research Council, are outstanding in the study, diagnosis, or treatment of psychiatric disorders, alcohol abuse and alcoholism, and dental diseases and conditions, respectively. In the case of the National Advisory Dental Research Council, four of such six shall be dentists. Each appointed member of each such council shall hold office for a term of four years, except that (1) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, (2) the terms of the members (other than the members of the National Advisory Council on Alcohol Abuse and Alcoholism) first taking office after September 30, 1950, shall expire as follows: Three shall expire four years after such date, three shall expire three years after such date, three shall expire two years after such date, and three shall expire one year after such date, as designated by the Surgeon General at the time of appointment; and (3) the terms of the members of the National Council on Alcohol Abuse and Alcoholism first taking office after December 31, 1970, shall expire as follows: Three shall expire four years after such date, three shall expire three years after such date, three shall expire two years after such date, and three shall expire one year after such date, as designated by the Secretary at the time of appointment. Appointed members may serve after the expiration of their terms until their successors have taken office. None of the appointed members shall be eligible for reappointment within one year after the end of his preceding term, but terms expiring prior to October 1, 1950, shall not be deemed "preceding terms" for the purposes of this sentence.

[*See main edition for text of* (*b*) *to* (*d*)]

(e) National Advisory Council on Drug Abuse; composition; qualifications; duties

(1) The National Advisory Council on Drug Abuse shall consist of the Secretary, who shall be Chairman, the chief medical officer of the Veterans' Administration or his representative, and a medical officer designated by the Secretary of Defense, who shall be ex officio members. In addition, the Council shall be composed of twelve members appointed by the Secretary without regard to the provisions of title 5 governing appointments in the competitive service. The appointed members of the Council shall represent a broad range of interests, disciplines, and expertise in the drug area and shall be selected from outstanding professionals and paraprofessionals in the fields of medicine, education, science, the social sciences, and other related disciplines, who have been active in the areas of drug abuse prevention, treatment, rehabilitation, training, or research, including officers or employees of State and local drug abuse agencies. Appointed members may serve after the expiration of their terms until their successors have taken office.

[*See main edition for text of* (*2*)]

(f) Repealed. Pub. L. 95-622, title III, § 302(b), Nov. 9, 1978, 92 Stat. 3442

(g) National Advisory Council on Migrant Health; duties; composition; tenure; applicability of section 14(a) of the Federal Advisory Committee Act

(1) Within 120 days of July 29, 1975, the Secretary shall appoint and organize a National Advisory Council on Migrant Health (hereinafter in this subsection referred to as the "Council") which shall advise, consult with, and make recommendations to the Secretary on matters concerning the organization, operation, selection, and funding of migrant health centers and other entities under grants and contracts under section 254b of this title.

(2) The Council shall consist of fifteen members, at least twelve of whom shall be members of the governing boards of migrant health centers or other entities assisted under section 254b of this title. Of such twelve members who

are members of such governing boards, at least nine shall be chosen from among those members of such governing boards who are being served by such centers or grantees and who are familiar with the delivery of health care to migratory agricultural workers and seasonal agricultural workers. The remaining three Council members shall be individuals qualified by training and experience in the medical sciences or in the administration of health programs.

[*See main edition for text of* (*3*) *and* (*4*)]

(As amended Nov. 9, 1978, Pub. L. 95-622, title III, § 302(b), 92 Stat. 3442; Nov. 10, 1978, Pub. L. 95-626, title I, § 102(b)(1), 92 Stat. 3551; Jan. 2, 1980, Pub. L. 96-180, § 13, 93 Stat. 1304; Jan. 2, 1980, Pub. L. 96-181, § 14, 93 Stat. 1315.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-180 authorized appointees to serve after the expiration of their terms until their successors have taken office.

Subsec. (e)(1). Pub. L. 96-181, in provisions relating to the eligibility for selection of members, added officers or employees of state and local drug abuse agencies, and added provision that appointed members may serve after the expiration of their terms until their successors have taken office.

1978—Subsec. (f). Pub. L. 95-622 struck out subsec. (f), which related to the establishment of a National Advisory Council for the Protection of Subjects of Biomedical and Behavioral Research.

Subsec. (g)(1), (2). Pub. L. 95-626 substituted "section 254b" for "section 247d".

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 302(b) of Pub. L. 95-622 provided in part that the amendment by Pub. L. 95-622 is effective Nov. 1, 1978.

EFFECTIVE DATE OF 1974 AMENDMENT

Section 211(b) of Pub. L. 93-348, as amended by Pub. L. 94-278, title III, § 301(b), Apr. 22, 1976, 90 Stat. 407; Pub. L. 94-573, § 18(b), Oct. 21, 1976, 90 Stat. 2720; Pub. L. 95-203, § 5(b), Nov. 23, 1977, 91 Stat. 1454, provided that: "The amendment made by subsection (a) [enacting subsec. (f) of this section] shall take effect November 1, 1978."

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-218 effective 60 days after Dec. 23, 1971, or on such prior date after Dec. 23, 1971, as the President shall prescribe and publish in the Federal Register, see section 7 of Pub. L. 92-218, set out as an Effective Date note under section 289*l* of this title.

§ 218a. Training of officers; availability of appropriations for pay and allowances, tuition, fees, and expenses; payment by officer upon voluntary separation

[*See main edition for text of* (*a*)]

(b) Any officer whose tuition, fees, and other necessary expenses are paid pursuant to subsection (a) of this section while attending an educational institution or training program for a period in excess of thirty days shall be obligated to pay to the Service an amount equal to two times the total amount of such tuition, fees, and other necessary expenses received by such officer during such period, and two times the total amount of any compensation received by, and any allowance paid to, such officer during such period, if after return to active service such officer voluntarily leaves the Service within (1) six months, or (2) twice the period of such attendance, whichever is greater. Such subsequent period of service shall commence upon the cessation of such attendance and of any further continuous period of training duty for which no tuition and fees are paid by the Service and which is part of the officer's prescribed formal training program, whether such further training is at a Service facility or otherwise. The Surgeon General may waive, in whole or in part, any payment which may be required by this subsection upon a determination that such payment would be inequitable or would not be in the public interest.

(As amended Sept. 29, 1979, Pub. L. 96-76, title III, § 310, 93 Stat. 585.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-76 substituted provisions relating to payment by an officer to the Service upon voluntary separation of two times the total amount of tuition, fees, and other necessary expenses received by such officer and two times the total amount of any compensation received by, and any allowance paid to, such officer, for provisions relating to reimbursement by the officer to the Service upon voluntary separation of tuition and fees and in last sentence substituted "payment" for "reimbursement" wherever appearing.

§ 219. Gifts for benefit of Service

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 218, 278, 286b, 286d, 287g, 287h, 288c of this title.

§ 229. Annual report of Surgeon General

AGENCY REPORTING REQUIREMENTS; REPORT BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE TO CONGRESSIONAL COMMITTEES RELATING TO REQUIREMENTS, TERMINATION, ETC.

Pub. L. 93-641, § 7, Jan. 4, 1975, 88 Stat. 2275, provided that by Jan. 4, 1976, the Secretary of Health, Education, and Welfare report to the Committee on Labor and Public Welfare (now Committee on Labor and Human Resources) of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives on the identity, due date, etc., of certain reports required under the Public Health Service Act (section 201 et seq. of this title), the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 (sections 2689 et seq. and 6001 et seq. of this title), or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (section 4541 et seq. of this title).

§ 229a. Memorials and other acknowledgments for contributions to the health of the nation

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 229b. Evaluation of programs

Such portion as the Secretary may determine, but not more than 1 per centum, of any appropriation for grants, contracts, or other payments under any provision of this chapter, the Mental Retardation Facilities Construction Act [42 U.S.C. 6000 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], the Act of August 5, 1954 (Public Law 568, Eighty-third Congress) [42 U.S.C. 2001 et seq.], or the Act of August 16, 1957 (Public Law 85-151) [42 U.S.C. 2005 et seq.], for any fiscal year beginning after June 30, 1970, shall be available for evaluation (directly, or by grants or contracts) of any program authorized by this chapter or any of such other Acts, and, in the case of allotments from any such appropriation, the amount available for allotment shall be reduced accordingly.

(July 1, 1944, ch. 373, title V, § 513, as added June 30, 1970, Pub. L. 91-296, title IV, § 401(a), 84 Stat. 351.)

REFERENCES IN TEXT

The Mental Retardation Facilities Construction Act, referred to in text, is title I of Pub. L. 88-164, as added by Pub. L. 94-103, Oct. 4, 1975, 89 Stat. 496, and amended, now known as the Developmental Disabilities Assistance and Bill of Rights Act, which is classified generally to chapter 75 (§ 6000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

The Community Mental Health Centers Act, referred to in text, is title II of Pub. L. 88-164, as added by Pub. L. 94-63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which is classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2689 of this title and Tables.

The act of Aug. 5, 1954, referred to in text, is act Aug. 5, 1954, ch. 658, 68 Stat. 674, which is classified generally to subchapter I (§ 2001 et seq.) of chapter 22 of this title. For complete classification of this Act to the Code, see Tables.

The act of Aug. 16, 1957, referred to in text, is Pub. L. 85-151, Aug. 16, 1957, 71 Stat. 370, which is classified generally to subchapter II (§ 2005 et seq.) of chapter 22 of this title. For complete classification of this Act to the Code, see Tables.

§ 229c. Contract authority

The authority of the Secretary to enter into contracts under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(July 1, 1944, ch. 373, title V, § 514, as added Nov. 9, 1978, Pub. L. 95-623, § 11(e), 92 Stat. 3456.)

§ 231. Service and supply fund; uses; reimbursement

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER II—GENERAL POWERS AND DUTIES

PART A—RESEARCH AND INVESTIGATIONS

§ 241. Research and investigations generally

(a) The Secretary shall conduct in the Service, and encourage, cooperate with, and render assistance to other appropriate public authorities, scientific institutions, and scientists in the conduct of, and promote the coordination of, research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases and impairments of man, including water purification, sewage treatment, and pollution of lakes and streams. In carrying out the foregoing the Secretary is authorized to—

(1) collect and make available through publications and other appropriate means, information as to, and the practical application of, such research and other activities;

(2) make available research facilities of the Service to appropriate public authorities, and to health officials and scientists engaged in special study;

(3) make grants-in-aid to universities, hospitals, laboratories, and other public or private institutions, and to individuals for such research projects as are recommended by the National Advisory Health Council, or, with respect to cancer, recommended by the National Cancer Advisory Board, or, with respect to mental health, recommended by the National Advisory Mental Health Council, or with respect to heart, blood vessel, lung, and blood diseases and blood resources, recommended by the National Heart, Lung, and Blood Advisory Council, or, with respect to dental diseases and conditions, recommended by the National Advisory Dental Research Council; and include in the grants for any such project grants of penicillin and other antibiotic compounds for use in such project; and make, upon recommendation of the National Advisory Health Council, grants-in-aid to public or non-profit universities, hospitals, laboratories, and other institutions for the general support of their research: *Provided*, That such uniform percentage, not to exceed 15 per centum, as the Secretary may determine, of the amounts provided for grants for research projects for any fiscal year through the appropriations for the National Institutes of Health may be transferred from such appropriations to a separate account to be available for such research grants-in-aid for such fiscal year;

(4) secure from time to time and for such periods as he deems advisable, the assistance and advice of experts, scholars, and consultants from the United States or abroad;

(5) for purposes of study, admit and treat at institutions, hospitals, and stations of the

Service, persons not otherwise eligible for such treatment;

(6) make available, to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical methods to experiments, studies, and surveys in health and medical fields;

(7) enter into contracts, including contracts for research in accordance with and subject to the provisions of law applicable to contracts entered into by the military departments under sections 2353 and 2354 of title 10, except that determination, approval and certification required thereby shall be by the Secretary of Health, Education, and Welfare; and

(8) adopt, upon recommendation of the National Advisory Health Council, or, with respect to cancer, upon recommendation of the National Cancer Advisory Board, or, with respect to mental health, upon recommendation of the National Advisory Mental Health Council, or, with respect to heart, blood vessel, lung, and blood diseases and blood resources, upon recommendation of the National Heart, Lung and Blood Advisory Council, or, with respect to dental diseases and conditions, upon recommendations of the National Advisory Dental Research Council, such additional means as he deems necessary or appropriate to carry out the purposes of this section.

The Secretary may make available to individuals and entities, for biomedical and behavioral research, substances and living organisms. Such substances and organisms shall be made available under such terms and conditions (including payment for them) as the Secretary determines appropriate.

(b)(1) The Secretary shall conduct and may support through grants and contracts studies and testing of substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects. In carrying out this paragraph, the Secretary shall consult with entities of the Federal Government, outside of the Department of Health, Education, and Welfare, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct for such entity studies and testing of substances for carcinogenicity, teratogenicity, mutagenicity, and other harmful biological effects.

(2)(A) The Secretary shall establish a comprehensive program of research into the biological effects of low-level ionizing radiation under which program the Secretary shall conduct such research and may support such research by others through grants and contracts.

(B) The Secretary shall conduct a comprehensive review of Federal programs of research on the biological effects of ionizing radiation.

(3) The Secretary shall conduct and may support through grants and contracts research and studies on human nutrition, with particular emphasis on the role of nutrition in the prevention and treatment of disease and on the maintenance and promotion of health, and programs for the dissemination of information respecting human nutrition to health professionals and the public. In carrying out activities under this paragraph, the Secretary shall provide for the coordination of such of these activities as are performed by the different divisions within the Department of Health, Education, and Welfare and shall consult with entities of the Federal Government, outside of the Department of Health, Education, and Welfare, engaged in comparable activities. The Secretary, upon request of such an entity and under appropriate arrangements for the payment of expenses, may conduct and support such activities for such entity.

(4) The Secretary shall publish an annual report which contains—

(A) a list of all substances (i) which either are known to be carcinogens or may reasonably be anticipated to be carcinogens and (ii) to which a significant number of persons residing in the United States are exposed;

(B) information concerning the nature of such exposure and the estimated number of persons exposed to such substances;

(C) a statement identifying (i) each substance contained in the list under subparagraph (A) for which no effluent, ambient, or exposure standard has been established by a Federal agency, and (ii) for each effluent, ambient, or exposure standard established by a Federal agency with respect to a substance contained in the list under subparagraph (A), the extent to which, on the basis of available medical, scientific, or other data, such standard, and the implementation of such standard by the agency, decreases the risk to public health from exposure to the substance; and

(D) a description of (i) each request received during the year involved—

(I) from a Federal agency outside the Department of Health, Education, and Welfare for the Secretary, or

(II) from an entity within the Department of Health, Education, and Welfare to any other entity within the Department,

to conduct research into, or testing for, the carcinogenicity of substances or to provide information described in clause (ii) of subparagraph (C), and (ii) how the Secretary and each such other entity, respectively, have responded to each such request.

(5) The authority of the Secretary to enter into any contract for the conduct of any study, testing, program, research, or review, or assessment under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(As amended Nov. 9, 1978, Pub. L. 95-622, title II, §§ 261, 262, 92 Stat. 3434.)

AMENDMENTS

1978—Pub. L. 95-622 designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, redesignated former pars. (a) to (h) as (1) to (8), substituted "Secretary" for "Surgeon General" wherever appearing, and added following par. (8) provisions relating to the authority of the Secretary to make available to individuals and entities substances and living organisms, and added subsec. (b).

CHANGE OF NAME

The Secretary and the Department of Health, Education, and Welfare were redesignated the Secretary and the Department of Health and Human Services, respectively, by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 261 of Pub. L. 95-622 provided in part that the amendment to subsec. (a) by section 261 of Pub. L. 95-622 is effective Oct. 1, 1978.

Section 262 of Pub. L. 95-622 provided in part that the amendment to this section by section 262 of Pub. L. 95-622 is effective Oct. 1, 1978.

EFFECTIVE DATE OF 1971 AMENDMENT

Amendment by Pub. L. 92-218 effective 60 days after Dec. 23, 1971, or on such prior date after Dec. 23, 1971, as the President shall prescribe and publish in the Federal Register, see section 7 of Pub. L. 92-218, set out as an Effective Date note under section 289*l* of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242, 242a, 256, 263, 282, 287a, 287h, 288a, 288b, 289a, 289c, 289d, 289g, 289k, 289k-1, 289k-4, 300d-5, 4551, 7610 of this title; title 21 section 1191.

§ 242. Studies and investigations on use and misuse of narcotic drugs and other drugs; annual report to the Attorney General; cooperation with States

MARIHUANA AND HEALTH REPORTING

Pub. L. 91-296, title V, §§ 501-503, June 30, 1970, 84 Stat. 352, as amended by Pub. L. 95-461, § 3(a), Oct. 14, 1978, 92 Stat. 1268, provided that:

[*See main edition for text of Sec. 501*]

"SEC. 502. [BIENNIAL REPORT TO CONGRESS BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE]

"The Secretary of Health, Education, and Welfare, after consultation with the Surgeon General and other appropriate individuals, shall transmit a report to the Congress on or before January 31, 1971, and biennially thereafter (1) containing current information on the health consequences of using marihuana, and (2) containing such recommendations for legislative and administrative action as he may deem appropriate. A preliminary report shall be transmitted to the Congress by the Secretary concerning current information on the health consequences of using marihuana not later than ninety (90) days after the date of enactment of this title [June 30, 1970].

[*See main edition for text of Sec. 503*]

§ 242a. Mental health; clinical training and instruction and clinical traineeships; stipends and allowances; research projects; protection of identity of subjects of drug research; affect of treaties and other international agreements on confidentiality; grants to public and other nonprofit institutions

[*See main edition for text of* (*a*)]

(b) Nothing in the Single Convention on Narcotic Drugs, the Convention on Psychotropic Substances, or other treaties or international agreements shall be construed to limit, modify, or prevent the protection of the confidentiality of patient records or of the names and other identifying characteristics of research subjects as provided by any Federal, State, or local law or regulation.

(c) The Secretary may provide for training, instruction, and traineeships under subsection (a)(1) of this section through grants to public and other nonprofit institutions. Grants under paragraph (2) of subsection (a) of this section may be made only upon recommendation of the National Advisory Mental Health Council. Such grants may be paid in advance or by way of reimbursement, as may be determined by the Surgeon General; and shall be made on such conditions as the Surgeon General finds necessary.

(As amended Nov. 10, 1978, Pub. L. 95-633, title I, § 108(b), 92 Stat. 3773.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-633 added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 95-633 redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-633 effective on the date the Convention on Psychotropic Substances enters into force in the United States, see section 112 of Pub. L. 95-633, set out as an Effective Date note under section 801a of Title 21, Food and Drugs.

§ 242b. General authority respecting research, evaluations, and demonstrations in health statistics, health services, and health care technology

(a) Scope of activities

(1) The Secretary, acting through the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology, shall conduct and support research, demonstrations, evaluations, and statistical and epidemiological activities for the purpose of improving the effectiveness, efficiency, and quality of health services in the United States.

(2) In carrying out paragraph (1), the Secretary shall give appropriate emphasis to research, demonstrations, evaluations, and statistical and epidemiological activities respecting—

(A) the accessibility, acceptability, planning, organization, distribution, utilization, and financing of systems for the delivery of health care,

(B) alternative methods for measuring and evaluating the quality of systems for the delivery of health care,

(C) the collection, analysis, and dissemination of health related statistics,

(D) alternative methods to improve and promote health statistical and epidemiological activities,

(E) the safety, efficacy, effectiveness, cost effectiveness, and social, economic, and ethical impacts of health care technologies,

(F) alternative methods for disseminating knowledge concerning health and health related activities,

(G) the special health problems of low income and minority groups and the elderly to insure that these problems are assessed on a periodic regular basis,

(H) the prevention of illness, disability, and premature deaths in the United States,

(I) health care costs, increases in such costs, and the reasons for such increases, and

(J) the impact of the environment on individual health and on health care.

(3) The Secretary shall, through the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology and using National Research Service Awards and other appropriate authorities, undertake and support training programs to provide for an expanded and continuing supply of individuals qualified to perform the research, evaluation, and demonstration projects set forth in sections 242c, 242k, and 242n of this title.

(b) Additional authority; scope of activities

To implement subsection (a) of this section, the Secretary may, in addition to any other authority which under other provisions of this chapter or any other law may be used by him to implement such subsection, do the following:

(1) Utilize personnel and equipment, facilities, and other physical resources of the Department of Health, Education, and Welfare, permit appropriate (as determined by the Secretary) entities and individuals to utilize the physical resources of such Department, provide technical assistance and advice, make grants to public and nonprofit private entities and individuals, and, when appropriate, enter into contracts with public and private entities and individuals.

[*See main edition for text of* (*2*)]

(3) Secure, from time to time and for such periods as the Secretary deems advisable, but in accordance with section 3109 of title 5, the assistance and advice of consultants from the United States or abroad. The Secretary may for the purpose of carrying out the functions set forth in sections 242c, 242k, and 242n of this title, obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the number of days or the period of service) for each of the centers the services of not more than fifteen experts who have appropriate scientific or professional qualifications.

[*See main edition for text of* (*4*)]

(c) Coordination of activities through units of Department

(1) The Secretary shall coordinate all health services research, evaluations, and demonstrations, all health statistical and epidemiological activities, and all research, evaluations, and demonstrations respecting the assessment of health care technology undertaken and supported through units of the Department of Health, Education, and Welfare. To the maximum extent feasible such coordination shall be carried out through the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology.

(2) The Secretary shall coordinate the health services research, evaluations, and demonstrations, the health statistical and (where appropriate) epidemiological activities, and the research, evaluations, and demonstrations respecting the assessment of health care technology authorized by this chapter through the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology.

(d) Study of costs of diseases and adverse effects which are environmentally related

(1) The Secretary and the National Academy of Sciences (acting through the Institute of Medicine and other appropriate units) shall, jointly and in cooperation with the Administrator of the Environmental Protection Agency, the Secretary of Labor, the Consumer Product Safety Commission, the Council of Economic Advisers, the Council on Wage and Price Stability, the Council on Environmental Quality, and other entities of the Federal Government which the Secretary determines have the expertise in the subject of the study prescribed by this paragraph, conduct, with funds appropriated under section 242m(i)(2) of this title, an ongoing study of the present and projected future health costs of pollution and other environmental conditions resulting from human activity (including human activity in any place in the indoor or outdoor environment, including places of employment and residence). In conducting the study, the Secretary and the National Academy of Sciences (hereinafter in this subsection referred to as the "Academy") shall, to the extent feasible—

(A) identify the pollution (and the pollutants responsible for the pollution) and other environmental conditions which are, or may reasonably be anticipated to be, responsible for causing, contributing to, increasing susceptibility to, or aggravating human diseases and adverse effects on humans;

(B) identify each such disease and adverse effect on humans and specifically determine whether cancer, birth defects, genetic damage, emphysema, asthma, bronchitis, and other respiratory diseases, heart disease, stroke, and mental illness and impairment are such a disease or effect;

(C) identify (on a national, regional, or other geographical basis) the source or sources of such pollutants and conditions and estimate the portion of each pollutant and the extent of each condition which can be traced to a specific type of source;

(D) ascertain (i) the extent to which the pollutants and conditions identified under subparagraph (A) are, or may reasonably be anticipated to be, responsible, individually or collectively, for causing, contributing to, increasing susceptibility to, or aggravating the diseases and effects identified under subparagraph (B), and (ii) the effect upon the incidence or severity of specific diseases and effects of individual or collective, as appropriate, incremental reductions in the pollutants and changes in such conditions; and

(E) quantify (i) the present and projected future health costs of the diseases and effects identified under subparagraph (B), and (ii) the reduction in health costs which would result from each incremental reduction and change referred to in subparagraph (D)(ii).

(2) The Secretary shall enter into appropriate arrangements with the Academy under which the Secretary shall be responsible for expenses incurred by the Academy in connection with the study prescribed by paragraph (1).

(3) The first report on the study prescribed by paragraph (1) shall be made to the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives by the Secretary and the Academy not later than eighteen months after November 9, 1978. Subsequent reports on the study shall be made by the Secretary and the Academy every two years after the date the first report is submitted. Each report shall (A) identify deficiencies and limitations in the data on the matters considered in the study and recommend actions which may be taken to eliminate such deficiencies and limitations, (B) include such recommendations for legislation as the Secretary determines appropriate, (C) include recommendations for facilitating studies of the effects of hazardous substances on humans, and (D) include a description of any administrative action proposed to be taken by the Secretary, the Administrator of the Environmental Protection Agency, the Secretary of Labor, and the Consumer Product Safety Commission to reduce the costs which have been quantified under paragraph (1)(E)(i). In conducting the study, the Secretary and the Academy shall seek assistance from public and private health financing entities in securing the data needed for the study.

(4) For purposes of paragraph (1), the term "health costs of pollution and other environmental conditions" means the costs of human diseases and other adverse effects on humans which pollution and other environmental conditions are, or may reasonably be anticipated to be, responsible for causing, contributing to, increasing susceptibility to, or aggravating, including the costs of preventing such diseases and effects, the costs of the treatment, cure, convalescence, and rehabilitation of persons afflicted by such diseases, costs reasonably attributable to pain and suffering from such diseases and effects, loss of income and future earnings resulting from such diseases and effects, adverse effects on productivity (and thus increases in production costs and consumer prices) resulting from such diseases and effects, loss of tax revenues resulting from such decreases in earnings and productivity, costs to the welfare and unemployment compensation systems and the programs of health benefits under titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.] resulting from such diseases and effects, the overall increases in costs throughout the economy resulting from such diseases and effects, and other related direct and indirect costs.

(As amended Nov. 9, 1978, Pub. L. 95-623, §§ 3, 7, 92 Stat. 3443, 3451; July 10, 1979, Pub. L. 96-32, § 5(a)-(c), 93 Stat. 82.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(4), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

1979—Subsec. (b)(1), (3). Pub. L. 96-32, § 5(a), (b), amended directory language of Pub. L. 95-623, § 3(b), (d), and required no change in text. See 1978 Amendment note below.

Subsec. (d). Pub. L. 96-32, § 5(c), substituted "(d)" for "(e)" as the letter designation of the subsections added by Pub. L. 95-623, § 7, thereby correcting the subsection designation.

1978—Subsec. (a)(1). Pub. L. 95-623, § 3(a), substituted provision for the Secretary acting through the National Center for Health Care Technology for such action through other units of the Department of Health, Education, and Welfare and "conduct" for "undertake", included epidemiological activities, and declared as an objective the improvement of the effectiveness, efficiency, and quality of Federal health services.

Subsec. (a)(2). Pub. L. 95-623, § 3(a), provided for emphasis to demonstrations, evaluations, and epidemiological activities; redesignated as subpar. (A) former subpar. (C), deleted "technology" and "quality" following "organization," and "utilization," and end clause "including systems for the delivery of preventive, personal, and mental health care" and former subpar. (A) activities respecting "the determination of an individual's health"; added subpars. (B) through (D); deleted former subpar. (D) activities respecting "individual and community knowledge of individual health and the systems for the delivery of health care"; added subpars. (E) through (I); and redesignated as subpar. (J) former subpar. (B).

Subsec. (a)(3). Pub. L. 95-623, § 3(a), added par. (3).

Subsec. (b)(1). Pub. L. 95-623, § 3(b), as amended by Pub. L. 96-32, § 5(a), substituted ", when appropriate, enter into contracts with public and private entities and individuals" for "enter into contracts with public and private entities and individuals, for (A) health services research, evaluation, and demonstrations, and (B) health services research and health statistics training, and (C) health statistical activities".

Subsec. (b)(3). Pub. L. 95-623, § 3(d), as amended by Pub. L. 96-32, § 5(b), substituted "advisable but in accordance with section 3109 of title 5" for "advisable", struck out "experts and" preceding "consultants", and authorized the Secretary to obtain for the centers the services of experts with appropriate scientific or professional qualifications.

Subsec. (c). Pub. L. 95-623, § 3(c), designated existing text as par. (1), substituted "evaluations, and demonstrations, all health statistical and epidemiological activities, and all research, evaluations, and demonstrations respecting the assessment of health care technology" for "evaluation, demonstration, and health statistical activities" preceding "undertaken and supported", required coordination of activities to also be carried out through the National Center for Health Care Technology, and added par. (2).

Subsec. (d). Pub. L. 95-623, § 7, as amended by Pub. L. 96-32, § 5(c), added subsec. (d).

CHANGE OF NAME

The Secretary and the Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services, respectively, by section 3508 of Title 20, Education.

MODEL STANDARDS WITH RESPECT TO PREVENTIVE HEALTH SERVICES IN COMMUNITIES

Pub. L. 95-83, title III, § 314, Aug. 1, 1977, 91 Stat. 398, provided that: "The Secretary of Health, Education, and Welfare, in cooperation with appropriate professional entities and individuals, shall within two years of the date of the enactment of this section [Aug. 1, 1977], (1) establish model standards with respect to preventive health services in communities, and (2) report such standards to the Congress. Such standards shall be developed to identify populations in need of preventive or protective health services and to maintain community oriented preventive health programs."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 235, 242c, 242k, 242*l*, 242m, 256, 289*l*-1 of this title.

§ 242c. National Center for Health Services Research

[*See main edition for text of* (*a*)]

(b) Duties

In carrying out section 242b(a) of this title, the Secretary, acting through the Center, shall undertake and support research, evaluation, and demonstration projects (which may include and shall be appropriately coordinated with experiments and demonstration activities authorized by the Social Security Act [42 U.S.C. 301 et seq.] and the Social Security Amendments of 1967) respecting—

(1) the accessibility, acceptability, planning, organization, distribution, technology, utilization, quality, and financing of health services and systems;

(2) the supply and distribution, education and training, quality, utilization, organization, and costs of health manpower;

(3) the design, utilization, organization, and cost of facilities and equipment, and

(4) the uses of computer science in health services delivery and medical information systems.

[*See main edition for text of* (*c*) *to* (*e*)]

(As amended Nov. 9, 1978, Pub. L. 95-623, § 4, 92 Stat. 3445.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-623 substituted in introductory text "shall" for "may" preceding "undertake and support", struck from par. (3) "construction," following "design," and added par. (4).

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242b, 242*l*, 242m, 256 of this title.

§ 242k. National Center for Health Statistics

[*See main edition for text of* (*a*)]

(b) Duties

In carrying out section 242b(a) of this title, the Secretary, acting through the Center,

(1) shall collect statistics on—

[*See main edition for text of* (*A*) *to* (*G*)]

(H) family formation, growth, and dissolution;

(2) shall undertake and support (by grant or contract) research, demonstrations, and evaluations respecting new or improved methods for obtaining current data on the matters referred to in paragraph (1);

(3) may undertake and support (by grant or contract) epidemiological research, demonstrations, and evaluations on the matters referred to in paragraph (1); and

(4) may collect, furnish, tabulate, and analyze statistics, and prepare studies, on matters referred to in paragraph (1) upon request of public and nonprofit private entities under arrangements under which the entities will pay the cost of the service provided.

Amounts appropriated to the Secretary from payments made under arrangements made under paragraph (4) shall be available to the Secretary for obligation until expended.

(c) Statistical and epidemiological compilations and surveys

The Center shall furnish such special statistical and epidemiological compilations and surveys as the Committee on Labor and Human Resources and the Committee on Appropriations of the Senate and the Committee on Interstate and Foreign Commerce and the Committee on Appropriations of the House of Representatives may request. Such statistical and epidemiological compilations and surveys shall not be made subject to the payment of the actual or estimated cost of the preparation of such compilations and surveys.

[*See main edition for text of* (*d*)]

(e) Cooperative Health Statistics System

For the purpose of producing comparable and uniform health information and statistics, there is established the Cooperative Health Statistics System. The Secretary, acting through the Center, shall—

(1) coordinate the activities of Federal agencies involved in the design and implementation of the System;

(2) undertake and support (by grant or contract) research, development, demonstrations, and evaluations respecting the System;

(3) make grants to and enter into contracts with State and local health agencies to assist them in meeting the costs of data collection carried out under the System; and

(4) review the statistical activities of the Department of Health, Education, and Welfare to assure that they are consistent with the System.

States participating in the System shall designate a State agency to administer or be responsible for the administration of the statistical activities within the State under the System. The Secretary, acting through the Center, shall prescribe guidelines to assure that statistical activities within States participating in the system produce uniform and timely data and assure appropriate access to such data.

(f) Federal State cooperation

To assist in carrying out this section, the Secretary, acting through the Center, shall cooperate and consult with the Departments of Commerce and Labor and any other interested Federal departments or agencies and with State and local health departments and agencies. For such purpose he shall utilize insofar as possible the services or facilities of any agency of the Federal Government and, without regard to section 5 of title 41, of any appropriate State or other public agency, and may, without regard to such section, utilize the services or facilities of any private agency, organization, group, or individual, in accordance with written agreements between the head of such agency, organization, or group and the Secretary or between such individual and the Secretary. Payment, if any, for such services or facilities shall be made in such amounts as may be provided in such agreement.

[*See main edition for text of* (*g*) *and* (*h*)]

(i) Technical assistance in effective use of statistics

The Center may provide to public and nonprofit private entities engaged in health planning activities technical assistance in the effective use in such activities of statistics collected or compiled by the Center.

(j) Coordination of health statistical and epidemiological activities

In carrying out the requirements of section 242b(c) of this title and paragraph (1) of subsection (e) of this section, the Secretary shall coordinate health statistical and epidemiological activities of the Department of Health, Education, and Welfare by—

(1) establishing standardized means for the collection of health information and statistics under laws administered by the Secretary;

(2) developing, in consultation with the National Committee on Vital and Health Statistics, and maintaining the minimum sets of data needed on a continuing basis to fulfill the collection requirements of subsection (b)(1) of this section;

(3) after consultation with the National Committee on Vital and Health Statistics, establishing standards to assure the quality of health statistical and epidemiological data collection, processing, and analysis;

(4) in the case of proposed health data collections of the Department which are required to be reviewed by the Director of the Office of Management and Budget under section 3509 of title 44, reviewing such proposed collections to determine whether they conform with the minimum sets of data and the standards promulgated pursuant to paragraphs (2) and (3), and if any such proposed collection is found not to be in conformance, by taking such action as may be necessary to assure that it will conform to such sets of data and standards, and

(5) periodically reviewing ongoing health data collections of the Department, subject to review under such section 3509, to determine if the collections are being conducted in accordance with the minimum sets of data and the standards promulgated pursuant to paragraphs (2) and (3) and, if any such collection is found not to be in conformance, by taking such action as may be necessary to assure that the collection will conform to such sets of data and standards not later than the ninetieth day after the date of the completion of the review of the collection.

(k) National Committee on Vital and Health Statistics; establishment; membership; term of office; vacancies; service pending a successor in office; compensation; functions; consultations of Secretary with Committee and professional advisory groups

(1) There is established in the Office of the Secretary a committee to be known as the National Committee on Vital and Health Statistics (hereinafter in this subsection referred to as the "Committee") which shall consist of fifteen members.

(2)(A) The members of the Committee shall be appointed by the Secretary from among persons who have distinguished themselves in the fields of health statistics, health planning, epidemiology, and the provision of health services. Except as provided in subparagraph (B), members of the Committee shall be appointed for terms of three years.

(B) Of the members first appointed—

(i) five shall be appointed for terms of one year,

(ii) five shall be appointed for terms of two years, and

(iii) five shall be appointed for terms of three years,

as designated by the Secretary at the time of appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(3) Members of the Committee shall be compensated in accordance with section 210(c) of this title.

(4) It shall be the function of the Committee to assist and advise the Secretary—

(A) to delineate statistical problems bearing on health and health services which are of national or international interest;

(B) to stimulate studies of such problems by other organizations and agencies whenever possible or to make investigations of such problems through subcommittees;

(C) to determine, approve, and revise the terms, definitions, classifications, and guidelines for assessing health status and health services, their distribution and costs, for use (i) within the Department of Health, Education, and Welfare, (ii) by all programs administered or funded by the Secretary, including the Federal-State-local cooperative health statistics system referred to in subsection (e) of this section, and (iii) to the extent possible as determined by the head of the agency involved, by the Veterans' Administration, the Department of Defense, and other Federal agencies concerned with health and health services;

(D) with respect to the design of and approval of health statistical and health information systems concerned with the collection, processing, and tabulation of health statistics within the Department of Health, Education, and Welfare, with respect to the Cooperative Health Statistics System established under subsection (e) of this section, and with respect to the standardized means for the collection of health information and statistics to be established by the Secretary under subsection (j)(1) of this section;

(E) to review and comment on findings and proposals developed by other organizations and agencies and to make recommendations for their adoption or implementation by local, State, national, or international agencies;

(F) to cooperate with national committees of other countries and with the World Health Organization and other national agencies in the studies of problems of mutual interest; and

(G) to issue an annual report on the state of the Nation's health, its health services, their costs and distributions, and to make proposals for improvement of the Nation's health statistics and health information systems.

(5) In carrying out health statistical activities under this part, the Secretary shall consult with, and seek the advice of, the Committee and other appropriate professional advisory groups.

(*l*) Information on effects on health of the environment and employment conditions

(1) The Secretary, acting through the Center, shall develop a plan for the collection and coordination of statistical and epidemiological data on the effects of the environment on health. Such plan shall include a review of the data now available on health effects, deficiencies in such data, and methods by which existing data deficiencies can be corrected. The Secretary shall submit such plan to the Congress not later than January 1, 1980.

(2)(A) The Secretary, acting through the Center, shall establish, not later than two years after November 9, 1978, guidelines for the collection, compilation, analysis, publication, and distribution of statistics and information necessary for determining the effects of conditions of employment and indoor and outdoor environmental conditions on the public health. Guidelines established under this subparagraph shall not (i) authorize or require the disclosure of any matter described in section 552(b)(6) of title 5, and (ii) authorize or require the disclosure of any statistics or other information which is exempt from disclosure pursuant to subsection (a) of section 552 of title 5, by reason of subsection (b)(4) of such section. The guidelines shall be reviewed and, if appropriate, revised at least every three years after the date they are initially established. Guidelines shall take effect on the date of the promulgation of the regulation establishing or revising the guidelines or such later date as may be specified in the guidelines.

(B) The guidelines shall be designed—

(i) to improve coordination of environmental and health studies, statistics, and information, and to prevent overlap and unnecessary duplication with respect to such studies, statistics, and information;

(ii) to assure that such studies, statistics, and information will be available to executive departments responsible for the administration of laws relating to the protection of the public health and safety or the environment;

(iii) to encourage the more effective use by executive departments of such studies, statistics, and information;

(iv) to improve the statistical validity and reliability of such studies, statistics, and information; and

(v) to assure greater responsiveness by the Department of Health, Education, and Welfare and other executive departments in meeting informational and analytical needs for determining the effects of employment and indoor and outdoor environmental conditions on public health.

(C) In establishing and revising guidelines under subparagraph (A), the Secretary shall take into consideration the plan developed pursuant to paragraph (1).

(D) The Center shall serve as a clearinghouse for statistics and information with respect to which guidelines have been established under subparagraph (A) and shall assist executive departments in obtaining such statistics and information for purposes of administering laws under their jurisdiction relating to environmental health protection or the safety and health of employees.

(E)(i) Each executive department shall comply with the substantive and procedural requirements of the guidelines.

(ii) The President shall by Executive order require each executive department to comply with requests, made in accordance with the guidelines, by the Secretary, the Administrator of the Environmental Protection Agency, the Consumer Product Safety Commission, or the Secretary of Labor for statistics and information.

(iii) The President may by Executive order exempt any executive department from compliance with a requirement of the guidelines respecting specific statistics or other information if the President determines that the exemption is necessary in the interest of national security.

(F) In carrying out his duties under this paragraph, the Secretary, acting through the Center, shall, insofar as practicable, provide for coordination of his activities with those of other Federal agencies and interagency task forces relating to the collection, analysis, publication, or distribution of statistics and information necessary for determining the effects of conditions of employment and indoor and outdoor environmental conditions on the public health.

(G) For purposes of this paragraph, the term "guidelines" means the guidelines, either as initially established or as revised, in effect under this paragraph.

(3) Omitted

(4) In carrying out paragraphs (1), (2), and (3), the Secretary shall consult with and take into consideration any recommendations of the Task Force on Environmental Cancer and Heart and Lung Disease, the Administrator of the Environmental Protection Agency, the Secretary of Labor, the Consumer Product Safety Commission, the Council on Environmental Quality, the National Committee on Vital and Health Statistics, and the National Academy of Sciences (including the Institute of Medicine and any other unit of the Academy).

(As amended Nov. 9, 1978, Pub. L. 95-623, §§ 5, 8(a), 92 Stat. 3445, 3453; S. Res. 30, Mar. 7, 1979.)

CODIFICATION

Subsec. (*l*)(3), which provided that the Secretary, acting through the Center, and in consultation with public and private entities, conduct a study of establishing a Federal system to assist, without invading personal privacy, Federal, State, and other entities in locating individuals who may have been exposed to hazardous substances to determine the effect on their health and to assist them in obtaining medical care and, not later than one year after Nov. 9, 1978, complete the study and report to the Congress the results with recommendations, was omitted from the Code as executed.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-623, § 5(a), deleted "may" following "through the Center,", substituted in pars. (1) and (2) "shall collect" and "shall undertake" for "collect" and "undertake" and added pars. (3) and (4) and provision for availability of certain appropriated funds from par. (4) payments until expended.

Subsec. (c). Pub. L. 95-623, § 5(b), substituted "statistical and epidemiological compilations" for "statistical compilations" in two instances and "Committee on Human Resources" for "Committee on Labor and Public Welfare" of the Senate.

Subsec. (e). Pub. L. 95-623, § 5(c)(1), incorporated in introductory text prior cl. (1) provision requiring the Secretary to assist State and local health agencies and Federal agencies involved in health matters in the design and implementation of a cooperative system for producing comparable and uniform health information and statistics at the Federal, State, and local levels; enacted in pars. (1) and (2) provisions almost identical to prior cls. (2) and (3); enacted par. (3); deleted prior cl. (4) provision for the Federal share of the data collection costs under the system; enacted in par. (4) provisions almost identical to prior cl. (5); and required State designation of a State administrative agency to be responsible for the statistical activities within the State under the System and Federal guidelines for production of uniform and timely data and appropriate access to the data.

Subsec. (f). Pub. L. 95-623, § 5(d), substituted "the Secretary, acting through the Center, shall cooperate and consult" for "the Secretary shall cooperate and consult".

Subsec. (i). Pub. L. 95-623, § 5(f), added subsec. (i). Former subsec. (i) redesignated (k).

Subsec. (j). Pub. L. 95-623, § 5(f), added subsec. (j).

Subsec. (k). Pub. L. 95-623, § 5(c)(2), (e), (f), struck from par. (1) "United States" preceding "National Committee on Vital and Health Statistics"; authorized in par. (2)(A) the appointment of Committee members from distinguished persons in field of health planning; required the Committee to assist and advise the Secretary with respect to the Cooperative Health Statistics System and the standardized means for the collection of health information and statistics to be established by the Secretary; and redesignated such amended subsec. (i) as (k).

Subsec. (*l*). Pub. L. 95-623, § 8(a), added subsec. (*l*).

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

The name of the Committee on Human Resources of the Senate was changed to the Committee on Labor and Human Resources effective Mar. 7, 1979, by Senate Resolution 30, 96th Congress. See, also, Rule XXV of the Standing Rules of the Senate adopted Nov. 14, 1979.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242b, 242*l*, 242m, 242p, 300*l*-2, 300m-1, 1320a of this title.

§ 242*l*. International cooperation

INTERNATIONAL HEALTH STUDY

Pub. L. 95-83, title III, § 315, Aug. 1, 1977, 91 Stat. 398, which provided that the Secretary of Health, Education, and Welfare arrange through the National Academy of Sciences or other nonprofit private groups or associations, for a study to determine opportunities for broadened Federal program activities in areas of international health, which study was to consider biomedical and behavioral research, health services research, health professions education, immunization and public health activities, and other areas that might improve our and other nations' capacities to prevent, diagnose, control, or cure disease, and to organize and deliver effective and efficient health services, with an interim report on such study completed no later than Oct. 1, 1977 and a final report completed no later than Jan. 1, 1978 and both reports submitted to the Secretary, the Committee on Human Resources, of the Senate, and the Committee on Interstate and Foreign Commerce of the House of Representatives, was omitted from the Code as executed.

§ 242m. General provisions respecting sections 242b, 242c, 242k, 242*l*, and 242n of this title concerning general authority of Secretary, National Center and other centers for Health Services Research, National Center for Health Statistics, international cooperation, and National Center for Health Care Technology

(a) Reports to Congress, and President and Congress; review by Office of Management and Budget

(1) Not later than December 1 of each year, the Secretary shall make a report to Congress respecting (A) the administration of sections 242b, 242c, 242k, and 242*l* and section 242n of this title during the preceding fiscal year, and (B) the current state and progress of health services research and, health statistics, and health care technology.

[*See main edition for text of* (*2*) *and* (*3*)]

(b) Grants or contracts; applications, submittal; application review panel, findings and recommendations; other provisions applicable

(1) No grant or contract may be made under section 242b, 242c, 242k, 242*l*, or 242n of this title unless an application therefor has been submitted to the Secretary in such form and manner, and containing such information, as the Secretary may by regulation prescribe.

[*See main edition for text of* (*2*) *and* (*3*); (*c*)]

(d) Information; publication restrictions

No information obtained in the course of activities undertaken or supported under section 242b, 242c, 242k, 242*l*, or 242n of this title may be used for any purpose other than the purpose for which it was supplied unless authorized by guidelines in effect under section 242k(*l*)(2) of this title or under regulations of the Secretary; and (1) in the case of information obtained in the course of health statistical or epidemiological activities under section 242b or 242k of this title, such information may not be published or released in other form if the particular establishment or person supplying the information or described in it is identifiable unless such establishment or person has consented (as determined under regulations of the Secretary) to its publication or release in other form, and (2) in the case of information obtained in the course of health services research, evaluations, or demonstrations under section 242b or 242c of this title, such information may not be published or released in other form if the person who supplied the information or who is described in it is identifiable unless such person has consented (as determined under regulations of the Secretary) to its publication or release in other form.

(e) Payment procedures; advances or reimbursement; installments; conditions; reductions

(1) Payments of any grant or under any contract under section 242b, 242c, 242k, 242*l*, or 242n of this title may be made in advance or by way of reimbursement, and in such installments and on such conditions, as the Secretary deems necessary to carry out the purposes of such section.

(2) The amounts otherwise payable to any person under a grant or contract made under section 242b, 242c, 242k, 242*l*, or 242n of this title shall be reduced by—

[*See main edition for text of* (*A*) *and* (*B*)]

but only if such person requested the Secretary to furnish such equipment or supplies, or such services, as the case may be.

(f) Contracts without regard to section 529 of title 31 and section 5 of title 41

Contracts may be entered into under section 242b, 242c, 242k, or 242n of this title without regard to section 529 of title 31 and section 5 of title 41.

(g) Research results; publication; indexing, abstracting, and other services; prohibition against restriction of publication and dissemination of national center project data and results; statistical publications

[*See main edition for text of* (*1*)]

(2) The Secretary shall (A) take such action as may be necessary to assure that statistics developed under sections 242b, 242c, 242k, and 242n of this title are of high quality, timely, comprehensive as well as specific, standardized, and adequately analyzed and indexed, and (B) publish, make available, and disseminate such statistics on as wide a basis as is practicable.

(h) Project facility or equipment cost limitation of grants and contracts; labor standards; regulations

(1) Except where the Secretary determines that unusual circumstances make a larger percentage necessary in order to effectuate the purposes of section 242b, 242c, 242k, or 242n of this title, a grant or contract under section 242b, 242c, 242k, or 242n of this title with respect to any project for construction of a facility or for acquisition of equipment may not provide for payment of more than 50 per centum of so much of the cost of the facility or equipment as the Secretary determines is reasonably attributable to research, evaluation, or demonstration purposes.

[*See main edition for text of* (*2*) *and* (*3*)]

(i) Authorization of appropriations

(1) For health service research, evaluation, and demonstration activities undertaken or supported under section 242b or 242c of this title, there are authorized to be appropriated $65,200,000 for the fiscal year ending June 30, 1975, $80,000,000 for the fiscal year ending June 30, 1976, $28,600,000 for the fiscal year ending September 30, 1978, $35,000,000 for the fiscal year ending September 30, 1979, $40,000,000 for the fiscal year ending September 30, 1980, and $45,000,000 for the fiscal year ending September 30, 1981. At least 20 per centum of the amount appropriated under the preceding sentence for any fiscal year or $6,000,000, whichever is less, shall be available only for health services research, evaluation and demonstration activities directly undertaken through the National Center for Health Services Research, and at least 5 per centum of such amount or $1,000,000, whichever is less, shall be available only for dissemination activities directly undertaken through such Center.

(2) For health statistical and epidemiological activities undertaken or supported under section 242b or 242k of this title, there are authorized to be appropriated $30,000,000 for the fiscal year ending June 30, 1975, $30,000,000 for the fiscal year ending June 30, 1976, $33,600,000 for the fiscal year ending September 30, 1978, $50,000,000 for the fiscal year ending September 30, 1979, $65,000,000 for the fiscal year ending September 30, 1980, and $70,000,000 for the fiscal year ending September 30, 1981.

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 104, 91 Stat. 384; Nov. 9, 1978, Pub. L. 95-623, §§ 2, 6(d), 8(b), 92 Stat. 3443, 3451, 3455.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-623, § 6(d)(1), required the report to cover the administration of section 242n of this title and the current state and progress of health care technology.

Subsec. (b)(1). Pub. L. 95-623, § 6(d)(2), included reference to grant or contract under section 242n of this title.

Subsec. (d). Pub. L. 95-623, §§ 6(d)(3), 8(b), inserted reference to section 242n of this title and substituted in cl. (1) "statistical or epidemiological activities" for "statistical activities"; and authorized use of information for purposes other than for which supplied when authorized by guidelines in effect under section 242k(*l*)(2) of this title.

Subsecs. (e), (f), (g)(2), (h)(1). Pub. L. 95-623, § 6(d)(4)-(7), inserted references to section 242n of this title.

Subsec. (i)(1). Pub. L. 95-623, § 2(a), authorized appropriation of $35,000,000; $40,000,000; and $45,000,000 for fiscal years ending Sept. 30, 1979, through 1981, and substituted minimum amounts of the lesser of 20 per centum of appropriated funds or $6,000,000 for health services research, evaluation and demonstration activities of the National Center for Health Services Research and 5 per centum of such funds or $1,000,000 for dissemination activities of such Center for prior similar requirement of 25 per centum of appropriated funds for the applicable fiscal years for health services research, evaluation, and demonstration activities of the Secretary.

Subsec. (i)(2). Pub. L. 95-623, § 2(b), authorized appropriation of $50,000,000; $65,000,000; and $70,000,000 for fiscal years ending Sept. 30, 1979, through 1981.

1977—Subsec. (i)(1). Pub. L. 95-83, § 104(a), authorized appropriation of $28,600,000 for fiscal year ending Sept. 30, 1978.

Subsec. (i)(2). Pub. L. 95-83, § 104(b), authorized appropriation of $33,600,000 for fiscal year ending Sept. 30, 1978.

MINE WORKERS STUDY; REPORT COMPLETED AND SUBMITTED NO LATER THAN 30 MONTHS AFTER NOVEMBER 9, 1978

Section 10 of Pub. L. 95-623 provided that: "The Secretary, acting through the National Center for Health Services Research, shall arrange for the conduct of a study to evaluate the impact upon the utilization of health services by and the health status of members of the United Mine Workers and their dependents as a result of changes in the United Mine Workers' collective-bargaining agreements of March 1978, that require copayments for health services. Such study and a report thereon shall be completed and submitted to the Secretary, the Committee on Human Resources, the Committee on Appropriations, and the Committee on Finance of the Senate, and the Committee on Ways and Means, the Committee on Appropriations, and the Committee on Interstate and Foreign Commerce of the House of Representatives no later than thirty months after the date of enactment of this section [Nov. 9, 1978]. Not more than $1,000,000 of the sums authorized to be appropriated for health services research, evaluation, and demonstration activities by section 308(i)(1) of the Public Health Service Act [subsec. (i)(1) of this section] shall be available for such study."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242b, 242c, 242n, 242p, 292h of this title.

§ 242n. National Center for Health Care Technology

(a) Establishment; Director

There is established in the Department of Health, Education, and Welfare the National Center for Health Care Technology (hereinafter in this section referred to as the "Center") which shall be under the direction of a Director who shall be appointed by the Secretary and supervised by the Assistant Secretary for Health (or such other officer of the Department as may be designated by the Secretary as the principal adviser to him for health programs).

(b) Grants and contracts

(1) The Secretary, acting through the Center, shall undertake and support (by grant or contract) assessments of health care technology. Such assessments shall take into account the safety, effectiveness, and cost effectiveness of, and the social, ethical, and economic impact of health care technologies.

(2) The Secretary, acting through the Center, shall encourage, undertake, and support (by grant or contract) research, demonstrations, and evaluations respecting—

(A) the factors that affect the use of health care technologies in the United States;

(B) methods for disseminating information on health care technologies; and

(C) the effectiveness, cost effectiveness, and social, ethical, and economic impacts of particular medical technologies.

(3) The Secretary, acting through the Center, shall encourage and support (by grant or contract) research, evaluations, and demonstrations respecting the safety and efficacy of particular health care technologies.

(4) The Secretary, acting through the Center and in consultation with the National Council on Health Care Technology, shall establish priorities for the activities prescribed by paragraphs (1), (2), and (3). In determining if an activity respecting a particular health care technology should be given priority, emphasis shall be placed on—

(A) the actual or potential risks and the actual or potential benefits to patients associated with the use of the technology,

(B) the actual or potential cost of the technology,

(C) the actual or potential rate of its use, and

(D) the stage of development of the technology.

(5) The Center may make recommendations to the Secretary respecting health care technology issues in the administration of the laws under the Secretary's jurisdiction, including recommendations with respect to reimbursement policy.

(c) Centers for assessments, multidisciplinary research, evaluations, and demonstrations

(1) The Secretary, acting through the Center, shall, by grant or contract, assist public and private nonprofit entities in meeting the costs of planning and establishing new centers, and operating existing and new centers, for assessments, multidisciplinary research, evaluations, and demonstrations respecting the matters referred to in paragraphs (1) and (2) of subsection (b) of this section. To the extent practicable, the Secretary shall take such actions, in accordance with the requirements of this subsection and section 242m of this title, to assure that three such centers shall be operational by September 1, 1981.

(2)(A) No grant or contract may be made under this subsection for planning and establishing a center unless the Secretary, acting through the Center, determines that when it is operational it will meet the requirements listed in subparagraph (B), and no payment shall be made under a grant or contract for operation of a center unless the center meets such requirements.

(B) Each center shall meet the following requirements:

(i) There shall be a full-time director of the center who possesses a demonstrated capacity for sustained productivity and leadership in assessments, research, demonstrations, and evaluations respecting the matters referred to in paragraphs (1) and (2) of subsection (b) of this section, and there shall be such additional professional staff as may be appropriate.

(ii) The staff of the center shall have expertise in the various disciplines needed to conduct assessments, multidisciplinary research, evaluations and demonstrations respecting the matters referred to in paragraphs (1) and (2) of subsection (b) of this section.

(iii) The center shall be located within an established academic or research institution with departments and resources appropriate to the programs of the center.

(iv) Each center shall meet such additional requirements as the Secretary may by regulation prescribe.

(d) Review requirements

Any grant or contract under subsection (b) or (c) of this section, the direct cost of which will exceed $35,000, may be made or entered into only after appropriate review for scientific merit by peer review groups composed of experts in the relevant fields and only after the National Council on Health Care Technology has had an opportunity to review the project with respect to which the grant or contract is to be made or entered into.

(e) Cooperation and consultation

To assist in carrying out this section, the Secretary, acting through the Center, shall cooperate and consult with the National Institutes of Health, the Veterans' Administration, and any other interested Federal departments or agencies and with State and local health departments and agencies.

(f) National Council on Health Care Technology

(1) There is established the National Council on Health Care Technology (hereinafter in this subsection referred to as the "Council"). The Council shall—

(A) advise the Secretary and the Director of the Center with respect to the performance of the functions prescribed by this section;

(B) review applications for grants and contracts under this section in excess of $35,000 and provide the Secretary its recommendation respecting the approval of such applications;

(C) after consultation with appropriate public and private entities, advise the Secretary respecting the safety, efficacy, effectiveness, cost effectiveness, and the social and economic impacts of particular health care technologies;

(D) after consultation with appropriate public and private entities, develop, when appropriate and to the extent practicable, exemplary standards, norms, and criteria concerning the use of particular health care technologies; and

(E) promptly publish, disseminate, and otherwise make available, through the National Library of Medicine, standards, norms, and criteria developed under subparagraph (D).

(2) The Council shall consist of—

(A) the Director of the National Institutes of Health, the Chief Medical Director of the Veterans' Administration, the Assistant Secretary for Health and Environment of the Department of Defense, the Chairman of the National Professional Standards Review Council, a member of the National Council on Health Planning and Development (established under section 300k-3 of this title), the Director of the Office of Science and Technology Policy, the head of the Food and Drug Administration (or the successor to such entity), the head of the Center for Disease Control (or the successor to such entity), and the head of the Health Care Financing Administration (or the successor to such entity) who (or their designees) shall be ex officio members, and

(B) eighteen members appointed by the Secretary.

The Secretary shall make his initial appointments to the Council within one hundred and twenty days of November 9, 1978. Six of the appointed members shall be selected from individuals who are distinguished in the fields of medicine, engineering, or science (including social science). Of such six members, at least two shall be selected from individuals who are representatives of business entities engaged in the development or production of health care technology. Two of the appointed members shall be physicians, two of the appointed members shall be selected from individuals who are hospital administrators, two of the appointed members shall be selected from individuals who are distinguished in the field of economics, two of the appointed members shall be selected from individuals who are distinguished in the field of law, one of the appointed members shall be selected from individuals who are distinguished in the field or ethics, and three of the appointed members shall be selected from members of the general public who represent the interests of consumers of health care.

(3)(A) Each appointed member of the Council shall be appointed for a term of four years, except that—

(i) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term; and

(ii) of the members first appointed after the date of the enactment of this section, four shall be appointed for a term of four years, four shall be appointed for a term of three years, four shall be appointed for a term of two years, and four shall be appointed for a term of one year, as designated by the Secretary at the time of appointment.

Appointed members may serve after the expiration of their terms until their successors have taken office.

(B) Members of the Council who are not officers or employees of the United States shall receive for each day they are engaged in the performance of the functions of the Council compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, including traveltime; and all members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703 of title 5, for persons in the Government service employed intermittently.

(4) The Council shall annually elect one of its appointed members to serve as Chairman until the next election.

(5) The Council shall meet at the call of the Chairman, but not less often than four times a year.

(6) The Director of the Center shall (1) designate a member of the staff of the Center to act as Executive Secretary of the Council, and (2) make available to the Council such staff, information, and other assistance as it may require to carry out its functions.

(7) The Council shall be subject to the Federal Advisory Committee Act, except that the Council shall terminate September 30, 1981.

(g) Listing of health care technologies under development or likely to be used in practice of medicine

The Director of the National Institutes of Health, the head of the Food and Drug Administration (or the successor to such entity), the head of the Center for Disease Control (or the successor to such entity), the head of the Health Care Financing Administration (or the successor to such entity), and the head of any other entity of the Department of Health, Education, and Welfare designated by the Secretary shall each make available annually to the Center and the Council a listing of all health care technologies of which he is aware that are under development and appear likely to be used in the practice of medicine.

(h) "Health care technology" defined

For purposes of this section, the term "health care technology" means any discrete and identifiable regimen or modality used to diagnose and treat illness, prevent disease, maintain patient well-being, or facilitate the provision of health care services.

(i) Authorization of appropriations

There are authorized to be appropriated to carry out this section $15,000,000 for the fiscal year ending September 30, 1979, $25,000,000 for the fiscal year ending September 30, 1980, and $33,000,000 for the fiscal year ending September 30, 1981. Not less than 15 per centum of the amount appropriated for the fiscal year ending September 30, 1981, shall be obligated for assessments, research, demonstrations, and evaluations directly undertaken through the Center under paragraph (1) or (2) of subsection (b) of this section.

(July 1, 1944, ch. 373, title III, § 309, as added Nov. 9, 1978, Pub. L. 95-623, § 6(c), 92 Stat. 3447, and amended July 10, 1979, Pub. L. 96-32, § 5(d), 93 Stat. 83.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (f)(3)(B), is set out under section 5332 of Title 5, Government Organization and Employees.

The Federal Advisory Committee Act, referred to in subsec. (f)(7), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 309 of act July 1, 1944, was redesignated 310(a) by section 6(a)(2), (3) of Pub. L. 95-623 which is classified to section 242o(a) of this title.

AMENDMENTS

1979—Subsec. (f)(2)(A). Pub. L. 96-32 substituted "Chief Medical Director" for "Chief Medical Officer".

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242b, 242m of this title.

§ 242o. Health conferences; publication of health educational information

(a) A conference of the health authorities in and among the several States shall be called annually by the Secretary. Whenever in his opinion the interests of the public health would be promoted by a conference, the Secretary may invite as many of such health authorities and officials of other State or local public or private agencies, institutions, or organizations to confer as he deems necessary or proper. Upon the application of health authorities of five or more States it shall be the duty of the Secretary to call a conference of all State health authorities joining in the request. Each State represented at any conference shall be entitled to a single vote. Whenever at any such conference matters relating to mental health are to be discussed, the mental health authorities of the respective States shall be invited to attend.

(b) From time to time the Secretary shall issue information related to public health, in the form of publications or otherwise, for the use of the public, and shall publish weekly reports of health conditions in the United States and other countries and other pertinent health information for the use of persons and institutions concerned with health services.

(July 1, 1944, ch. 373, title III, § 310, formerly §§ 309, 310, as added July 23, 1974, Pub. L. 93-353, title I, § 107(a), 88 Stat. 371, and renumbered Nov. 9, 1978, Pub. L. 95-623, § 6(a), (b), 92 Stat. 3447.)

CODIFICATION

Subsec. (a) of this section consists of former section 309 of act July 1, 1944, prior to the renumbering of that section as section 310(a) by Pub. L. 95-623. Subsec. (b) of this section consists of former section 310 of act July 1, 1944, prior to the renumbering of that section as section 310(b) by Pub. L. 95-623.

PRIOR PROVISIONS

Provisions similar to those comprising subsec. (a) of this section were contained in section 312 of act July 1, 1944, ch. 373, title III, 58 Stat. 693, as amended (formerly classified to section 244 of this title) prior to repeal of the provision by Pub. L. 93-353, title I, § 102(a), July 23, 1974, 88 Stat. 362.

Provisions similar to those comprising subsec. (b) of this section were contained in section 315 of act July 1, 1944, ch. 373, title III, 58 Stat. 695, as amended Oct. 30, 1970, Pub. L. 91-515, title II, § 282, 84 Stat. 1308 (formerly classified to section 247 of this title) prior to repeal of the provision by Pub. L. 93-353, title I, § 102(a), July 23, 1974, 88 Stat. 362.

§ 242p. National disease prevention data profile

(a) The Secretary, acting through the National Center for Health Statistics, shall submit to Congress on December 1, 1980, and on December 1 of every third year thereafter, a national disease prevention data profile in order to provide a data base for the effective implementation of this Act and to increase public awareness of the prevalence, incidence, and any trends in the preventable causes of death and disability in the United States. Such profile shall include at a minimum—

(1) mortality rates for preventable diseases;

(2) morbidity rates associated with preventable diseases;

(3) the physical determinants of health of the population of the United States and the relationship between these determinants of health and the incidence and prevalence of preventable causes of death and disability; and

(4) the behavioral determinants of health of the population of the United States including, but not limited to, smoking, nutritional and dietary habits, exercise, and alcohol consumption, and the relationship between these determinants of health and the incidence and prevalence of preventable causes of death and disability.

(b) In preparing the profile required by subsection (a) of this section, the Secretary, acting through the National Center for Health Statistics, shall comply with all relevant provisions of sections 242k and 242m of this title.

(Pub. L. 95-626, title IV, § 404, Nov. 10, 1978, 92 Stat. 3591.)

References in Text

This Act, referred to in subsec. (a), is Pub. L. 95-626, Nov. 10, 1978, 92 Stat. 3551, known as the Health Services and Centers Amendments of 1978. For complete classification of this Act to the Code, see Short Title of 1978 Amendments note set out under section 201 of this title and Tables.

Codification

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

Part B—Federal-State Cooperation

§ 243. General grant of authority for cooperation

Section Referred to in Other Sections

This section is referred to in section 7610 of this title.

§ 246. Grants and services to States

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Grants for comprehensive public health services; form, manner, contents, and required assurances of application; annual review of activities undertaken in application; prerequisites for approval of application; suspension of payments; maximum amount of grants; reduction in grants; determination of State and local expenditures for comprehensive public health services and population; payments; authorization of appropriations; regulations

(1) The Secretary shall make grants to State health authorities to assist in meeting the costs of providing comprehensive public health services.

(2) No grant may be made under paragraph (1) to the State health authority of any State unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary may require, and shall contain or be supported by assurances satisfactory to the Secretary that—

(A) the comprehensive public health services which will be provided within the State with funds under a grant under paragraph (1) will be provided in accordance with the State health plan in effect under section 300m-3(c) of this title;

(B) funds received under grants under paragraph (1) will—

(i) be used to supplement the level of non-Federal funds that would otherwise be made available for the comprehensive public health services for which the grant funds are provided, and

(ii) not be used to supplant such non-Federal funds,

except that the Secretary may in exceptional circumstances waive clause (i) or (ii) or both clauses;

(C) the State health authority for which the application is submitted will—

(i) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds received under grants under paragraph (1);

(ii) from time to time, as prescribed by the Secretary, report to the Secretary (through a uniform national health program reporting system and by such categories as the Secretary may prescribe) a description of the comprehensive public health services provided in the State in the fiscal year for which the grant applied for is made and the amount and source of funds expended in that fiscal year and in the preceding fiscal year for the provision of each such category of services; and

(iii) make such other reports (in such form and containing such information as the Secretary may prescribe) as the Secretary may reasonably require and keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness of, and to verify, such reports; and

(D) the State health authority for which the application is submitted will have in effect a method satisfactory to the Secretary which will assure equitable distribution of funds under grants under paragraph (1) among State and local public health entities within the State which have made expenditures which may be used under paragraph (4) to compute the amount of such grants and which method provides that within the limit of the amount of funds received by the State health authority under such grants—

(i) each local public health entity which makes such expenditures shall receive from such funds in the fiscal year for which grants are made an amount which is equal to the lesser of—

(I) the product of the total amount of such expenditures in such fiscal year and the applicable grant computation percentage, or

(II) the product of $1.50 and the population of the area served by such entity (as such population and area may be determined pursuant to guidelines established by the Secretary); and

(ii) amounts which a local public health entity would receive under clause (i)(I) which are in excess of the applicable amount computed under clause (i)(II) shall be distributed for comprehensive public health services within communities which have the greatest need for such services as determined by the State health authority pursuant to guidelines established by the Secretary.

For purposes of subparagraph (D)(i)(I), the term "applicable grant computation percentage" means the percentage applicable under paragraph (4)(A)(i)(II) to the computation of the amount of a grant under paragraph (1).

(3)(A) The Secretary shall review annually the activities undertaken by each State health authority with an approved application under this subsection to determine if the authority complied with the assurances provided with the application. The Secretary may not approve an application submitted under paragraph (2) if the Secretary determines—

(i) that the State health authority for which the application was submitted did not comply with assurances provided with a prior application under paragraph (2), and

(ii) that he cannot be assured that the authority will comply with the assurances provided with the application under consideration.

(B) Whenever the Secretary, after reasonable notice and opportunity for a hearing to the State health authority of a State, finds that, with respect to funds paid to the authority under a grant under paragraph (1), there is a failure to comply with assurances provided under paragraph (2) with respect to the receipt of such grant, the Secretary shall notify the authority that further payments will not be made to it under such grant (or in his discretion that further payments will not be made to it from such grant for activities in which there is such failure), until he is satisfied that there will no longer be such failure. Until he is so satisfied, the Secretary shall make no payment to such authority from such grant or shall limit payment under such grant to activities in which there is no such failure.

(4)(A) The total amount of grants received by a State health authority under paragraph (1) in any fiscal year shall be the greater of the amount determined under clause (i) or (ii) as follows:

(i) The total amount of grants to a State health authority in a fiscal year shall be the lesser of—

(I) an amount determined by the Secretary which may not be less than the product of $1.00 and the population of the State served by such authority or more than the product of $1.50 and such population, or

(II) in the case of the fiscal year ending September 30, 1980, 10 percent of the amount of State and local expenditures for comprehensive public health services within the State in the State's fiscal year which ended on or before July 1, 1979, in the case of the fiscal year ending September, 30, 1981, 15 percent of the amount of such expenditures in the State's fiscal year which ended on or before July 1, 1980, and in the case of the fiscal year ending September 30, 1982, 20 percent of the amount of such expenditures in the State's fiscal year which ended on or before July 1, 1981.

In determining the amount of a grant to a State health authority under subclause (I), the Secretary shall take into account the financial need of such State and the level of State and local expenditures for comprehensive public health services (as defined in subparagraph (C)). In determining the financial need of a State, the Secretary shall consider, as major factors, the proportion of the State's population whose income level is below the poverty income level established by the Secretary and the proportion of its population which is living in medical underserved areas.

(ii) The total amount of grants to a State health authority in a fiscal year may not be less than the greater of—

(I) the total amount of grants received by such authority under paragraph (1) for the fiscal year ending September 30, 1979, or

(II) the product of $1 and the population of the State served by such authority.

Notwithstanding the preceding provisions of this subparagraph, if for any fiscal year the amount appropriated for that fiscal year under paragraph (6) is less than the amount needed to make grants in that fiscal year in accordance with such clauses to all State health authorities with approved applications, the total amount of grants in that fiscal year for a State health authority shall not be less than an amount which bears the same ratio to the amount determined for such authority in accordance with the applicable clause as the amount appropriated under such paragraph bears to the amount needed to make grants in accordance with such clauses in such fiscal year to all State health authorities with approved applications, except that if the amount appropriated for a fiscal year is equal to or less than the amount appropriated for the fiscal year ending September 30, 1979, the total amount of grants for a State health authority shall be an amount which bears the same ratio to the amount appropriated as the total amount of grants received by such authority from the appropriations for the fiscal year ending September 30, 1979, bears to the amount appropriated for that fiscal year.

(B) The Secretary, at the request of a State health authority, may reduce the amount of the grants to it under paragraph (1), by—

(i) the fair market value of any supplies (including vaccines and other prevention agents) or equipment furnished the State health authority, and

(ii) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the State health authority and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of the State health authority and for the purpose of carrying out a program with respect to which its grant under paragraph (1) is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the State health authority.

(C) For purposes of subparagraph (A)(i)(II), the term "State and local expenditures for comprehensive public health services" means expenditures by State and local public health authorities for public health services designated by the Secretary, but excludes expenditures by such authorities—

(i) specifically required by Federal statutory law as a condition to the receipt of Federal financial assistance, or

(ii) for operating inpatient care facilities, construction, or mental health programs.

(D) For purposes of subparagraph (A) and paragraph (2)(D), populations shall be determined on the basis of the latest figures available from the Department of Commerce.

(5) The Secretary may make payments under grants under paragraph (1) on the basis of such estimates and in such installments as appropriate with adjustments for any previous overpayments or underpayments.

(6)(A) For the purpose of making grants under this subsection there are authorized to be appropriated $150,000,000 for the fiscal year ending September 30, 1980, and $170,000,000 for the fiscal year ending September 30, 1981.

(B) Of the amount appropriated under subparagraph (A) for any fiscal year, the Secretary shall obligate not more than $1,000,000 for the uniform national health program reporting system referred to in paragraph (2)(C)(ii).

(7) Regulations (including substantive amendments to regulations) under this subsection shall be promulgated by the Secretary after consultation with a conference of State health authorities. The Secretary shall consult with such conference prior to the publication of proposals for such regulations or amendments.

[*See main edition for text of* (*e*)]

(f) Repealed. Pub. L. 91-648, title IV, § 403, Jan. 5, 1971, 84 Stat. 1925, as amended Pub. L. 95-454, title VI, § 602(c), Oct. 13, 1978, 92 Stat. 1189

(g) State mental health program grants; applications; procedures applicable; amount of grants; authorization of appropriations; promulgation of regulations

(1) From allotments made pursuant to paragraph (4), the Secretary shall make grants to State mental health authorities to assist them in meeting the costs of carrying out their functions under subchapter XIII of this chapter and under section 2689t of this title and, after September 30, 1979, in meeting the costs of providing mental health services.

(2) No grant may be made under paragraph (1) unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary may require, and shall contain or be supported by assurances satisfactory to the Secretary that—

(A) the mental health services provided within the State under the grant applied for will be provided in accordance with the State health plan in effect for such State under section 300m-3(c) of this title;

(B) funds received under the grant applied for will (i) be used to supplement and, to the extent practical, to increase the level of non-Federal funds that would otherwise be made available for the purposes for which the grant funds are provided, and (ii) not be used to supplant such non-Federal funds;

(C) the State mental health authority will—

(i) provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursements of and accounting for funds received under grants under paragraph (1);

(ii) from time to time, but not less often than annually, report to the Secretary (through a uniform national reporting system and by such categories as the Secretary may prescribe) a description of the mental health services provided in the State in the fiscal year for which the grant applied for is made and the amount of funds obligated in such fiscal year for the provision of each such category of services; and

(iii) make such reports (in such form and containing such information as the Secretary may prescribe) as the Secretary may reasonably require, and keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness of, and to verify, such reports;

(D) the State mental health authority will—

(i) perform the duties prescribed by section 2689t of this title;

(ii) prescribe and provide for the enforcement of minimum standards for the maintenance and operation of mental health programs and facilities (including community mental health centers) within the State;

(iii) provide for assistance to courts and other public agencies and to appropriate private agencies to facilitate (I) screening by community mental health centers (or, if there are no such centers, other appropriate entities) of residents of the State who are being considered for inpatient care in a mental health facility to determine if such care is necessary, and (II) provision of followup care by community mental health centers (or, if there are no such centers, by other appropriate entities) for residents of the State who have been discharged from mental health facilities; and

(iv) establish and carry out a plan which—

(I) is designed to eliminate inappropriate placement in institutions of persons with mental health problems, to insure the availability of appropriate noninstitutional services for such persons, and to improve the quality of care for those with mental health problems for whom institutional care is appropriate, and

(II) shall include fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) to protect the interests of employees affected by actions described in subclause (I), including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which maximum effort will be made to guarantee the employment of such employees.

(3)(A) The Secretary shall review annually the activities undertaken by each State mental health authority with an approved application to determine if it complied with the assurances provided with the application. The Secretary may not approve an application submitted under paragraph (2) if the Secretary determines—

(i) the State for which the application was submitted did not comply with assurances provided with a prior application under paragraph (2), and

(ii) he cannot be assured that the State will comply with the assurances provided with the application under consideration.

(B) Whenever the Secretary, after reasonable notice and opportunity for a hearing to the State mental health authority of a State, finds that, with respect to funds paid to the authority under a grant under paragraph (1), there is a failure to comply substantially with assurances provided under paragraph (2) with respect to the receipt of such grant, the Secretary shall notify the authority that further payments will not be made to it under such grant (or, in his discretion, that further payments will not be made to it from such grant for activities in which there is such failure), until he is satisfied that there will no longer be such failure. Until he is so satisfied, the Secretary shall make no payment to such authority from such grant, or shall limit payment under such grant to activities in which there is no such failure.

(4) For the purpose of determining the total amount of grants that may be made to the State mental health authorities of each State, the Secretary shall, in each fiscal year and in accordance with regulations, allot the sums appropriated for such year under paragraph (7) among the States on the basis of the population and the financial need of the respective States. The populations of the States shall be determined on the basis of the latest figures for the population of the States available from the Department of Commerce.

(5)(A) The Secretary shall determine the amount of any grant under paragraph (1); but the amount of grants made in any fiscal year to the mental health authorities of any State may not exceed the amount of the State's allotment available for obligation in such fiscal year. Payments under such grants may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary.

(B) The Secretary, at the request of a State mental health authority, may reduce the amount of the grant to the authority under paragraph (1) by—

(i) the fair market value of any supplies or equipment furnished the State mental health authority, and

(ii) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the State mental health authority and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of the State mental health authority and for the purpose of carrying out any project with respect to which its grant under paragraph (1) is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the State mental health authority.

(6) In any fiscal year not less than 70 per centum of the amount of a State's grants shall be available only for the provision of mental health services and for the conduct of mental health planning activities in communities of the State.

(7) For the purpose of making grants under this subsection there are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1979, $20,000,000 for the fiscal year ending September 30, 1980, and $25,000,000 for the fiscal year ending September 30, 1981.

(8) Regulations (including substantive amendments to regulations) under this subsection shall be promulgated by the Secretary after consultation with a conference of State mental health authorities. The Secretary shall consult with such conference before the publication of proposals for such regulations or amendments.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 302, 91 Stat. 387; Oct. 13, 1978, Pub. L. 95-454, title VI, § 602(c), 92 Stat. 1189; Nov. 9, 1978, Pub. L. 95-622, title I, § 109, 92 Stat. 3417; Nov. 10, 1978, Pub. L. 95-626, title II, § 201(a), (b)(2), 92 Stat. 3570; July 10, 1979, Pub. L. 96-32, § 6(e), (f), 93 Stat. 83.)

AMENDMENT OF SUBSEC. (g)(2)(D)(iv)

Pub. L. 96-79, title I, §§ 115(k)(2), 129(a), Oct. 4, 1979, 93 Stat. 610, 629, provided that, effective Oct. 4, 1980, subsec. (g)(2)(D)(iv) of this section is amended by substituting "a plan which is consistent with the State health plan in effect for the State under section 300m-3(c) *of this title and" for "a plan".*

REFERENCES IN TEXT

Subchapter XIII of this chapter, referred to in subsec. (g)(1), is classified to section 300k et seq. of this title.

AMENDMENTS

1979—Subsec. (d)(2)(C)(ii). Pub. L. 96-32, § 6(e), substituted "uniform national health program reporting system" for "uniform national reporting system".

Subsec. (d)(4)(A). Pub. L. 96-32, § 6(f), in provision following subd. (II) of cl. (ii), substituted "the preceding provisions of this subparagraph" for "clauses (i) and (ii)" and "amount" for "amounts" and inserted provision that if the amount appropriated for a fiscal year is equal to or less than the amount appropriated for the fiscal year ending Sept. 30, 1979, the total amount of grants for a State health authority shall be an amount which bears the same ratio to the amount appropriated as the total amount of grants received by such authority from the appropriations for the fiscal year ending Sept. 30, 1979, bears to the amount appropriated for that fiscal year.

1978—Subsec. (d). Pub. L. 95-626, § 201(b)(2), completely revised subsec. (d) under which the Secretary is authorized to make grants to State health authorities to assist in meeting the costs of providing comprehensive public health services by including requirements that the States submit an application outlining how funds will be used to supplement non-Federal support for the provision of public health services in the State, by setting out formulae under which funds will be made available to States including definitions of "applicable grant computation percentage" and "State and local expenditures for comprehensive public health services", by requiring the implementation of a national health program reporting system to assure accountability for the expenditure of funds, and by authorizing appropriations of $150,000,000 for the fiscal year ending Sept. 30, 1980, and $170,000,000 for the fiscal year ending Sept. 30, 1981.

Subsec. (d)(7)(A). Pub. L. 95-626, § 201(a)(1), added provisions authorizing an appropriation of $103,000,000 for the fiscal year ending Sept. 30, 1979.

Subsec. (d)(7)(B). Pub. L. 95-626, § 201(a)(2), added provisions authorizing an appropriation of $20,000,000 for the fiscal year ending Sept. 30, 1979.

Subsec. (f). Pub. L. 95-454 designated the existing provisions of section 403 of Pub. L. 91-648 (see 1971 Amendment note below) as subsec. (a) thereof and added subsec. (b) thereto repealing subsec. (f) of this section as subsec. (f) of this section had applied to commissioned officers of the Public Health Service.

Subsec. (g). Pub. L. 95-622 substituted provisions relating to grants for State mental health programs for provisions relating to regulations and amendments with respect to grants to States under subsecs. (a) and (d) and reduction and suspension of subsec. (a) and (d) grant payments.

1977—Subsec. (d)(7)(A). Pub. L. 95-83, § 302(a), substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $106,750,000 for fiscal year ending Sept. 30, 1978.

Subsec. (d)(7)(B). Pub. L. 95-83, § 302(b), substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $12,680,000 for fiscal year ending Sept. 30, 1978.

1971—Subsec. (f). Pub. L. 91-648, § 403(a), repealed subsec. (f), which authorized the Secretary to arrange the interchange of personnel with States to aid in the discharge of responsibilities in the field of health care, except as subsec. (b) applied to commissioned officers of the Public Health Service. See 1978 Amendment note above.

EFFECTIVE DATE OF 1978 AMENDMENTS

Section 201(b)(2) of Pub. L. 95-626 provided in part that the amendment of subsec. (d) of this section by section 201(b)(2) of Pub. L. 95-626 is effective Oct. 1, 1979.

Section 403(b) of Pub. L. 91-648, as amended by section 602(c) of Pub. L. 95-454, provided that the repeal of subsec. (f) of this section, as such repeal is applicable to commissioned officers of the Public Health Service, is effective beginning on the effective date of the Civil Service Reform Act of 1978, i.e., 90 days after Oct. 13, 1978.

CONGRESSIONAL FINDINGS AND DECLARATION

Section 201(b)(1) of Pub. L. 95-626 provided that: "The Congress finds and declares that—

"(A) individual health status can be effectively and economically improved through an adequate investment in community public health programs and services;

"(B) the Federal Government and the States and their communities share in the financial responsibility for funding public health programs;

"(C) the Federal contribution to funds for public health programs should serve as an incentive to an additional investment by State and local governments;

"(D) existing categorical programs of Federal financial assistance to combat specific public health problems should be supplemented by a national program of stable generic support for such public health activities as the prevention and control of environmental health hazards, prevention and control of diseases, prevention and control of health problems of particularly vulnerable population groups, and development and regulation of health care facilities and health services delivery systems; and

"(E) the States and their communities, not the Federal Government, should have primary responsibility for identifying and measuring the impact of public health problems and the allocation of resources for their amelioration."

PUBLIC HEALTH SERVICE HOSPITALS

Provisions of section 818(a) and (b) of Pub. L. 93-155, formerly set out as a note under this section, are now set out as section 248a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 235, 236, 243, 247b, 248a, 291e, 293a, 300*l*, 1320a-1, 2689r, 2689t, 4728, 7610 of this title; title 21 section 1173; title 48 section 1666.

§ 247. Formula grants to States for preventive health service programs

(a) Grant authority

The Secretary shall make grants to States to assist them in planning for and developing, and in providing (directly and through grants or contracts, or both, the public health authorities of political subdivisions of the States, other public entities, and private entities) preventive health service programs—

(1) which shall be designed to reduce, through primary or secondary prevention of risk factors and causative conditions, the mortality rate for one or more of the five leading causes of death in a State, and

(2) which the State receiving a grant under this subsection may design to also reduce, through primary or secondary prevention of risk factors and causative conditions, the burden of illness associated with one or more of the five leading causes of morbidity in the State.

(b) Applications

No grant may be made under subsection (a) of this section for a preventive health service program unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and be submitted in such manner as the Secretary shall by regulation prescribe and shall provide (other than in an application for a planning and developing grant)—

(1) a detailed plan of the program for which the applicant is seeking a grant under subsection (a) of this section, which plan—

(A) shall require the use, to the extent practicable, of all relevant professional disciplines;

(B) may, at the option of the State, describe a program or programs that are targeted toward a particular age group;

(C) shall set forth quantitatively the current relevant rates of mortality or of morbidity, as the case may be, in the State measured and reported in accordance with regulations of the Secretary;

(D) shall set forth the quantitive goals for reduction in the relevant rates of mortality and reduction in the risk factors or causative conditions associated with one or more of the five leading causes of death in the State;

(E) shall, if the applicant's program also concerns morbidity, set forth the quantitative goals for reduction in the relevant rates of morbidity and reduction in the risk factors or causative conditions associated with one or more of the five leading causes of morbidity in the State;

(F) shall require a separate health communications component in the program or programs which shall include a description of how the communications media, including the electronic media, will be used to effectuate the purposes of the programs;

(G) shall identify a specific institutional entity in the State that will be responsible for accomplishing through contracts with private entities and through other means the requirements of subparagraph (F); and

(H) shall contain such other information as the Secretary may by regulation prescribe;

(2) with respect to each of the major causes of mortality and morbidity included in the program (A) the amount of Federal, State, and other funds obligated by the applicant in its latest annual accounting period with respect to such cause, (B) a description of the services provided by the applicant in such program in such period with respect to such cause, (C) the amount of Federal funds needed by the applicant to continue providing such services in such program, and (D) if the applicant proposes changes in the provision of the services in such program, the priorities of such proposed changes, reasons for such changes, and the amount of Federal funds needed by the applicant to make such changes;

(3) for assurances satisfactory to the Secretary that the program which will be provided with funds under a grant under subsection (a) of this section will be provided in a manner consistent with the State health plan in effect under section 300m-3(c) of this title,

(4) for assurances satisfactory to the Secretary that the applicant will provide for such fiscal control and fund accounting procedures as the Secretary by regulation prescribes to assure the proper disbursement of and accounting for funds received under grants under subsection (a) of this section;

(5) assurances satisfactory to the Secretary that the applicant will provide for periodic evaluation of its program or programs;

(6) assurances satisfactory to the Secretary that the applicant will make such reports (in such form and containing such information as the Secretary may by regulation prescribe) as the Secretary may reasonably require and keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness of, and to verify, such reports;

(7) assurances satisfactory to the Secretary that the applicant will comply with any other conditions imposed by this section with respect to grants; and

(8) such other information as the Secretary may by regulation prescribe.

(c) Application approval; annual review; ineffective operation of program; failure of substantial compliance

(1) The Secretary shall not approve an application submitted under subsection (b) of this section for a grant for a program for which a grant was previously made under subsection (a) of this section unless the Secretary determines—

(A) the program for which the application was submitted is operating effectively to achieve its stated purpose.

(B) the applicant complied with the assurances provided the Secretary when applying for such previous grant, and

(C) the applicant will comply with the assurances provided with the application.

(2) The Secretary shall review annually the activities undertaken by each recipient of a grant under subsection (a) of this section to determine if the program assisted by such grant is operating effectively to achieve its stated purposes and if the recipient is in compliance with the assurances provided the Secretary when applying for such grant.

(3) Whenever the Secretary finds with respect to funds paid to it under a grant under subsection (a) of this section for a program, that the program is not operating effectively to achieve its stated purposes or that there is a failure to comply substantially with assurances provided with respect to the receipt of such grant, the Secretary shall notify the State that further payments will not be made to it under such grant (or in his discretion that further payments will be reduced), until he is satisfied that the program will operate effectively or there will no longer be such a failure. Until he is so satisfied, the Secretary shall make no payment or, in his discretion, reduce payments to the State from such grant.

(d) Funding requirements

(1) The total amount of grants made under subsection (a) of this section in the fiscal year ending September 30, 1980, to any State under subsection (a) of this section to assist it in plan-

ning and developing a program described in such subsection shall be determined by the Secretary, except that it may not be less than the product of $0.10 and population of the State. Notwithstanding the preceding sentence, if for any fiscal year the amount appropriated for the fiscal year ending September 30, 1980, under subsection (k) of this section is less than the amount needed to make grants for that fiscal year in accordance with such sentences to all States with approved applications, the total amount of grants for that fiscal year for a State shall not be less than an amount which bears the same ratio to the amounts determined for such State in accordance with the preceding sentence as the amount appropriated under subsection (k) of this section bears to the amount needed to make grants in accordance with such sentence for such fiscal year to all States with approved applications.

(2) The total amount of grants made to any State under subsection (a) of this section for any fiscal year to assist it in providing a program described in such subsection shall be determined by the Secretary, except that it—

(i) may not exceed the lesser of—

(I) the product of $0.50 and the population of the State, or

(II) in the case of the fiscal year ending September 30, 1982, 5 per centum of the amount of State and local expenditures for preventive health services within the State in the State's fiscal year which ended on or before July 1, 1981; in the case of the fiscal year ending September 30, 1983, 7½ per centum of the amount of such expenditures in the State's fiscal year which ended on or before July 1, 1982; and, in the case of the fiscal year ending September 30, 1984, 10 per centum of the amount of such expenditures in the State's fiscal year which ended on or before July 1, 1983; and

(ii) may not be less than the product of $0.25 and the population of the State, except as provided in subsection (c)(3) of this section.

Notwithstanding the preceding sentence, if for any fiscal year the amount appropriated for that fiscal year under subsection (k) of this section is less than the amount needed to make grants for that fiscal year in accordance with such sentence to all States with approved application the total amount of grants for that fiscal year for a State shall not be less than an amount which bears the same ratio to the amounts determined for such State in accordance with such sentence as the amount appropriated under subsection (k) of this section bears to the amount needed to make grants in accordance with this section for such fiscal year to all States with approved application.

(e) Payments

Payments under grants under subsection (a) of this section may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

(f) Grant reduction

The Secretary, at the request of a State which is a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by—

(1) the fair market value of any supplies or equipment furnished the State, and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the State and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such State and for the purpose of planning or carrying out a program with respect to which a grant under subsection (a) of this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the State.

(g) Recordkeeping; examination and audit

(1) Each State which is a recipient of a grant under subsection (a) of this section shall keep such records as the Secretary shall by regulation prescribe, including records which fully disclose the amount and disposition by such State of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of each State which is a recipient of a grant under subsection (a) of this section that are pertinent to such grant.

(h) Other grant funds; persons who object to being treated

(1) Nothing in this section shall limit or otherwise restrict the use of funds which are granted to a State or to an agency or a political subdivision of a State under provisions of Federal law (other than this section) and which are available for the conduct of preventive health service programs from being used in connection with programs assisted through grants under subsection (a) of this section.

(2) Nothing in this subsection shall be construed to require any State or any agency or political subdivision of a State to have a preventive health service program which would require any person, who objects to any treatment provided under such a program, to be treated or to have any child or ward treated under such program.

(i) Report

The Secretary shall include, as part of the report required by section 300u-4 of this title, a report on the extent of the problems presented by the causes of mortality and morbidity referred to in subsection (a) of this section; on the amount of funds obligated under grants under such subsection in the preceding fiscal year to assist the States in operating programs described in such subsection; and on the effectiveness of the programs assisted under grants under such subsection.

(j) Definitions

(1) For purposes of subsection (a) of this section the term "primary prevention of causative conditions" means the prevention of the development of causative conditions in healthy individuals.

(2) For purposes of subsection (a) of this section, the term "secondary prevention of causative conditions" means the early detection, referral for diagnosis and treatment, or follow-up for compliance with treatment of causative conditions in asymptomatic individuals.

(3) For purposes of subsection (d)(2) of this section, the term "State and local expenditures for preventive health services" means expenditures by State and local public health authorities for preventive health services but excludes expenditures by such authorities—

(A) specifically required by Federal statutory law as a condition to the receipt of Federal financial assistance, or

(B) for operating inpatient care facilities or construction.

(4) For purposes of subsection (d) of this section, populations shall be determined on the basis of the latest figures available from the Department of Commerce.

(k) Authorization of appropriations

(1) For the purpose of making payments under grants under subsection (a) of this section to assist States in meeting the costs of planning and developing programs described in such subsection, there are authorized to be appropriated $20,000,000 for the fiscal year ending September 30, 1980.

(2) For the purpose of making payments under grants under subsection (a) of this section to assist States in meeting the costs of providing the programs described in such subsection, there are authorized to be appropriated $60,000,000 for the fiscal year ending September 30, 1981, and $75,000,000 for the fiscal year ending September 30, 1982.

(3) Not less than 20 per centum of the total amount of grants received by a State under subsection (a) of this section for providing a program described in such subsection shall be obligated by the State for operating the health communications component of such program. No funds appropriated under this paragraph shall be used (A) to assist States in meeting the costs of traditional law enforcement activities (including the prevention of homicide) as defined in regulations of the Secretary, or (B) for construction.

(July 1, 1944, ch. 373, title III, § 315, as added Nov. 10, 1978, Pub. L. 95-626, title II, § 203, 92 Stat. 3578, and amended July 10, 1979, Pub. L. 96-32, § 6(h), 93 Stat. 83.)

PRIOR PROVISIONS

A prior section 247, acts July 1, 1944, ch. 373, title III, § 315, 58 Stat. 695; Oct. 30, 1970, Pub. L. 91-515, title II, § 282, 84 Stat. 1308, providing for the publication of health educational information, was repealed by Pub. L. 93-353, title I, § 102(a), July 23, 1974, 88 Stat. 362. See section 242o(b) of this title.

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-32 substituted "under subsection (k) of this section" for "under subsection (*l*) of this section" in four places.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 247b of this title.

§ 247a. Lead-based paint poisoning prevention programs

(a) Grants

(1)(A) The Secretary may make grants to agencies of units of general local governments and to private nonprofit entities to assist them in meeting the costs of providing lead-based paint poisoning prevention programs. The Secretary may also make such grants to an agency of State government in any case where State government provides direct services to citizens in local communities or where units of general local government within the State are prevented by State law from implementing or receiving such grants or from expending such grants in accordance with their intended purpose.

(B) Each program for which a grant is made under this subsection shall afford, to the maximum extent feasible, opportunities for employing the residents of communities or neighborhoods affected by lead-based paint poisoning, and for providing appropriate training, education, and any information which may be necessary to inform such residents of opportunities for employment in lead-based paint elimination programs.

(2) For purposes of this section—

(A) the term "lead-based paint poisoning prevention program" means any program which provides for—

(i) educational programs intended to communicate to parents, educators, and local health officials the health danger and prevalence of lead-based paint poisoning among children;

(ii) the development and carrying out of intensive community testing programs designed to detect incidents of lead-based paint poisoning among community residents and to insure prompt medical treatment for such afflicted individuals;

(iii) the development and carrying out of intensive followup programs to insure that identified cases of lead-based paint poisoning are protected against further exposure to lead-based paints in their living environment;

(iv) the establishment of centralized laboratory facilities for analyzing biological and environmental lead specimens; and

(v) any other actions which will reduce or eliminate lead-based paint poisoning; and

(B) the term "units of general local government" means (i) any city, county, township, town, borough, parish, village, or other general purpose political subdivisions of a State, (ii) any combination of units of general local government in one or more States, (iii) an Indian tribe, and (iv) with respect to lead-based paint poisoning elimination activities, in their urban areas, the territories and possessions of the United States.

Followup programs described in subparagraph (A)(iii) shall include programs to eliminate lead-based paint hazards from surfaces in and around residential dwelling units or houses, including programs to provide for such purpose financial assistance to the owners of such units or houses who are financially unable to eliminate such hazards from their units or houses. In administering programs for the elimination of such hazards, priority shall be given to the elimination of such hazards in residential dwelling units or houses in which reside children with diagnosed lead-based paint poisoning.

(b) Applications

No grant may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and be submitted in such manner as the Secretary shall by regulation prescribe and shall provide—

(1) a complete description of the type and extent of the lead-based paint poisoning prevention program which is to be provided by or through the applicant with a grant under subsection (a) of this section;

(2) assurances satisfactory to the Secretary that the program to be provided under the grant applied for will be provided in accordance with the State health plan in effect under section 300m-3(c) of this title;

(3) assurances satisfactory to the Secretary that the applicant will make such reports respecting the program as the Secretary may require; and

(4) such other information as the Secretary may by regulation prescribe.

No grant may be made under subsection (a) of this section unless the Secretary determines that there is satisfactory assurance that Federal funds made available under such a grant for any period will be so used as to supplement and, to the extent practical, increase the level of State, local, and other non-Federal funds that would, in the absence of such Federal funds, be made available for the program for which the grant is to be made and will in no event supplant such State, local, and other non-Federal funds.

(c) Amount of grants

The Secretary shall determine the amount of a grant made under subsection (a) of this section. Payments under such grants may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

(d) Recordkeeping; examination and audit

(1) Each recipient of a grant under subsection (a) of this section shall keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of grants under subsection (a) of this section that are pertinent to such grants.

(e) Technical assistance

The Secretary may provide technical assistance to recipients of grants under subsection (a) of this section in connection with the operation of their lead-based paint poisoning prevention programs.

(f) Report to Congress

The Secretary shall submit annually to the Congress a report (1) on the extent of the problems presented by lead-based paint, and (2) on the effectiveness of the programs assisted under grants under subsection (a) of this section.

(g) Authorization of appropriations

There are authorized to be appropriated for grants under subsection (a) of this section $14,000,000 for the fiscal year ending September 30, 1979, $14,000,000 for the fiscal year ending September 30, 1980, and $15,000,000 for the fiscal year ending September 30, 1981.

(July 1, 1944, ch. 373, title III, § 316, as added Nov. 10, 1978, Pub. L. 95-626, title II, § 208(a), 92 Stat. 3586.)

PRIOR PROVISIONS

A prior section 247a, act July 1, 1944, ch. 373, title III, § 316, as added Oct. 30, 1970, Pub. L. 91-515, title II, § 281, 84 Stat. 1307, providing for the establishment, composition, qualifications of members, terms of office, vacancies, reappointment, compensation, travel expenses, and functions of the National Advisory Council on Comprehensive Health Planning Programs, was repealed by Pub. L. 93-641, § 5(d), Jan. 4, 1975, 88 Stat. 2275.

STUDY OF EFFECT OF LEAD ON CHILD DEVELOPMENT

Section 209 of Pub. L. 95-626 provided that: "The Secretary of Health, Education, and Welfare shall conduct a study to determine the long-term effect on child development of various levels of lead in blood. The Secretary shall report the results of such study to the Congress together with recommendations for such legislation as the Secretary determines is appropriate."

§ 247b. Project grants for preventive health services

(a) Grant authority

The Secretary may make grants—

(1) to State health authorities to assist them in meeting the costs of establishing and

maintaining preventive health service programs for screening for, the detection, diagnosis, prevention, and referral for treatment of, and follow-up on compliance with treatment prescribed for, hypertension; and

(2) to States and, in consultation with State health authorities, to political subdivisions of States and to other public entities to assist them in meeting the costs of establishing and maintaining preventive health service programs (other than programs described in paragraph (1)).

(b) Application

No grant may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be in such form and be submitted in such manner as the Secretary shall by regulation prescribe and shall provide—

(1) a complete description of the type and extent of the program for which the applicant is seeking a grant under subsection (a) of this section;

(2) with respect to each such program (A) the amount of Federal, State, and other funds obligated by the applicant in its latest annual accounting period for the provision of such program, (B) a description of the services provided by the applicant in such program in such period, (C) the amount of Federal funds needed by the applicant to continue providing such services in such program, and (D) if the applicant proposes changes in the provision of the services in such program, the priorities of such proposed changes, reasons for such changes, and the amount of Federal funds needed by the applicant to make such changes;

(3) assurances satisfactory to the Secretary that the program which will be provided with funds under a grant under subsection (a) of this section will be provided in a manner consistent with the State health plan in effect under section 300m-3(c) of this title and in those cases where the applicant is a State, that such program will be provided, where appropriate, in a manner consistent with any plans in effect under an application approved under section 247 of this title;

(4) assurances satisfactory to the Secretary that the applicant will provide for such fiscal control and fund accounting procedures as the Secretary by regulation prescribes to assure the proper disbursement of and accounting for funds received under grants under subsection (a) of this section;

(5) assurances satisfactory to the Secretary that the applicant will provide for periodic evaluation of its program or programs;

(6) assurances satisfactory to the Secretary that the applicant will make such reports (in such form and containing such information as the Secretary may by regulation prescribe) as the Secretary may reasonably require and keep such records and afford such access thereto as the Secretary may find necessary to assure the correctness of, and to verify, such reports;

(7) assurances satisfactory to the Secretary that the applicant will comply with any other conditions imposed by this section with respect to grants; and

(8) such other information as the Secretary may by regulation prescribe.

(c) Approval; annual project review

(1) The Secretary shall not approve an application submitted under subsection (b) of this section for a grant for a program for which a grant was previously made under subsection (a) of this section unless the Secretary determines—

(A) the program for which the application was submitted is operating effectively to achieve its stated purpose,

(B) the applicant complied with the assurances provided the Secretary when applying for such previous grant, and

(C) the applicant will comply with the assurances provided with the application.

(2) The Secretary shall review annually the activities undertaken by each recipient of a grant under subsection (a) of this section to determine if the program assisted by such grant is operating effectively to achieve its stated purposes and if the recipient is in compliance with the assurances provided the Secretary when applying for such grant.

(d) Amount of grant; payment

The amount of a grant under subsection (a) of this section shall be determined by the Secretary. Payments under such grants may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

(e) Reduction

The Secretary, at the request of a recipient of a grant under subsection (a) of this section, may reduce the amount of such grant by—

(1) the fair market value of any supplies (including vaccines and other preventive agents) or equipment furnished the grant recipient, and

(2) the amount of the pay, allowances, and travel expenses of any officer or employee of the Government when detailed to the grant recipient and the amount of any other costs incurred in connection with the detail of such officer or employee,

when the furnishing of such supplies or equipment or the detail of such an officer or employee is for the convenience of and at the request of such grant recipient and for the purpose of carrying out a program with respect to which the grant under subsection (a) of this section is made. The amount by which any such grant is so reduced shall be available for payment by the Secretary of the costs incurred in furnishing the supplies or equipment, or in detailing the personnel, on which the reduction of such grant is based, and such amount shall be deemed as part of the grant and shall be deemed to have been paid to the grant recipient.

(f) Recordkeeping; audit authority

(1) Each recipient of a grant under subsection (a) of this section shall keep such records as the Secretary shall by regulation prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such grant, the total cost of the undertaking in connection with which such grant was made, and the amount of that portion of the cost of the undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any books, documents, papers, and records of the recipient of grants under subsection (a) of this section that are pertinent to such grants.

(g) Use of grant funds; mandatory treatment prohibited

(1) Nothing in this section shall limit or otherwise restrict the use of funds which are granted to a State or to an agency or a political subdivision of a State under provisions of Federal law (other than this section) and which are available for the conduct of preventive health service programs from being used in connection with programs assisted through grants under subsection (a) of this section.

(2) Nothing in this section shall be construed to require any State or any agency or political subdivision of a State to have a preventive health service program which would require any person, who objects to any treatment provided under such a program, to be treated or to have any child or ward treated under such program.

(h) Reports

The Secretary shall include, as part of the report required by section 300u-4 of this title, a report on the extent of the problems presented by the diseases and conditions referred to in subsection (j) of this section, on the amount of funds obligated under grants under subsection (a) of this section in the preceding fiscal year for each of the programs listed in subsection (j) of this section, and on the effectiveness of the activities assisted under grants under subsection (a) of this section in controlling such diseases and conditions.

(i) Technical assistance

The Secretary may provide technical assistance to States, State health authorities, and other public entities in connection with the operation of their preventive health service programs.

(j) Authorization of appropriations; reports to Congressional Committees

(1)(A) Subject to subparagraph (B), for purposes of grants under subsection (a) of this section for preventive health service programs to immunize children against immunizable diseases (including measles, rubella, poliomyelitis, diphtheria, pertussis, tetanus, and mumps) and for purposes of grants under such subsection for the fiscal year ending September 30, 1979, for preventative health service programs to immunize individuals against influenza, there are authorized to be appropriated $51,000,000 for the fiscal year ending September 30, 1979, $39,500,000 for the fiscal year ending September 30, 1980, and $45,000,000 for the fiscal year ending September 30, 1981.

(B) No funds appropriated under subparagraph (A) may be obligated for grants for preventive health service programs to immunize individuals against influenza until the Secretary submits to the Committees on Labor and Human Resources and Appropriations of the Senate and the Committees on Interstate and Foreign Commerce and Appropriations of the House of Representatives the following:

(i) Not later than June 30, 1979, a complete report on the results of the influenza immunization activities in 1978 and 1979 under funds appropriated under Public Law 95-355, which report shall include information with respect to adverse effects associated with influenza immunization, any known liability arising out of such immunization, any report received by the Secretary on the safety and effectiveness of the vaccine used to provide such immunization, the number of persons immunized, and other experiences with such activities.

(ii) A report on the current status of the immunization program conducted under the amendment made to this section by the National Swine Flu Immunization Program of 1976 (Public Law 94-380), including the status of any claims still pending under the program and the Secretary's plans for dealing with such claims.

(iii) As they become available, all reports and information from studies conducted by or under contract with the Secretary with respect to liability arising out of personal injuries or deaths in connection with immunization programs, protection against such liability, and methods of compensation for such injuries and any other reports and information respecting such matters which are available to the Secretary.

(iv) Specific interim recommendations of the Secretary with respect to the matters referred to in clause (iii).

(v) A copy of the information which will be distributed to individuals before they receive any influenza immunization under a preventive health service program for which a grant is made under subsection (a) of this section.

(2) For the purpose of grants under subsection (a) of this section for preventive health service programs for the control of rodents there are authorized to be appropriated $14,500,000 for the fiscal year ending September 30, 1979, $15,500,000 for the fiscal year ending September 30, 1980, and $17,000,000 for the fiscal year ending September 30, 1981. Funds appropriated under this paragraph may be used to make grants to nonprofit private entities for any program or project for rodent control for which a grant was made under section 246(e) of this title for the fiscal year ending June 30, 1975. A grant to such an entity shall be made in the same manner as a grant under subsection (a) of this section.

(3) For the purpose of grants under subsection (a) of this section for programs for hypertension there are authorized to be appropriated $24,500,000 for the fiscal year ending September 30, 1980, $29,000,000 for the fiscal year ending September 30, 1981.

(4) For the purpose of grants under subsection (a) of this section for establishing and maintaining community and school-based fluoridation programs, there are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1980, and $5,000,000 for the fiscal year ending September 30, 1981.

(5) For the purpose of grants under subsection (a) of this section for preventive health service programs for which appropriations are not authorized by paragraph (1), (2), (3), or (4) there are authorized to be appropriated $1,000,000 for the fiscal year ending September 30, 1979, $1,000,000 for the fiscal year ending September 30, 1980, and $1,000,000 for the fiscal year ending September 30, 1981. No funds appropriated under this paragraph may be used for grants for immunization against influenza.

(As amended Nov. 10, 1978, Pub. L. 95-626, title II, §§ 202, 204(b)(2), 92 Stat. 3574, 3583; S. Res. 30, Mar. 7, 1979; July 10, 1979, Pub. L. 96-32, § 6(i), 93 Stat. 83.)

REFERENCES IN TEXT

Public Law 95-355, referred to in subsec. (j)(1)(B)(i), is Pub. L. 95-355, Sept. 8, 1978, 92 Stat. 523, known as the Second Supplemental Appropriations Act, 1978. For complete classification of this Act to the Code, see Tables.

The National Swine Flu Immunization Program of 1976 (Public Law 94-380), referred to in subsec. (j)(1)(B)(ii), is Pub. L. 94-380, Aug. 12, 1976, 90 Stat. 1113, which amended this section and enacted provisions set out as notes under this section and section 201 of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 201 of this title and Tables.

AMENDMENTS

1979—Subsec. (j)(4). Pub. L. 96-32 added par. (4). Former par. (4) redesignated as (5).

Subsec. (j)(5). Pub. L. 96-32 redesignated par. (4) as par. (5) and, in (5) as so redesignated, substituted "paragraph (1), (2), (3), or (4)" for "paragraph (1), (2), or (3)".

1978—Pub. L. 95-626, § 202, completely revised the entire section to substitute provisions relating to project grants for preventive health services for provisions relating to grants for disease control programs.

Subsec. (g)(2). Pub. L. 95-626, § 204(b)(2), struck out "Except as provided in section 247c of this title," preceding "No funds appropriated under any provision of this chapter".

CHANGE OF NAME

The name of the Committee on Human Resources of the Senate was changed to the Committee on Labor and Human Resources effective Mar. 7, 1979, by Senate Resolution 30, 96th Congress. See, also, Rule XXV of the Standing Rules of the Senate adopted Nov. 14, 1979.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 202 of Pub. L. 95-626, as amended by Pub. L. 96-32, § 6(g), July 10, 1979, 93 Stat. 83, provided in part that the amendment of this section by Pub. L. 95-626 is effective Oct. 1, 1978.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 243, 247b-2, 247c of this title.

§ 247b-1. Demonstration and evaluation of optimal methods for organizing and delivering comprehensive preventive health services to defined populations

(a) Program authority

The Secretary of Health, Education, and Welfare shall undertake or support (through grants or contracts or both) five intensive and comprehensive community based programs in both rural and urban areas for the purpose of demonstrating and evaluating optimal methods for organizing and delivering comprehensive preventive health services to defined populations.

(b) Reports to Congress

The Secretary shall submit to the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives on January 1, 1981, and on January 1 of every second year thereafter a report on the programs undertaken or supported under subsection (a) of this section including, but not limited to, a detailed description and an evaluation of the effectiveness of each such program.

(c) Authorization of appropriations

For the purpose of undertaking or supporting demonstrations and evaluations pursuant to subsection (a) of this section, there are authorized to be appropriated $6,000,000 for the fiscal year ending September 30, 1980, $8,000,000 for the fiscal year ending September 30, 1981, and $8,000,000 for the fiscal year ending September 30, 1982.

(Pub. L. 95-626, title IV, § 401, Nov. 10, 1978, 92 Stat. 3590; S. Res. 30, Mar. 7, 1979.)

CODIFICATION

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

The name of the Committee on Human Resources of the Senate was changed to the Committee on Labor and Human Resources effective Mar. 7, 1979, by Senate Resolution 30, 96th Congress. See, also, Rule XXV of the Standing Rules of the Senate adopted Nov. 14, 1979.

§ 247b-2. Deterrence of smoking and alcohol beverage use among children and adolescents

(a) Program authority

The Secretary of Health, Education, and Welfare, after consultation with appropriate public and private entities, shall establish a comprehensive program designed to deter smoking and the use of alcoholic beverages among children and adolescents. Such a program shall include—

(1) the undertaking or support (through grants or contracts or both) of biomedical and

behavioral research designed to increase understanding of the biological and behavioral determinants of smoking and the use of alcoholic beverages among children and adolescents, with special emphasis on children aged twelve or below; and

(2) grants to States or political subdivisions of States to assist them in meeting the costs of demonstrations and evaluations of community or school-based programs designed to deter smoking and the use of alcoholic beverages among children and adolescents.

(b) Compliance with requirements for project grants

With respect to grants under paragraph (a)(2) the Secretary and each grant applicant and recipient must comply with the provisions of subsections (b), (c), (d), (e), (f), (g), and (h) of section 247b of this title.

(c) Authorization of appropriations

(1) For the purpose of making payments for the undertaking or support of research under paragraph (a)(1), there are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1980, and $5,000,000 for the fiscal year ending September 30, 1981.

(2) For the purpose of making payments under paragraph (a)(2), there are authorized to be appropriated $10,000,000 for the fiscal year ending September 30, 1980, and $10,000,000 for the fiscal year ending September 30, 1981.

(Pub. L. 95-626, title IV, § 402, Nov. 10, 1978, 92 Stat. 3591.)

CODIFICATION

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 247c. Venereal disease prevention and control projects and programs

[*See main edition for text of* (*a*)]

(b) Research, demonstration, and public information and education projects

The Secretary is authorized to make grants to States, political subdivisions of States, and any other public or nonprofit private entity for projects for the conduct of research, demonstrations, and public information and education, for the prevention and control of venereal disease.

(c) Project grants to States

The Secretary is also authorized to make project grants to States and, in consultation with the State health authority, to political subdivisions of States, for—

(1) venereal disease surveillance activities, including the reporting, screening, and followup of diagnostic tests for, and diagnosed cases of, venereal disease;

(2) casefinding and case followup activities respecting venereal disease, including contact tracing of infectious cases of venereal disease and routine testing, including laboratory tests and followup systems;

(3) interstate epidemiologic referral and followup activities respecting venereal disease;

(4) professional (including appropriate allied health personnel) venereal disease education, training and clinical skills improvement activities; and

(5) such special studies or demonstrations to evaluate or test venereal disease prevention and control strategies and activities as may be prescribed by the Secretary.

(d) Authorization of appropriations; terms and conditions; payments; recordkeeping; audit; grant reduction; information disclosure

(1) For the purpose of making grants under subsections (b) and (c) of this section there are authorized to be appropriated $45,000,000 for the fiscal year ending September 30, 1979, $51,500,000 for the fiscal year ending September 30, 1980, and $59,000,000 for the fiscal year ending September 30, 1981. For grants under subsection (b) of this section in any fiscal year, the Secretary shall obligate not less than 5 per centum of the amount appropriated for such fiscal year under the preceding sentence. Grants made under subsection (b) or (c) of this section shall be made on such terms and conditions as the Secretary finds necessary to carry out the purposes of such subsection, and payments under any such grants shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary.

[*See main edition for text of* (*2*) *to* (*5*); (*e*)]

(f) Consent of individuals

Nothing in this section shall be construed to require any State or any political subdivision of a State to have a venereal disease program which would require any person, who objects to any treatment provided under such a program, to be treated under such a program.

(g) Definition

For purposes of this section and section 247b of this title, the term "venereal disease" means gonorrhea, syphilis, or any other disease which can be sexually transmitted and which the Secretary determines is or may be amendable to control with assistance provided under this section and is of national significance.

(h) Redesignated (g)

(As amended Nov. 10, 1978, Pub. L. 95-626, title II, § 204(b)(1), (c), (d), 92 Stat. 3583; July 10, 1979, Pub. L. 96-32, § 6(j), 93 Stat. 84.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-32 amended directory language of Pub. L. 95-626, § 204(c)(2), and required no change in text. See 1978 Amendment note below.

1978—Subsec. (b). Pub. L. 95-626, § 204(c)(2), as amended by Pub. L. 96-32, substituted "research, demonstrations, and public information and education for the prevention and control of venereal disease" for "research, demonstrations, education, and training for the prevention and control of venereal disease", struck out "(1)" preceding the provisions thus amended, and struck out par. (2) which authorized the appropriation of $5,000,000 for the fiscal year 1976, $6,600,000 for fiscal year 1977, and $7,600,000 for fiscal year 1978 for the purpose of carrying out this subsection.

Subsec. (c). Pub. L. 95-626, § 204(d), struck out "(1)" after "(c)" at the beginning of the existing provisions, changed the designations at the beginning of each of the five clauses from "(A)", "(B)", "(C)", "(D)", and "(E)" to "(1)", "(2)", "(3)", "(4)", and "(5)", respectively, substituted "The Secretary is also authorized" for "The Secretary is authorized" in the provisions preceding cl. (1) as redesignated, substituted "professional (including appropriate allied health personnel) venereal disease education, training and clinical skills improvement activities" for "professional and public venereal disease education activities" in cl. (4) as redesignated, and struck out former par. (2) which had authorized appropriations of $32,000,000 for fiscal year 1976, $41,500,000 for fiscal year 1977, and $43,500,000 for fiscal year 1978.

Subsec. (d)(1). Pub. L. 95-626, § 204(c)(1), added provisions authorizing appropriations of $45,000,000 for the fiscal year ending Sept. 30, 1979, $51,500,000 for the fiscal year ending Sept. 30, 1980, and $59,000,000 for the fiscal year ending Sept. 30, 1981, for the purpose of making grants under subsecs. (b) and (c) of this section, and added provisions directing the Secretary to obligate not less than 5 per centum of the amount appropriated for any fiscal year.

Subsec. (f). Pub. L. 95-626, § 204(b)(1), redesignated subsec. (g) as (f). Former subsec. (f), requiring that not to exceed 50 per centum of the amounts appropriated for any fiscal year under subsecs. (b) and (c) of this section could be used by the Secretary for grants for such fiscal year under section 247b of this title, was stricken out.

Subsec. (g). Pub. L. 95-626, § 204(b)(1), redesignated subsec. (h) as (g). Former subsec. (g) was redesignated (f).

CONGRESSIONAL FINDINGS AND DECLARATIONS

Section 204(a) of Pub. L. 95-626 provided that: "The Congress finds and declares that—

"(1) the number of reported cases of venereal disease persists in epidemic proportions in the United States;

"(2) the number of persons affected by venereal disease and reported to public health authorities is only a fraction of those actually affected;

"(3) the incidence of venereal disease continues to be particularly high among American youth, ages fifteen to twenty-nine, and among populations in metropolitan areas;

"(4) venereal disease accounts for severe permanent disabilities and sometimes death in newborns and causes reproductive dysfunction in women of childbearing age;

"(5) it is conservatively estimated that the public cost of health care for persons suffering from complications of venereal disease exceeds one-half billion dollars annually;

"(6) the number of trained Federal venereal disease prevention and control personnel has fallen to a dangerously inadequate level;

"(7) no vaccine for syphilis, gonorrhea, or any other venereal disease has yet been developed, nor does a blood test for the detection of asymptomatic gonorrhea in women exist, nor are safe and effective therapeutic agents available for some other venereal diseases;

"(8) school health education programs, public information and awareness campaigns, mass diagnostic screening and case followup have all been found to be effective venereal disease prevention and control methodologies;

"(9) skilled and knowledgeable health care providers, informed and concerned individuals and active, well-coordinated voluntary groups are fundamental to venereal disease prevention and control;

"(10) biomedical research toward improved diagnostic and therapeutic tools is of singular importance to the elimination of venereal disease; and

"(11) an increasing number of sexually transmissible diseases besides syphilis and gonorrhea have become a public health hazard."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 201 of this title.

§ 247d. Transferred

CODIFICATION

Section, acts July 1, 1944, ch. 373, title III, § 319, formerly § 310, as added Sept. 25, 1962, Pub. L. 87-692, 76 Stat. 592, amended Aug. 5, 1965, Pub. L. 89-109, § 3, 79 Stat. 436; Oct. 15, 1968, Pub. L. 90-574, title II, § 201, 82 Stat. 1006; Mar. 12, 1970, Pub. L. 91-209, 84 Stat. 52; June 18, 1973, Pub. L. 93-45, title I, § 105, 87 Stat. 91, renumbered July 23, 1974, Pub. L. 93-353, title I, § 102(d), 88 Stat. 362, and amended July 29, 1975, Pub. L. 94-63, title IV, § 401(a), title VII, § 701(c), 89 Stat. 334, 352; Apr. 22, 1976, Pub. L. 94-278, title VIII, § 801(a), 90 Stat. 414, relating to migrant health centers, was transferred to section 254b of this title.

PART C—HOSPITALS, MEDICAL EXAMINATIONS, AND MEDICAL CARE

AMENDMENTS

1978—Pub. L. 95-626, title I, § 113(a)(1), Nov. 10, 1978, 92 Stat. 3562, struck out heading "Subpart I—General Provisions".

§ 247e. Receipt, apprehension, detention, treatment, and release of lepers

(a) The Service shall, in accordance with regulations, receive into any hospital of the Service suitable for his accommodation any person afflicted with leprosy who presents himself for care, detention, or treatment, or who may be apprehended under subsection (b) of this section or section 264 of this title, and any person afflicted with leprosy duly consigned to the care of the Service by the proper health authority of any State. The Surgeon General is authorized, upon the request of any health authority, to send for any person within the jurisdiction of such authority who is afflicted with leprosy and to convey such person to the appropriate hospital for detention and treatment. When the transportation of any such person is undertaken for the protection of the public health the expense of such removal shall be met from funds available for the maintenance of hospitals of the Service. Such funds shall also be available, subject to regulations, for transportation of recovered indigent leper patients to their homes, including subsistence allowance while traveling. When so provided in appropriations available for any fiscal year for the maintenance of hospitals of the Service, the Surgeon General is authorized and directed to make payments to the Board of Health of Hawaii for the care and treatment in its facilities of persons afflicted with leprosy at a per diem rate, determined from time to time by the Surgeon General, which shall, subject to the availability of appropriations, be approximately equal to the per diem operating cost per patient of such facilities, except that such per diem rate shall not be greater than the comparable per diem operating cost per patient at the National Leprosarium, Carville, Louisiana.

(b) The Surgeon General may provide by regulation for the apprehension, detention, treatment, and release of persons being treated by the Service for leprosy.

(July 1, 1944, ch. 373, title III, § 320, formerly § 331, 58 Stat. 698; June 25, 1948, ch. 654, § 4, 62 Stat. 1018; June 25, 1952, ch. 460, 66 Stat. 157; July 12, 1960, Pub. L. 86-624, § 29(b), 74 Stat. 419; renumbered § 339, Oct. 12, 1976, Pub. L. 94-484, title IV, § 407(b)(2), 90 Stat. 2268; renumbered § 320, and amended Nov. 10, 1978, Pub. L. 95-626, title I, § 105(a)(2)-(4), 92 Stat. 3560; July 10, 1979, Pub. L. 96-32, § 7(b), 93 Stat. 84.)

REFERENCES IN TEXT

Section 256 of this title, referred to in subsec. (a), which related to promulgation of regulations by the Surgeon General for the apprehension, detention, treatment, and release of persons being treated for leprosy, was repealed by Pub. L. 95-626, and is now covered by subsec. (b) of this section.

CODIFICATION

Section was formerly set out as section 255 of this title prior to its renumbering by Pub. L. 95-626.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-32 substituted "apprehended under subsection (b) of this section or section 264 of this title" for "apprehended under section 256 or 264 of this title".

1978—Pub. L. 95-626 designated existing provisions as subsec. (a) and added subsec. (b).

1960—Pub. L. 86-624 eliminated words ", Territory, or the District of Columbia" following "proper health authority of any State", and substituted "Board of Health of Hawaii" for "Board of Health of the Territory of Hawaii".

1952—Act June 25, 1952, provided for payments to the Hawaiian Board of Health for expenditures made by them in the care and treatment of patients.

1948—Act June 25, 1948, authorized payment of travel expenses of indigent leper patients.

EFFECTIVE DATE OF 1960 AMENDMENT

Amendment by Pub. L. 86-624 effective on Aug. 21, 1959, see section 47(f) of Pub. L. 86-624, set out as an Effective Date of 1960 Amendment note under section 645 of Title 20, Education.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 stat. 1610, set out as a note under section 202 of this title.

FISCAL YEAR TRANSITION PERIOD OF JULY 1, 1976, THROUGH SEPTEMBER 30, 1976, DEEMED FISCAL YEAR

Fiscal year transition period of July 1, 1976, through Sept. 30, 1976, deemed fiscal year for purposes of this section, see section 201(17) of Pub. L. 94-274, Apr. 21, 1976, 90 Stat. 390, set out as a note under section 343 of Title 7, Agriculture.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254e of this title.

§ 248. Control and management of hospitals; furnishing prosthetic and orthopedic devices; transfer of patients; disposal of articles produced by patients; disposal of money and effects of deceased patients; payment; of burial expenses

The Surgeon General, pursuant to regulations, shall—

(a) Control, manage, and operate all institutions, hospitals, and stations of the Service, including minor repairs and maintenance, and provide for the care, treatment, and hospitalization of patients, including the furnishing of prosthetic and orthopedic devices; and from time to time, with the approval of the President, select suitable sites for and establish such additional institutions, hospitals, and stations in the States and possessions of the United States as in his judgment are necessary to enable the Service to discharge its functions and duties;

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended Nov. 9, 1978, Pub. L. 95-622, title II, § 266, 92 Stat. 3437.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-622 struck out ", and tobacco" following "orthopedic devices".

§ 248a. Closing or transfer of hospitals; reduction of services; Congressional authorization required

(a) Except as provided in subsection (b) of this section, the Secretary of Health, Education, and Welfare shall take such action as may be necessary to assure that the hospitals of the Public Health Service, located in Seattle, Washington, Boston, Massachusetts, San Francisco, California, Galveston, Texas, New Orleans, Louisiana, Baltimore, Maryland, Staten Island, New York, and Norfolk, Virginia, shall continue—

(1) in operation as hospitals of the Public Health Service,

(2) to provide for all categories of individuals entitled or authorized to receive care and treatment at hospitals or other stations of the Public Health Service inpatient, outpatient, and other health care services in like manner as such services were provided on January 1, 1973, to such categories of individuals at the hospitals of the Public Health Service referred to in the matter preceding paragraph (1) and at a level and range at least as great as the level and range of such services which were provided (or authorized to be provided) by such hospitals on such date, and

(3) to conduct at such hospitals a level and range of other health-related activities (including training and research activities) which is not less than the level and range of such activities which were being conducted on January 1, 1973, at such hospitals.

(b)(1) The Secretary may—

(A) close or transfer control of a hospital of the Public Health Service to which subsection (a) of this section applies,

(B) reduce the level and range of health care services provided at such a hospital from the level and range required by subsection (a)(2) of this section or change the manner in which such services are provided at such a hospital from the manner required by such subsection, or

(C) reduce the level and range of the other health-related activities conducted at such hospital from the level and range required by subsection (a)(3) of this section,

if Congress by law (enacted after November 16, 1973) specifically authorizes such action.

(2) Any recommendation submitted to the Congress for legislation to authorize an action described in paragraph (1) with respect to a hospital of the Public Health Service shall be accompanied by a copy of the written, unqualified approval of the proposed action submitted to the Secretary by each (A) section 314(a) State health planning agency whose section 314(a) plan covers (in whole or in part) the area in which such hospital is located or which is served by such hospital, and (B) section 314(b) areawide health planning agency whose section 314(b) plan covers (in whole or in part) such area.

(3) For purposes of this subsection, the term "section 314(a) State health planning agency" means the agency of a State which administers or supervises the administration of a State's health planning functions under a State plan approved under section 314(a) of the Public Health Service Act (referred to in paragraph (2) as a "section 314(a) plan"); and the term "section 314(b) areawide health planning agency" means a public or nonprofit private agency or organization which has developed a comprehensive regional, metropolitan, or other local area plan or plans referred to in section 314(b) of that Act (referred to in paragraph (2) as a "section 314(b) plan").

(Pub. L. 93-155, title VIII, § 818(a), (b), Nov. 16, 1973, 87 Stat. 622.)

REFERENCES IN TEXT

Section 314 of the Public Health Service Act, referred to in subsec. (b), is classified to section 246 of this title.

CODIFICATION

Section was formerly set out as a note under section 246 of this title.

Section was enacted as part of the Department of Defense Appropriation Authorization Act, 1974, and not as part of the Public Health Service Act which comprises this chapter.

PRIOR PROVISIONS

Provisions similar to those comprising this section, contained in Pub. L. 92-585, § 3, Oct. 27, 1972, 86 Stat. 1292, setting out the procedure to be followed in closing or transferring control of hospitals or other health care delivery facilities of the Public Health Service, were repealed by Pub. L. 93-155, title VIII, § 818(c), Nov. 16, 1973, 87 Stat. 623.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 250a. Transfer of appropriations

REPEATED

Pub. L. 96-132, § 2(12)(A)(ix), Nov. 30, 1979, 93 Stat. 1043.

Pub. L. 96-68, title II, § 200, Sept. 24, 1979, 93 Stat. 421.

Pub. L. 95-624, § 2(11)(A), Nov. 9, 1978, 92 Stat. 3461.

Pub. L. 95-431, title II, § 201, Oct. 10, 1978, 92 Stat. 1028.

Pub. L. 95-86, title II, § 201, Aug. 2, 1977, 91 Stat. 427.

§ 251. Medical examination and treatment of Federal employees; medical care at remote stations

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 254. Interdepartmental work

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 254a. Sharing of medical care facilities and resources

[*See main edition for text of section*]

(July 1, 1944, ch. 373, title III, § 327A, formerly § 328, as added Dec. 5, 1967, Pub. L. 90-174, § 7, 81 Stat. 539, and renumbered Nov. 10, 1978, Pub. L. 95-626, title I, § 113(a)(2), 92 Stat. 3562.)

PART D—PRIMARY HEALTH CARE [NEW]

SUBPART I—PRIMARY HEALTH CENTERS

AMENDMENTS

1978—Pub. L. 95-626, title I, § 113(a)(3), Nov. 10, 1978, 92 Stat. 3562, added the heading "Part D—Primary Health Care" and, immediately under it, the heading "Subpart I—Primary Health Centers".

§ 254a-1. Hospital-affiliated primary care centers

(a) Definitions

For purposes of this section:

(1) The term "community hospital" means a—

(A) public general hospital owned and operated by a State, county, or local unit of government or by a public benefit corporation, or

(B) private nonprofit hospital,

which primarily serves a medical underserved population (as defined in section 254c(b)(3) of this title).

(2) The terms "hospital-affiliated primary care center" and "primary care center" mean a distinct administrative unit of a community hospital which is located in or adjacent to the hospital and which—

(A) provides primary health services (except that emergency medical services shall be provided to the extent practicable through referral to the emergency room of the community hospital) to a catchment area which is determined by the hospital and approved by the Secretary;

(B) provides, as may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health services;

(C) provides referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services;

(D) provides for, when the center is closed, at least referral to emergency medical services and authorized access to patient medical records on a twenty-four-hours-a-day, seven-days-a-week basis; and

(E) provides information on the availability and proper use of health services provided by the community hospital and the center.

(3) The term "primary care group practice" means, with respect to a primary care center affiliated with a community hospital, any combination of physicians and other health care providers that includes at least three primary care physicians (as defined in section 295f-1(b)(2)(F)(ii) of this title)—

(i) which combination is organized to provide primary health services in a manner which is consistent with the needs of the population to be served by the center, and which uses, where practicable in the provision of such services, nonphysician providers (particularly physician assistants and nurse practitioners) in concert with the physicians of the group practice;

(ii) which combination is located in or adjacent to the community hospital;

(iii) the physicians of which have admitting privileges to the community hospital;

(iv)(I) the primary care physicians of which are salaried and full time in the hospital and a majority of whom practice full time in the primary care center, or (II) which combination is organized into a partnership, corporation, or professional association which has an agreement with the hospital to fulfill the obligations described in subparagraphs (A) and (C) of subsection (b)(3) of this section; and

(v) the primary care physicians of which are not all personnel serving with the National Health Service Corps;

except that in the case of such a combination serving a health manpower shortage area (designated under section 254e of this title), in lieu of one of the primary care physicians required in such a combination there may be a nurse practitioner or physician assistant.

(4) The term "primary care resident" means a graduate physician in a training program which (A) is in primary care (as defined in section 295f-2(b)(2)(F)(ii) of this title), (B) is approved by an appropriate certifying body, and (C) requires that at least one-third of the time in the last two years of residency training (or in the case of the osteopathic general practice resident, the last year of residency training) be spent in an ambulatory care setting.

(5) The terms "primary health services" and "supplemental health services" have the meanings given such terms in paragraphs (1) and (2) of section 254c(b) of this title, respectively.

(b) Grants; application for grant; requisite determinations for approval; priority applications; uses of grants

(1) The Secretary may make grants to community hospitals to support demonstration projects in the planning, development, and operation of hospital-affiliated primary care centers. To the extent feasible, the Secretary shall not make a grant for such a center to serve a population whose need for primary health services is being met by a community health center, migrant health center, or other health care provider.

(2) No grant may be made under paragraph (1) unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe. Insofar as practicable, the Secretary shall approve applications under this subsection in a manner which results in an equitable distribution of primary care centers among urban and rural areas.

(3) The Secretary may not approve an application for a grant under paragraph (1) with respect to a primary care center affiliated with a community hospital unless the Secretary has made the following determinations:

(A) The primary health services of the center will be provided through a primary care group practice, and may be provided by a primary care resident if (i) such services are provided under the direction of a member of the practice who is a primary care physician, and (ii) provision of such services by the resident are credited toward the resident's fulfilling the requirement of the residency training program described in subsection (a)(4)(C) of this section.

(B) Except under unusual circumstances (as established by the Secretary by regulation), primary health services provided by the community hospital will be provided only through the center, and qualified personnel trained in triage will be placed in the hospital's emergency room, outpatient department, and in the primary care center to screen and direct patients to the appropriate location for care.

(C) Each patient of the center will have an identified primary care physician who is a member of the primary care group practice and who is responsible for continuous management of the patient, including the referral of the patient for inpatient, outpatient, or emergency services.

(D) To the extent practicable, existing facilities and equipment which are in or owned by the community hospital, which are not required for the delivery of inpatient or emergency services, and which are needed in the primary care center will be converted for the use of the primary care center.

(E) The hospital and primary care center will avoid unnecessary duplication of facilities and equipment, except that the primary care center may install appropriate support equipment for the provision of routine primary health services.

(F) The primary care center will be maintained as a separate and distinct cost and revenue center for accounting purposes. Any costs which are not directly associated with the operation of the center (including inpatient-related costs) will not be assigned to the center. Costs associated with the education and training of residents and medical and other health science students will not be calculated into the costs of operating the primary care center, except that the salaries and other costs associated with the provision of services by residents may be calculated into the costs of operating the center as long as such costs are proportional to the actual percentage of time spent by the resident in the provision of services in the primary care center.

(G) The primary care center will be operated in accordance with all the requirements of section 254c(e)(3) of this title (other than subparagraph (G) thereof) applicable to community health centers.

(H) Unless the community hospital has a governing board described in subparagraph (G) of section 254c(e)(3) of this title for the primary care center, the application for the grant has been reviewed and approved by an advisory board which is established by the community hospital and which—

(i) is composed of individuals a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center,

(ii) participates in the development of the application for the grant under this section and in the development of any application for the renewal of such a grant, and

(iii) once the primary care center becomes operational, meets at least six times each year to review the operations of the center and to develop recommendations to the hospital's governing board concerning the types of services to be provided by, and the operations of, the center.

(I) The primary care center will provide for an information program for its patients under which patients are fully informed of the covered professional services and referral services offered by the center and of the methods by which patient grievances respecting billing for such services, or the quality of such services, may be resolved.

(J) The operating hours of the primary care center will include those periods when the community hospital's emergency room and outpatient department are most utilized.

(4) In reviewing and approving applications for grants under this section, the Secretary shall give priority to the application of any community hospital—

(A) which (i) is located in a State whose laws do not prohibit the hospital from establishing a governing board for its affiliated primary care center which board meets the requirements of subparagraph (G) of section 254c(e)(3) of this title for the governing board of a private community health center, and (ii) has established such a governing board, or

(B) which is located in a State whose laws prohibit the hospital from establishing such a board.

(5) Grants under this subsection may be used for covering the costs of planning, developing, and operating hospital-affiliated primary care centers, including the costs of acquiring and modernizing existing buildings or space located in or adjacent to the community hospital (including the costs of amortizing the principal of, and paying interest on, loans).

(c) Technical and other nonfinancial assistance

The Secretary may provide (either through the Department of Health, Education, and Welfare or by grant or contract) all necessary technical and other nonfinancial assistance (including fiscal and program management assistance and training in such management) to a community hospital to assist it in developing plans for, and in operating, a primary care center. The authority of the Secretary to enter into contracts under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(d) Report to Congress

Not later than March 1, 1981, the Comptroller General shall submit a report to Congress evaluating the operation of hospital-affiliated primary care centers, including, with their voluntary participation, those centers not assisted under this section. With respect to such centers the Comptroller General shall—

(1) assess the costs of such centers and their methods of allocating costs between the centers and their affiliated hospitals;

(2) assess the methods of reimbursement used (particularly under titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.]) for services provided by such centers;

(3) compare the cost and effectiveness of providing primary health services through such centers with the cost and effectiveness of providing such services through community health centers and other entities providing similar services, and

(4) assess the degree to which the hospitals provided assistance under this section are complying with the requirements specified under subsection (b)(3) of this section.

(e) Authorization of appropriations

There are authorized to be appropriated for the purpose of making payments for grants under subsection (a) of this section and for the provision of assistance under subsection (c) of this section—

(1) for the planning and development of primary care centers, $5,000,000 for the fiscal year ending September 30, 1979, and

(2) for the planning, development, and operation of primary care centers, $25,000,000 for the fiscal year ending September 30, 1980, and $30,000,000 for the fiscal year ending September 30, 1981.

Not more than $150.000 may be used for the planning and development of any single primary care center.

(July 1, 1944, ch. 373, title III, § 328, as added Nov. 10, 1978, Pub. L. 95-626, title I, § 114, 92 Stat. 3563.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (d)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 328 of act July 1, 1944, ch. 373, title III, as added Dec. 5, 1967, Pub. L. 90-174, § 7, 81 Stat. 539, which was classified to section 254a of this title, was redesignated as section 327A of act July 1, 1944, by Pub. L. 95-626, title I, § 113(a)(2), Nov. 20, 1978, 92 Stat. 3562.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 112 of part B of title I of Pub. L. 95-626 provided that:

"(a) Congress finds that—

"(1) although the achievement of equal access to quality health care at a reasonable cost is a priority of the Federal Government, there remains a wide disparity throughout the Nation regarding the cost, quality, and availability of primary health services;

"(2) despite Federal financing programs designed to eliminate barriers to primary health services for the poor and elderly, there remains a shortage of health resources to provide such services, especially in medically underserved urban and rural areas; and

"(3) residents of urban and rural medically underserved areas lack the availability of basic and appropriate services for health promotion, disease prevention, and primary care.

"(b) It is the purpose of this part [see Short Title of 1978 Amendments note set out under section 201 of this title]—

"(1) to alleviate the shortage of health resources for the provision of primary health services to urban and rural medical underserved populations in the United States; and

"(2) to provide authorities for research and demonstration projects which develop innovative approaches for the organization and delivery of primary health services."

§ 254b. Migrant health centers

(a) Definitions

For purposes of this section:

(1) The term "migrant health center" means an entity which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides—

(A) primary health services,

(B) as may be appropriate for particular centers, supplemental health services necessary for the adequate support of primary health services,

(C) referral to providers of supplemental health services and payment, as appropriate and feasible, for their provision of such services,

(D) environmental health services, including as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions assocated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health,

(E) as may be appropriate for particular centers (as determined by the centers), infectious and parasitic disease screening and control,

(F) as may be appropriate for particular centers, accident prevention programs, including prevention of excessive pesticide exposure, and

(G) information on the availability and proper use of health services and services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals,

for migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, within the area it serves (referred to in this section as a "catchment area") and individuals who have previously been migratory agricultural workers but can no longer meet the requirements of paragraph (2) of this subsection because of age or disability and members of their families within the area it serves.

(2) The term "migratory agricultural worker" means an individual whose principal employment is in agriculture on a seasonal basis, who has been so employed within the last twenty-four months, and who establishes for the purposes of such employment a temporary abode.

(3) The term "seasonal agricultural workers"[1] means an individual whose principal employment is in agriculture on a seasonal basis and who is not a migratory agricultural worker.

(4) The term "agriculture" means farming in all its branches, including—

(A) cultivation and tillage of the soil,

(B) the production, cultivation, growing, and harvesting of any commodity grown on, in, or as an adjunct to or part of a commodity grown in or on, the land, and

(C) any practice (including preparation and processing for market and delivery to storage or to market or to carriers for transportation to market) performed by a farmer or on a farm incident to or in conjunction with an activity described in subparagraph (B).

(5) The term "high impact area" means a health service area or other area which has not less than four thousand migratory agricultural workers and seasonal agricultural workers residing within its boundaries for more than two months in any calendar year. In computing the number of workers residing in an area, there shall be included as workers the members of the families of such workers.

(6) The term "primary health services" means—

(A) services of physicians and, where feasible, services of physicians' assistants and nurse clinicians;

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[1] So in original. Probably should be "worker".

(B) diagnostic laboratory and radiologic services;

(C) preventive health services (including children's eye and ear examinations to determine the need for vision and hearing correction, perinatal services, well child services, and family planning services);

(D) emergency medical services;

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular centers.

(7) The term "supplemental health services" means services which are not included as primary health services and which are—

(A) hospital services;

(B) home health services;

(C) extended care facility services;

(D) rehabilitative services (including physical therapy) and long-term physical medicine;

(E) mental health services;

(F) dental services;

(G) vision services;

(H) allied health services;

(I) therapeutic radiologic services;

(J) public health services (including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services);

(K) ambulatory surgical services; and

(L) health education services (including nutrition education).

(b) Priority areas for project and program assistance; assignment and determination of priorities; approval of application for grant to area without migratory agricultural workers

(1) The Secretary shall assign to high impact areas and any other areas (where appropriate) priorities for the provision of assistance under this section to projects and programs in such areas. The highest priorities for such assistance shall be assigned to areas where the Secretary determines the greatest need exists.

(2) No application for a grant under subsection (c) or (d) of this section for a project in an area which has no migratory agricultural workers may be approved unless grants have been provided for all approved applications under such subsections for projects in areas with migratory agricultural workers.

(c) Grants pursuant to assigned priorities to public and nonprofit private entities for projects to plan and develop centers; costs includable and criteria for grants; grants or contracts with public and nonprofit private entities for projects to plan and develop programs in areas without centers and specified migratory population; scope of programs for grants or contracts; number of grants or contracts; determination of amount of grants

(1)(A) The Secretary may, in accordance with the priorities assigned under subsection (b)(1) of this section, make grants to public and nonprofit private entities for projects to plan and develop migrant health centers which will serve migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, in high impact areas. A project for which a grant may be made under this subparagraph may include the cost of the acquisition and modernization of existing buildings (including the costs of amortizing the principal of, and paying the interest on, loans) and the costs of providing training related to the management of migrant health center programs, and shall include—

(i) an assessment of the need that the workers (and the members of the families of such workers) proposed to be served by the migrant health center for which the project is undertaken have for primary health services, supplemental health services, and environmental health services;

(ii) the design of a migrant health center program for such workers and the members of their families, based on such assessment;

(iii) efforts to secure, within the proposed catchment area of such center, financial and professional assistance and support for the project; and

(iv) initiation and encouragement of continuing community involvement in the development and operation of the project.

(B) The Secretary may make grants to or enter into contracts with public and nonprofit private entities for projects to plan and develop programs in areas in which no migrant health center exists and in which not more than four thousand migratory agricultural workers and their families reside for more than two months—

(i) for the provision of emergency care to migratory agricultural workers, seasonal agricultural workers, and the members of families of such migratory and seasonal workers;

(ii) for the provision of primary care (as defined in regulations of the Secretary) for such workers and the members of their families;

(iii) for the development of arrangements with existing facilities to provide primary health services (not included as primary care as defined under regulations under clause (ii)) to such workers and the members of their families; or

(iv) which otherwise improve the health of such workers and their families.

Any such program may include the acquisition and modernization of existing buildings and providing training related to the management of programs assisted under this subparagraph.

(2) Not more than two grants may be made under paragraph (1)(A) for the same project, and if a grant or contract is made or entered into under paragraph (1)(B) for a project, no other grant or contract under that paragraph may be made or entered into for the project.

(3) The amount of any grant made under paragraph (1) for any project shall be determined by the Secretary.

(d) Grants for centers in high impact areas; programs in areas in which no migrant health center exists; health services provided on a prepaid basis; two-grant maximum; maximum amount of grant; payments

(1)(A) The Secretary may, in accordance with priorities assigned under subsection (b)(1) of this section, make grants for the costs of operation of public and nonprofit private migrant health centers in high impact areas.

(B) The Secretary may make grants to and enter into contracts with public and nonprofit private entities for projects for the operation of programs in areas in which no migrant health center exists and in which not more than four thousand migratory agricultural workers and their families reside for more than two months—

(i) for the provision of emergency care to migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers;

(ii) for the provision of primary care (as defined in regulations of the Secretary) for such workers and the members of their families;

(iii) for the development of arrangements with existing facilities to provide primary health services (not included as primary care as defined under regulations under clause (ii)) to such workers and the members of their families; or

(iv) which otherwise improve the health of such workers and the members of their families.

Any such program may include the acquisition and modernization of existing buildings and providing training related to the management of programs assisted under this subparagraph.

(C) The Secretary may make grants to migrant health centers to enable the centers to plan and develop the provision of health services on a prepaid basis to some or to all of the individuals which the centers serve. Such a grant may only be made for such a center if—

(i) the center has received grants under subparagraph (A) of this paragraph for at least two consecutive years preceding the year of the grant under this subparagraph;

(ii) the governing board of the center (described in subsection (f)(3)(G) of this section) requests, in a manner prescribed by the Secretary, that the center provide health services on a prepaid basis to some or to all of the population which the center serves; and

(iii) the center provides assurances satisfactory to the Secretary that the provision of such services on a prepaid basis will not result in the diminution of health services provided by the center to the population the center served prior to the grant under this subparagraph.

Any such grant may include the acquisition and modernization of existing buildings and providing training related to the management of the provision of health services on a prepaid basis.

(2) The costs for which a grant may be made under paragraph (1)(A) may include the costs of acquiring and modernizing existing buildings (including the costs of amortizing the principal of, and paying the interest on, loans); and the costs for which a grant or contract may be made under paragraph (1) may include the costs of providing training related to the provision of primary health services, supplemental health services, and environmental health services, and to the management of migrant health center programs.

(3) Not more than two grants may be made under paragraph (1)(C) for the same entity.

(4)(A) The amount of any grant made in any fiscal year under subparagraph (A) of paragraph (1) to a health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of—

(i) the State, local, and other funds, and

(ii) the fees, premiums, and third-party reimbursements,

which the center may resonably be expected to receive for its operations in such fiscal year. In determining the amount of such a grant for a center, if the application for the grant requests funds for a service described in subparagraph (D) or (E) of subsection (a)(1) of this section (other than to the extent the funds would be used for the improvement of private property) or a supplemental health service described in subparagraph (B), (F), (J), or (L) of subsection (a)(7) of this section, the Secretary shall include, in an amount determined by the Secretary and to the extent funds are available under appropriation Acts, funds for such service unless the Secretary makes a written finding that such service is not needed and provides the applicant with a copy of such finding.

(B) Payments under grants under subparagraph (A) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments, except that if in any fiscal year the sum of—

(i) the total of the amounts described in clauses (i) and (ii) of subparagraph (A) of this paragraph received by a center in such fiscal year, and

(ii) the amount of the grant to the center in such fiscal year,

exceeded the costs of the center's operation in such fiscal year because the amount received by the center from fees, premiums, and third-party reimbursements was greater than expected, an adjustment in the amount of the grant to the center in the succeeding fiscal year shall be made in such a manner that the center may retain such an amount (equal to not less than one-half of the amount by which such sum exceeded such costs) as the center can demonstrate to the satisfaction of the Secretary will be used to enable the center (I) to expand and improve its services, (II) to increase the number of persons (eligible under subsection (a) of this section to receive services from such a center) it is able to serve, (III) to construct and modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish the financial reserve required for the furnishing of services on a prepaid basis. Without the approval of the Secretary, not more than one-half of such retained sum may be used for construction and modernization of its facilities.

(e) Contracts with public and private entities for implementation and enforcement of environmental health standards and projects and studies related to environmental health hazard problems

The Secretary may enter into contracts with public and private entities to—

(1) assist the States in the implementation and enforcement of acceptable environmental health standards, including enforcement of standards for sanitation in migrant labor camps and applicable Federal and State pesticide control standards; and

(2) conduct projects and studies to assist the several States and entities which have received grants or contracts under this section in the assessment of problems related to camp and field sanitation, pesticide hazards, and other environmental health hazards to which migratory agricultural workers, seasonal agricultural workers, and members of their families are exposed.

(f) Approval of application as prerequisite for grant or contract; form and manner of submission and contents of application; determination of entity as center as prerequisite for approval of application; criteria for determination; priorities for applications; improvements of private property; nonapplicability of statutory provisions to contracts

(1) No grant may be made under subsection (c) or (d) of this section and no contract may be entered into under subsection (c)(1)(B), (d)(1)(B), or (e) of this section unless an application therefore[1] is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe. An application for a grant or contract which will cover the costs of modernizing a building shall include, in addition to other information required by the Secretary—

(A) a description of the site of the building,

(B) plans and specifications for its modernization, and

(C) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on the modernization of the building will be paid wages at rates not less than those prevailing on similar work in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a-5, known as the Davis-Bacon Act).

The Secretary of Labor shall have with respect to the labor standards referred to in subparagraph (C) the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 276c of title 40.

(2) An application for a grant under subparagraph (A) of subsection (d)(1) of this section for a migrant health center shall include—

(A) a description of the need in the center's catchment area for each of the health services described in subparagraphs (D) and (E) of subsection (a)(1) of this section and in subparagraphs (B), (F), (J), and (L) of subsection (a)(7) of this section,

(B) if the applicant determines that any such service is not needed, the basis for such determination, and

(C) if the applicant does not request funds for any such service which the applicant determines is needed, the reason for not making such a request.

In considering an application for a grant under subparagraph (A) of subsection (d)(1) of this section, the Secretary may require as a condition to the approval of such application assurance that the applicant will provide any specified health service described in subsection (a) of this section which the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided the applicant.

(3) The Secretary may not approve an application for a grant under subsection (d)(1)(A) of this section unless the Secretary determines that the entity for which the application is submitted is a migrant health center (within the meaning of subsection (a)(1) of this section) and that—

(A) the primary health services of the center will be available and accessible in the center's catchment area promptly, as appropriate, and in a manner which assures continuity;

(B) the center will have organizational arrangements, established in accordance with regulations of the Secretary, for (i) an ongoing quality assurance program (including utilization and peer review systems) respecting the center's services, and (ii) maintaining the confidentiality of patient records;

(C) the center will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(D) the center (i) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (ii) has made or will make every reasonable effort to enter into such an arrangement;

(E) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], to medical assistance under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.], or to assistance for medical expenses under any other public assistance program or private health insurance program;

(F) the center (i) has prepared a schedule of fees or payments for the provision of its services designed to cover its reasonable costs of operation and a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay, (ii) has made and will continue to make every reasonable effort (I) to secure from patients payment for services in accordance with such schedules, and (II) to collect reimbursement for health services to persons described in subparagraph (E) on the basis of the full amount of fees and payments for such services without application of any discount, and (iii) has submitted to the Secretary such reports as he may require to determine compliance with this subparagraph;

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[1] So in original. Probably should be "therefor".

(G) the center has established a governing board which (i) is composed of individuals a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center, and (ii) selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body of the center has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;

(H) the center has developed, in accordance with regulations of the Secretary, (i) an overall plan and budget that meets the requirements of section 1861(z) of the Social Security Act [42 U.S.C. 1395x(z)] and (ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to (I) the costs of its operations, (II) the patterns of use of its services, (III) the availability, accessibility, and acceptability of its services, (IV) such other matters relating to operations of the applicant as the Secretary may, by regulation, require, and (V) expenditures made from any amount the center was permitted to retain under subsection (d)(4)(B) of this section;

(I) the center will review periodically its catchment area to (i) insure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the migratory agricultural workers, seasonal agricultural workers, and the members of the families of such migratory and seasonal workers, in the area promptly and as appropriate, (ii) insure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs, and (iii) insure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation; and

(J) in the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, the center has (i) developed a plan and made arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and (ii) identified an individual on its staff who is fluent in both that language and English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences.

For purposes of subparagraph (G) and subsection (h)(4) of this section, the term "public center" means a migrant health center funded (or to be funded) through a grant under this section to a public agency.

(4) In considering applications for grants and contracts under subsection (c) or (d)(1)(B) of this section, the Secretary shall give priority to applications submitted by community-based organizations which are representative of the populations to be served through the projects, programs, or centers to be assisted by such grants or contracts.

(5) The Secretary, in making a grant under this section to a migrant health center for the provision of environmental health services described in subsection (a)(1)(D) of this section, may designate a portion of the grant to be expended for improvements to private property for which the written consent of the owner has been obtained and which are necessary to alleviate a hazard to the health of those residing on, or otherwise using, the property and of other persons in the center's catchment area. A center may make such an expenditure for an improvement under a grant only after the Secretary has specifically approved such expenditure and has determined that funds for the improvement are not available from any other source. The Secretary shall annually notify the appropriate committees of Congress of the amounts so expended and the improvements for which they were spent.

(6) Contracts may be entered into under this section without regard to section 529 of title 31 and section 5 of title 41.

(g) Technical and other nonfinancial assistance for centers or public or private nonprofit entities operating as centers without determination of status; resources list

(1) The Secretary may provide (either through the Department of Health, Education, and Welfare or by grant or contract) all necessary technical and other nonfinancial assistance (including fiscal and program management assistance and training in such management) to any migrant health center or to any public or private nonprofit entity to assist it in developing plans for, and in operating as, a migrant health center, and in meeting the requirements of subsection (f)(2) of this section.

(2) The Secretary shall make available to each grant recipient under this section a list of available Federal and non-Federal resources to improve the environmental and nutritional status of individuals in the recipient's catchment area.

(h) Authorization of appropriations; minimum obligation of funds for inpatient and outpatient hospital services; establishment of general policies by governing boards

(1) There are authorized to be appropriated for payments pursuant to grants and contracts under subsection (c)(1) of this section

$4,000,000 for fiscal year 1976, $4,000,000 for the fiscal year ending September 30, 1977, $2,950,000 for the fiscal year ending September 30, 1978, $2,200,000 for the fiscal year ending September 30, 1979, $2,500,000 for the fiscal year ending September 30, 1980, and $2,900,000 for the fiscal year ending September 30, 1981. Of the funds appropriated under this paragraph for fiscal year 1976, not more than 30 per centum of such funds may be made available for grants and contracts under subsection (c)(1)(B) of this section, and of the funds appropriated under this paragraph for each of the next five fiscal years, not more than 25 per centum of such funds may be made available for grants and contracts under such subsection.

(2) There are authorized to be appropriated for payments pursuant to grants and contracts under subsection (d)(1) of this section (other than for payments under such grants and contracts for the provision of inpatient and outpatient hospital services) and for payments pursuant to contracts under subsection (e) of this section, $30,000,000 for fiscal year 1976, $35,000,000 for the fiscal year ending September 30, 1977, $32,080,000 for the fiscal year ending September 30, 1978, $40,800,000 for the fiscal year ending September 30, 1979, $46,000,000 for the fiscal year ending September 30, 1980, and $52,100,000 for the fiscal year ending September 30, 1981. Of the funds appropriated under the first sentence for fiscal year 1976, there shall be made available for grants and contracts under subsection (d)(1)(B) of this section an amount not exceeding the greater of 30 per centum of such funds or 90 per centum of the amount of grants made under this section for the preceding fiscal year for programs described in subsection (d)(1)(B) of this section. Of the funds appropriated under the first sentence for any fiscal year, there shall be made available for grants and contracts under subsection (d)(1)(B) of this section an amount not exceeding the greater of 25 per centum of such funds or 90 per centum of the amount of grants made under this section for the preceding fiscal year for programs described in subsection (d)(1)(B) of this section which received grants under this section for the fiscal year ending June 30, 1975. Of the funds appropriated under this paragraph for any fiscal year, not more than 10 per centum of such funds may be made available for contracts under subsection (e) of this section, and not more than 5 per centum of such funds may be made available for grants under subsection (d)(1)(C) of this section.

(3) In any fiscal year, the Secretary shall obligate for payments under grants and contracts in such fiscal year under subsection (d)(1) of this section for the provision of inpatient and outpatient hospital services not less than 10 per centum of the amount appropriated in such fiscal year under paragraph (2).

(4) The Secretary may not expend in any fiscal year, for grants under this section to public centers (as defined in the second sentence of subsection (f)(3) of this section) the governing boards of which (as described in subsection (f)(3)(G)(ii) of this section do not establish general policies for such centers, an amount which exceeds 5 per centum of the funds appropriated under this section for that fiscal year.

(July 1, 1944, ch. 373, title III, § 329, formerly § 310, as added Sept. 25, 1962, Pub. L. 87-692, 76 Stat. 592, and amended Aug. 5, 1965, Pub. L. 89-109, § 3, 79 Stat. 436; Oct. 15, 1968, Pub. L. 90-574, title II, § 201, 82 Stat. 1006; Mar. 12, 1970, Pub. L. 91-209, 84 Stat. 52; June 18, 1973, Pub. L. 93-45, title I, § 105, 87 Stat. 91; renumbered § 319, July 23, 1974, Pub. L. 93-353, title I, § 102(d), 88 Stat. 362, and amended July 29, 1975, Pub. L. 94-63, title IV, § 401(a), title VII, § 701(c), 89 Stat. 334, 352; Apr. 22, 1976, Pub. L. 94-278, title VIII, § 801(a), 90 Stat. 414; Aug. 1, 1977, Pub. L. 95-83, title III, § 303, 91 Stat. 388; renumbered § 329, and amended Nov. 10, 1978, Pub. L. 95-626, title I, §§ 102(a), 103(a)-(g)(1)(B), (2), (h), (i), 92 Stat. 3551-3555; July 10, 1979, Pub. L. 96-32, § 6(a), 93 Stat. 83.)

References in Text

The Social Security Act, referred to in subsec. (f)(3)(D), (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Codification

Prior to its renumbering as section 329 of act July 1, 1944 by section 102(a) of Pub. L. 95-626, this section was designated as section 310 of act July 1, 1944, and set out as section 242h of this title, and was subsequently renumbered as section 319 of act July 1, 1944 and set out as section 247d of this title.

Prior Provisions

A prior section 254b, act July 1, 1944, ch. 373, title III, § 329, as added Dec. 31, 1970, Pub. L. 91-623, § 2, 84 Stat. 1868, and amended Nov. 18, 1971, Pub. L. 92-157, title II, § 203, 85 Stat. 462; Oct. 27, 1972, Pub. L. 92-585, § 2, 86 Stat. 1290; July 29, 1975, Pub. L. 94-63, title VIII, §§ 801-803, 89 Stat. 353, 354; Oct. 12, 1976, Pub. L. 94-484, title I, § 101(b), 90 Stat. 2244, which related to the establishment of the National Health Service Corps, assignment of personnel and statement of purpose, was repealed by Pub. L. 94-484, title IV, § 407(b)(1), Oct. 12, 1976, 90 Stat. 2268. See section 254d et seq. of this title.

Amendments

1979—Subsec. (a)(7)(L). Pub. L. 96-32 struck out "; and" and inserted a period in lieu thereof at the end of par. (7)(L).

1978—Subsec. (a)(1)(D). Pub. L. 95-626, § 103(a)(1)(A), added "(as determined by the centers)" after "as may be appropriate for particular centers".

Subsec. (a)(1)(E). Pub. L. 95-626, § 103(a)(1)(A), added "(as determined by the centers)" after "as may be appropriate for particular centers".

Subsec. (a)(1)(G). Pub. L. 95-626, § 103(a)(1)(B), added "and services which promote and facilitate optimal use of health services, including, if a substantial number of the individuals in the population served by a center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals".

Pub. L. 95-626, § 103(a)(1)(C), in provision following subpar. (G), added "and individuals who have previously been migratory agricultural workers but can no longer meet the requirements of paragraph (2) of this subsection because of age or disability and members of their families within the area it serves".

Subsec. (a)(5). Pub. L. 95-626, § 103(c), substituted "four thousand" for "six thousand".

Subsec. (a)(6)(G). Pub. L. 95-626, § 103(a)(2), added subpar. (G).

Subsec. (a)(7). Pub. L. 95-626, § 103(a)(3), struck out subpar. (I) relating to pharmaceutical services and subpar. (N) relating to services which promote and facilitate optimal use of primary health services, redesignated subpars. (J), (K), (L), and (M) as (I), (J), (K), and (L), respectively, in subpar. (J) as so redesignated, substituted "(including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services)" for "(including nutrition education and social services)" and in subpar. (L) as so redesignated, added "(including nutrition education)" after "health education services".

Subsec. (b)(1). Pub. L. 95-626, § 103(b), substituted "areas where the Secretary determines the greatest need exists" for "areas in which reside the greatest number of migratory agricultural workers and the members of their families for the longest period of time".

Subsec. (c)(1)(B). Pub. L. 95-626, § 103(c), substituted "four thousand" for "six thousand".

Subsec. (d)(1). Pub. L. 95-626, § 103(c), (d)(1), (3)(A), struck out subpar. (B) relating to the power of the Secretary to make grants for the costs of the operation of public and nonprofit entities which intend to become migrant health centers, redesignated subpar. (C) as (B), and in subpar. (B) as so redesignated, substituted "four thousand" for "six thousand" and added subpar. (C).

Subsec. (d)(2). Pub. L. 95-626, § 103(d)(2)(A), substituted "made under paragraph (1)(A) may include" for "made under paragraph (1)(A) or (1)(B) may include".

Subsec. (d)(3). Pub. L. 95-626, § 103(e), substituted "Not more than two grants may be made under paragraph (1)(C) for the same entity" for "The amount of any grant made under paragraph (1) shall be determined by the Secretary".

Subsec. (d)(4). Pub. L. 95-626, § 103(e), added par. (4).

Subsec. (f). Pub. L. 95-626, § 103(d)(2)(B), (f), (g)(1)(A), (B), (2), redesignated pars. (2), (3), and (4) as (3), (4), and (6), respectively, added pars. (2) and (5), substituted "(d)(1)(B)" for "(d)(1)(C)" in par. (1), in par. (3)(G) as so redesignated, substituted "(ii) selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body of the center has approved the application or if the governing has not approved the application, the failure of the governing body to approve the application was unreasonable" for "(ii) establishes general policies for the center (including the selection of services to be provided by the center and a schedule of hours during which services will be provided), approves the center's annual budget, and approves the selection of a director for the center", added cl. (V) in par. (3)(H), and added definition of "public center" following par. (3)(J), and, in par. (4) as so redesignated, substituted "(d)(1)(B)" for "(d)(1)(C)".

Subsec. (g). Pub. L. 95-626, § 103(h), designated existing provisions as par. (1) and added par. (2).

Subsec. (h)(1). Pub. L. 95-626, § 103(i)(1), added provisions authorizing appropriations of $2,200,000 for the fiscal year ending Sept. 30, 1979, $2,500,000 for the fiscal year ending Sept. 30, 1980, and $2,900,000 for the fiscal year ending Sept. 30, 1981, and substituted "the next five fiscal years" for "the next two fiscal years".

Subsec. (h)(2). Pub. L. 95-626, § 103(d)(2)(C), (3)(B), (i)(2), added provisions authorizing appropriations of $40,800,000 for the fiscal year ending Sept. 30, 1979, $46,000,000 for the fiscal year ending Sept. 30, 1980, and $52,100,000 for the fiscal year ending Sept. 30, 1981, substituted "any fiscal year" for "fiscal years ending September 30, 1977, and September 30, 1978" following "Of the funds appropriated under the first sentence for", substituted "(d)(1)(B)" for "(d)(1)(C)" wherever appearing in the existing provisions, and added provision that not more than 5 per centum of the appropriated funds be made available for grants under subsection (d)(1)(C) of this section.

Subsec. (h)(3). Pub. L. 95-626, § 103(i)(3), substituted "In any fiscal year, the Secretary shall obligate for payments under grants and contracts in such fiscal year under subsection (d)(1) of this section for the provision of inpatient and outpatient hospital services not less than 10 per centum of the amount appropriated in such fiscal year under paragraph (2)" for "There are authorized to be appropriated for payments under grants and contracts under subsection (d)(1) of this section for the provision of inpatient and outpatient hospital services $5,000,000 for fiscal year 1976, $5,000,000 for the fiscal year ending September 30, 1977, and $4,230,000 for the fiscal year ending September 30, 1978".

Subsec. (h)(4). Pub. L. 95-626, § 103(i)(4), added par. (4).

1976—Subsec. (a)(7). Pub. L. 94-278 redesignated former subpars. (L) and (M) as (M) and (N) and added subpar. (L).

1975—Subsec. (a). Pub. L. 94-63, §§ 401(a), 701(c), designated existing provision as subsec. (a) and, as so designated, substituted provisions defining specified terms, for provisions setting forth health services for domestic agricultural migrants and authorizing appropriations from the fiscal year ending June 30, 1966 through the fiscal year ending June 30, 1975 for the implementation of programs and projects.

Subsecs. (b) to (h). Pub. L. 94-63, § 401(a), added subsecs. (b) to (h).

1973—Pub. L. 93-45 authorized appropriations of $26,750,000 for fiscal year ending June 30, 1974.

1970—Pub. L. 91-209 substituted "Secretary" for "Surgeon General", authorized appropriations of $20,000,000, $25,000,000, and $30,000,000 for the fiscal years ending June 3, 1971, June 30, 1972, and June 30, 1973, respectively, made the bringing about of continuity in health services one of the objects of the Secretary's grants for special projects, inserted parenthetical reference to allied health professions personnel, authorized the Secretary to provide funds towards health services for those performing seasonal agricultural services, and provided for the representation of all elements of the migratory worker population, whose health needs are to be met, in the development of health programs and that such persons be given an opportunity to participate in the implementation of such programs.

1968—Pub. L. 90-574 added provisions authorizing appropriations of $9,000,000 for the fiscal year ending June 30, 1969, and $15,000,000 for the fiscal year ending June 30, 1970.

1965—Pub. L. 89-109 substituted "not to exceed $7,000,000 for the first year ending June 30, 1966, $8,000,000 for the fiscal year ending June 30, 1967, and $9,000,000 for the fiscal year ending June 30, 1968" for "for the fiscal year ending June 30, 1963, the fiscal year ending June 30, 1964, and the fiscal year ending June 30, 1965, such sums, not to exceed $3,000,000 for any year, as may be necessary", and inserted "including necessary hospital care, and" in cl. (1)(ii).

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 103(g)(1)(C) of Pub. L. 95-626 provided that: "The change in the governing board requirements for migrant health centers made by the amendment by subparagraph (A) to section 329(f)(3)(G)(ii) of the Public Health Service Act [subsec. (f)(3)(G)(ii) of this section] shall not apply with respect to any public migrant health center which met the governing board requirements in effect under section 319(f)(2)(G)(ii) of such Act [subsec. (f)(2)(G)(ii) of this section] before October 1, 1978."

Section 103(j) of Pub. L. 95-626 provided that: "The amendments made by this section [amending this section] shall apply with respect to grants and contracts made under section 329 of the Public Health Service Act [this section] from appropriations for the fiscal years ending after September 30, 1978."

EFFECTIVE DATE OF 1975 AMENDMENT

Amendment by section 401(a) of Pub. L. 94-63, generally revising and redesignating provisions relating to migrant health centers, effective July 1, 1975, see section 608 of Pub. L. 94-63, set out as an Effective Date of 1975 Amendment note under section 247b of this title.

TRANSFER OF FUNCTIONS

All functions of Public Health Service, of the Surgeon General of the Public Health Service, and of all other officers and employees of the Public Health Service, and all functions of all agencies of or in the Public Health Service transferred to Secretary of Health, Education, and Welfare by Reorg. Plan No. 3 of 1966, eff. June 25, 1966, 31 F.R. 8855, 80 Stat. 1610, set out as a note under section 202 of this title.

CONTINUATION OF FEDERAL PROGRAMS AND ACTIVITIES DURING FISCAL YEAR TRANSITION PERIOD FROM JULY 1, 1976, THROUGH SEPTEMBER 30, 1976

Pub. L. 94-274, title I, § 104, Apr. 21, 1976, 90 Stat. 385, provided that: "For the purpose of the second sentence of section 319(h)(2) of the Public Health Service Act (42 U.S.C. 247d(h)(22)) [subsec. (h)(2) of this section] the period of July 1, 1976, through September 30, 1976, shall be treated as part of fiscal year 1976, and the 90 per centum limitation specified in that sentence shall be increased to 112.5 per centum for that period."

STUDY OF HOUSING CONDITIONS OF AGRICULTURAL MIGRATORY WORKERS; CONSULTATIONS; SUBMISSION OF REPORT TO CONGRESSIONAL COMMITTEES

Section 401(c) of Pub. L. 94-63 required the Secretary of Health, Education, and Welfare, in consultation with the Secretary of Housing and Urban Development, to conduct a study of housing conditions of agricultural migratory workers and submit a report to specific Committees of the House of Representatives and Senate within 18 months of the first Act making appropriations for the study.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 218, 256a, 300e-12, 300e-14a, 1396b of this title; title 29 section 777b.

§ 254c. Community health centers

(a) Definitions

For purposes of this section, the term "community health center" means an entity which either through its staff and supporting resources or through contracts or cooperative arrangements with other public or private entities provides—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health, and

(5) information on the availability and proper use of health services,

for all residents of the area it serves (referred to in this section as a "catchment area").

(b) Additional definitions

For purposes of this section:

(1) The term "primary health services" means—

[*See main edition for text of* (*A*) *to* (*D*)]

(E) transportation services as required for adequate patient care;

(F) preventive dental services; and

(G) pharmaceutical services, as may be appropriate for particular centers.

(2) The term "supplemental health services" means services which are not included as primary health services and which are—

[*See main edition for text of* (*A*) *to* (*H*)]

(I) therapeutic radiologic services;

(J) public health services (including, for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services);

(K) ambulatory surgical services;

(L) health education services (including nutrition education); and

(M) services which promote and facilitate optimal use of primary health services and the services referred to in the preceding subparagraphs of this paragraph, including, if a substantial number of the individuals in the population served by a community health center are of limited English-speaking ability, the services of appropriate personnel fluent in the language spoken by a predominant number of such individuals.

(N) Redesignated (M)

(3) The term "medically underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of personal health services or a population group designated by the Secretary as having a shortage of such services. In designating urban and rural areas for purposes of this paragraph, the Secretary shall take into account unusual local conditions which are a barrier to access to or the availability of personal health services.

[*See main edition for text of* (*c*)

(d) Grants to public and nonprofit private centers and related entities functioning without center determination for costs of operation; prepayment; costs includable for grants; number of grants; determination of amount of grants; payments

(1) [*See main edition for text of* (*A*)]

(B) The Secretary may make grants for the costs of the operation of public and nonprofit private entities which provide health services to medically underserved populations but with respect to which he is unable to make each of the determinations required by subsection (e)(3) of this section.

(C) The Secretary may make grants to community health centers to enable the centers to plan and develop the provision of health services on a prepaid basis to some or to all of the individuals which the centers serve. Such a grant may only be made for such a center if—

(i) the center has received grants under subparagraph (A) of this paragraph for at least two consecutive years preceding the year of the grant under this subparagraph;

(ii) the governing board of the center (described in subsection (e)(3)(G) of this section requests, in a manner prescribed by the Secretary, that the center provide health services on a prepaid basis to some or to all of the population which the center serves; and

(iii) the center provides assurances satisfactory to the Secretary that the provision of such services on a prepaid basis will not result in the diminution of health services provided by the center to the population the center served prior to the grant under this subparagraph.

Any such grant may include the acquisition and modernization of existing buildings and providing training related to management of the provision of health services on a prepaid basis.

(2) The costs for which a grant may be made under paragraph (1)(A) or (1)(B) may include the costs of acquiring and modernizing existing buildings (including the costs of amortizing the principal of, and paying interest on, loans) and the costs of providing training related to the provision of primary health services, supplemental health services and environmental health services, and to the management of community health center programs.

(3) Not more than two grants may be made under paragraph (1)(B) or (1)(C) for the same entity.

(4)(A) The amount of any grant made in any fiscal year under paragraph (1) (other than subparagraph (C)) to a community health center shall be determined by the Secretary, but may not exceed the amount by which the costs of operation of the center in such fiscal year exceed the total of—

(i) the State, local, and other funds, and

(ii) the fees, premiums, and third-party reimbursements,

which the center may reasonably be expected to receive for its operations in such fiscal year. In determining the amount of such a grant for a center, if the application for the grant requests funds for a service described in subsection (a)(4) of this section (other than to the extent the funds would be used for the improvement of private property) or a supplemental health service described in subparagraph (B), (F), (L), or (M) of subsection (b)(2) of this section, the Secretary shall include, in an amount determined by the Secretary and to the extent funds are available under appropriation Acts, funds for such service unless the Secretary makes a written finding that such service is not needed and provides the applicant with a copy of such finding.

(B) Payments under grants under subparagraph (A) or (B) of paragraph (1) shall be made in advance or by way of reimbursement and in such installments as the Secretary finds necessary and adjustments may be made for overpayments or underpayments, except that if any fiscal year the sum of—

(i) the total of the amounts described in clauses (i) and (ii) of subparagraph (A) received by a center in such fiscal year, and

(ii) the amount of the grant to the center in such fiscal year,

exceeded the costs of the center's operation in such fiscal year because the amount received by the center from fees, premiums, and third-party reimbursements was greater than expected, an adjustment in the amount of the grant to the center in the succeeding fiscal year shall be made in such a manner that the center may retain such an amount (equal to not less than one-half of the amount by which such sum exceeded such costs) as the center can demonstrate to the satisfaction of the Secretary will be used to enable the center (I) to expand and improve its services, (II) to increase the number of persons (eligible to receive services from such a center) it is able to serve, (III) to construct and modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish the financial reserve required for the furnishing of services on a prepaid basis. Without the approval of the Secretary, not more than one-half of such retained sum may be used for construction and modernization of its facilities.

(e) Approval of application as prerequisite for grant; form and manner of submission and contents of application; determination of entity as center as prerequisite for approval of application; "public center" defined; improvement of private property

(1) No grant may be made under subsection (c) or (d) of this section unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe. An application for a grant which will cover the costs of modernizing a building shall include, in addition to other information required by the Secretary—

[*See main edition for text of* (*A*) *to* (*C*)]

The Secretary of Labor shall have with respect to the labor standards referred to in subparagraph (C) the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176, 5 U.S.C. Appendix) and section 276c of title 40.

(2) An application for a grant under subparagraph (A) or (B) of subsection (d)(1) of this section for a community health center shall include—

(A) a description of the need in the center's catchment area for each of the health services described in subsection (a)(4) of this section and in subparagraphs (B), (F), (L), and (M) of subsection (b)(2) of this section,

(B) if the applicant determines that any such service is not needed, the basis for such determination, and

(C) if the applicant does not request funds for any such service which the applicant determines is needed, the reason for not making such a request.

In considering an application for a grant under subparagraph (A) or (B) of subsection (d)(1) of this section, the Secretary may require as a condition to the approval of such application assurance that the applicant will provide any specified health services described in subsection (a) or (b) of this section which the Secretary finds is needed to meet specific health needs of the area to be served by the applicant. Such a finding shall be made in writing and a copy shall be provided the applicant.

(3) Except as provided in subsection (d)(1)(B) of this section, the Secretary may not approve an application for a grant under paragraph (1)(A) or (1)(B) of subsection (d) of this section unless the Secretary determines that the entity for which the application is submitted is a community health center (within the meaning of subsection (a) of this section) and that—

(A) the primary health services of the center will be available and accessible in the center's catchment area promptly, as appropriate, and in a manner which assures continuity;

(B) the center will have organizational arrangements, established in accordance with regulations prescribed by the Secretary, or (i) an on-going quality assurance program (including utilization and peer review systems) respecting the center's services, and (ii) maintaining the confidentiality of patient records;

(C) the center will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(D) the center (i) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the payment of all or a part of the center's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (ii) has made or will make every reasonable effort to enter into such an arrangement;

(E) the center has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to insurance benefits under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.], to medical assistance under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.], or to assistance for medical expenses under any other public assistance program or private health insurance program;

(F) the center (i) has prepared a schedule of fees or payments for the provision of its services designed to cover its reasonable costs of operation and a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay, (ii) has made and will continue to make every reasonable effort (I) to secure from patients payment for services in accordance with such schedules, and (II) to collect reimbursement for health services to persons described in subparagraph (E) on the basis of the full amount of fees and payments for such services without application of any discount, and (iii) has submitted to the Secretary such reports as he may require to determine compliance with this subparagraph;

(G) the center has established a governing board which (i) is composed of individuals a majority of whom are being served by the center and who, as a group, represent the individuals being served by the center, and (ii) meets at least once a month, selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a governing board of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable;

(H) the center has developed, in accordance with regulations of the Secretary, (i) an overall plan and budget that meets the requirements of section 1861(z) of the Social Security Act [42 U.S.C. 1395x(z)] and (ii) an effective procedure for compiling and reporting to the Secretary such statistics and other information as the Secretary may require relating to (I) the costs of its operations, (II) the patterns of use of its services, (III) the availability, accessibility, and acceptability of its services, (IV) such other matters relating to operations of the applicant as the Secretary may, by regulation, require, and (V) expenditures made from any amount the center was permitted to retain under subsection (d)(4)(B) of this section;

(I) the center will review periodically its catchment area to (i) insure that the size of such area is such that the services to be provided through the center (including any satellite) are available and accessible to the residents of the area promptly and as appropriate, (ii) insure that the boundaries of such area conform, to the extent practicable, to relevant boundaries of political subdivisions, school districts, and Federal and State health and social service programs, and (iii) insure that the boundaries of such area eliminate, to the extent possible, barriers to access to the services of the center, including barriers resulting from the area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation;

(J) in the case of a center which serves a population including a substantial proportion of individuals of limited English-speaking ability, the center has (i) developed a plan and made arrangements responsible to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and (ii) identified an individual on its staff who is fluent in both that language and in English and whose responsibilities shall include providing guidance to such individuals and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences; and

(K) the center, in accordance with regulations prescribed by the Secretary, has developed an on-going referral relationship with one or more hospitals.

For purposes of subparagraph (G) and subsection (g)(4) of this section, the term "public center" means a community health center funded (or to be funded) through a grant under this section to a public agency.

(4) The Secretary shall approve applications for grants under paragraph (1)(A) or (1)(B) of subsection (d) of this section for community health centers which—

(A) have not received a previous grant under such paragraph, or

(B) have applied for such a grant to expand their services,

in such a manner that the ratio of the medical underserved populations in rural areas which may be expected to use the services provided by such centers to the medical underserved populations in urban areas which may be expected to use the services provided by such centers is not less than two to three or greater than three to two.

(5) The Secretary, in making a grant under this section to a community health center for the provision of environmental health services described in subsection (a)(4) of this section, may designate a portion of the grant to be expended for improvements to private property for which the written consent of the owner has been obtained and which are necessary to alleviate a hazard to the health of those residing on, or otherwise using, the property and of other persons in the center's catchment area. A center may make such an expenditure for an improvement under a grant only after the Secretary has specifically approved such expenditure and has determined that funds for the improvement are not available from any other source. The Secretary shall annually notify the appropriate committees of Congress of the amounts so expended and the improvements for which they were spent.

(f) Technical and other nonfinancial assistance; resources list

(1) The Secretary may provide (either through the Department of Health, Education, and Welfare or by grant or contract) all necessary technical and other nonfinancial assistance (including fiscal and program management assistance and training in such management) to any public or private nonprofit entity to assist it in developing plans for, and in operating as, a community health center, and in meeting requirements of subsection (e)(2) of this section.

(2) The Secretary shall make available to each grant recipient under this section a list of available Federal and non-Federal resources to improve the environmental and nutritional status of individuals in the recipient's catchment area.

(g) Authorization of appropriations; establishment of general policies by governing boards

(1) There are authorized to be appropriated for payments pursuant to grants under subsection (c) of this section $5,000,000 for fiscal year 1976, $5,000,000 for the fiscal year ending September 30, 1977, $5,880,000 for the fiscal year ending September 30, 1978, $6,300,000 for the fiscal year ending September 30, 1979, $7,500,000 for the fiscal year ending September 30, 1980, and $9,000,000 for the fiscal year ending September 30, 1981.

(2) There are authorized to be appropriated for payments pursuant to grants under subsection (d) of this section $215,000,000 for fiscal year 1976, $235,000,000 for the fiscal year ending September 30, 1977, $256,840,000 for the fiscal year ending September 30, 1978, $341,700,000 for the fiscal year ending September 30, 1979, $397,500,000 for the fiscal year ending September 30, 1980, and $463,000,000 for the fiscal year ending September 30, 1981. The Secretary may not expend for grants under subsection (d)(1)(C) of this section in any fiscal year an amount which exceeds 5 per centum of the funds appropriated under this paragraph for that fiscal year.

(3) The Secretary may not expend in any fiscal year, for grants under this section to public centers (as defined in the second sentence of subsection (e)(3) of this section) the governing boards of which (as described in subsection (e)(3)(G)(ii) of this section) do not establish general policies for such centers, an amount which exceeds 5 per centum of the funds appropriated under this section for that fiscal year.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 304, 91 Stat. 388; Nov. 10, 1978, Pub. L. 95-626, title I, § 104(a)-(d)(3)(B), (4), (5), (e), (f), 92 Stat. 3556-3559; July 10, 1979, Pub. L. 96-32, §§ 6(b)-(d), 7(c), 93 Stat. 83, 84.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (e)(3)(D), (E), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1979—Subsec. (d)(1)(B). Pub. L. 96-32, § 7(c), substituted "subsection (e)(3) of this section" for "subsection (e)(2) of this section".

Subsec. (e)(3). Pub. L. 96-32, § 6(b), amended directory language of Pub. L. 95-623, § (d)(5)(A), and required no change in text. See 1978 Amendment note below.

Subsec. (g)(2). Pub. L. 96-32, § 6(c), substituted "funds appropriated under this paragraph" for "funds appropriated under this subsection".

Subsec. (g)(3). Pub. L. 96-32, § 6(d), substituted "(3)" for "(4)" as the number designation of the paragraph added by Pub. L. 95-626, 104(f)(4), thereby correcting the paragraph designation.

1978—Subsec. (a)(4). Pub. L. 95-626, § 104(a), substituted "environmental health services, including, as may be appropriate for particular centers (as determined by the centers), the detection and alleviation of unhealthful conditions associated with water supply, sewage treatment, solid waste disposal, rodent and parasitic infestation, field sanitation, housing, and other environmental factors related to health" for "as may be appropriate for particular centers, environmental health services".

Subsec. (b)(1)(G). Pub. L. 95-626, § 104(b)(1), added subpar. (G).

Subsec. (b)(2). Pub. L. 95-626, § 104(b)(2), struck out subpar. (I) relating to pharmaceutical services, redesignated subpars. (J) to (N) as (I) to (M), respectively, in subpar. (J) as so redesignated, substituted "(including for the social and other nonmedical needs which affect health status, counseling, referral for assistance, and followup services)" for "(including nutrition education and social services)", in subpar. (L) as so redesignated, added "(including nutrition education)" following "health education services" and, in subpar. (M) as so redesignated, substituted "appropriate personnel" for "outreach workers".

Subsec. (d)(1)(C). Pub. L. 95-626, § 104(c)(1)(A), added subpar. (C).

Subsec. (d)(2). Pub. L. 95-626, § 104(c)(1)(B), substituted "paragraph (1)(A) or (1)(B)" for "paragraph (1)".

Subsec. (d)(3). Pub. L. 95-626, § 104(c)(1)(C), substituted "paragraph (1)(B) or (1)(C)" for "paragraph (1)(B)".

Subsec. (d)(4). Pub. L. 95-626, § 104(c)(2), added par. (4). A prior par. (4), providing simply that the amount of any grant made under paragraph (1) be determined by the Secretary, was stricken.

Subsec. (e)(2). Pub. L. 95-626, § 104(d)(2), added par. (2). Former par. (2) was redesignated (3).

Subsec. (e)(3). Pub. L. 95-626, § 104(d)(1), (2), (3)(A), (B), (4), (5)(A), as amended by Pub. L. 96-32, § 6(b), redesignated former par. (2) as (3) and in par. (3) as so redesignated, substituted "paragraph (1)(A) or (1)(B) of subsection (d) of this section unless" for "subsection (d) of this section unless" in the provisions preceding subpar. (A), substituted "(ii) meets at least once a month, selects the services to be provided by the center, schedules the hours during which such services will be provided, approves the center's annual budget, approves the selection of a director for the center, and, except in the case of a governing board of a public center (as defined in the second sentence of this paragraph), establishes general policies for the center; and if the application is for a second or subsequent grant for a public center, the governing body has approved the application or if the governing body has not approved the application, the failure of the governing body to approve the application was unreasonable" for "(ii) meets at least once a month, establishes general policies for the center (including the selection of services to be provided by the center and a schedule of hours during which services will be provided), approves the center's annual budget, and approves the selection of a director for the center" in subpar. (G), added cl. (V) in subpar. (H), added subpar. (K), and added the definition of public center following subpar. (K).

Subsec. (e)(4), (5). Pub. L. 95-626, § 104(d)(5)(B), added pars. (4) and (5).

Subsec. (f). Pub. L. 95-626, § 104(e), designated existing provisions as par. (1) and added par. (2).

Subsec. (g)(1). Pub. L. 95-626, § 104(f)(1), added provisions authorizing appropriations of $6,300,000 for the fiscal year ending Sept. 30, 1979, $7,500,000 for the fiscal year ending Sept. 30, 1980, and $9,000,000 for the fiscal year ending Sept. 30, 1981.

Subsec. (g)(2). Pub. L. 95-626, § 104(f)(2), (3), added provisions authorizing appropriations of $341,700,000 for the fiscal year ending Sept. 30, 1979, $397,500,000 for the fiscal year ending Sept. 30, 1980, and $463,000,000 for the fiscal year ending Sept. 30, 1981, and provided that Secretary may not expend for grants under subsection (d)(1)(C) of this section in any fiscal year an amount which exceeds 5 per centum of the funds appropriated under subsec. (g)(2) of this section for that fiscal year.

Subsec. (g)(3). Pub. L. 95-626, § 104(f)(4), as amended by Pub. L. 96-32, § 6(d), added par. (3).

1977—Subsec. (b)(3). Pub. L. 95-83, § 304(b)(1), required the Secretary to take into account unusual local conditions which are a barrier to access to or the availability of personal health services.

Subsec. (e)(1). Pub. L. 95-83, § 304(b)(2), corrected introductory text, substituting subsection "(c)" for "(e)".

Subsec. (g). Pub. L. 95-83, § 304(a), substituted in pars. (1) and (2) provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation for fiscal year ending Sept. 30, 1978, of $5,880,000 in par. (1) and $256,840,000 in par. (2).

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

Effective Date of 1978 Amendment

Section 104(d)(3)(C) of Pub. L. 95-626 provided that: "The change in the governing board requirements for public community health centers made by the amendment by subparagraph (A) to section 330(e)(3)(G)(ii) of the Public Health Service Act [subsec. (e)(3)(G)(ii) of this section] shall not apply with respect to any public community health center which met the governing board requirements in effect under section 330(e)(2)(G)(ii) of such Act [subsec. (e)(2)(G)(ii) of this section] before October 1, 1978."

Section 104(g) of Pub. L. 95-626 provided that: "The amendments made by this section [amending this section] shall apply with respect to grants made under section 330 of the Public Health Service Act [this section] from appropriations for fiscal years ending after September 30, 1978."

Sections Referred to in Other Sections

This section is referred to in sections 254a-1, 256, 256a, 300e-12, 300n, 1396b, 2928g of this title; title 7 section 3178.

SUBPART II—NATIONAL HEALTH SERVICE CORPS PROGRAM

§ 254d. National Health Service Corps

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

Special Report on Present and Future Direction of National Health Service Corps; Submission to Congress Not Later Than February 1, 1979

Pub. L. 95-626, title I, § 116(c), Nov. 10, 1978, 92 Stat. 3569, which provided that, not later than Feb. 1, 1979, the Secretary, in consultation with the National Advisory Council of the National Health Service Corps and the National Advisory Council on Health Professions Education, submit to Congress a report on the direction of the National Health Service Corps, particularly its role as a health manpower program and as a health services delivery program, the use of members of the Corps in health manpower shortage areas to meet urban and rural health needs, the types of health professions needed to meet urban and rural health needs, and the projected size, composition, and use of the Corps through 1985, was omitted from the Code as executed.

§ 254e. Health manpower shortage areas

(a) Designation by Secretary; medical facility defined

[*See main edition for text of* (*1*)]

(2) For purposes of this subsection, the term "medical facility" means a facility for the delivery of health services and includes—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) such a facility used in connection with the delivery of health services under sections 248 of this title (relating to hospitals), 249 of this title (relating to care and treatment of seamen and others), 250 of this title (relating to care and treatment of Federal prisoners), 251 of this title (relating to examination and treatment of certain Federal employees), 252 of this title (relating to examination of aliens), or 253 of this title (relating to services to certain Federal employees), or section 247e of this title (relating to services for persons with Hansen's disease); and

(D) a Federal medical facility.

[*See main edition for text of* (*b*)]

(c) Designation of area; considerations by Secretary; recommendations of State Governor, State health planning and development agencies, and health system agencies

In determining whether to make a designation, the Secretary shall take into consideration the following:

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The extent to which individuals who are (A) residents of the area, members of the population group, or patients in the medical facility or other public facility under consideration for designation, and (B) entitled to have payment made for medical services under title XVIII or XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.], cannot obtain such services because of suspension of physicians from the programs under such titles.

[*See main edition for text of* (*d*) *to* (*h*)]

(As amended Oct. 25, 1977, Pub. L. 95-142, § 7(d), 91 Stat. 1193; July 10, 1979, Pub. L. 96-32, § 7(d), 93 Stat. 84.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1979—Subsec. (a)(2)(C). Pub. L. 96-32 substituted "section 247e of this title" for "part D of subchapter II of this chapter".

1977—Subsec. (c)(3). Pub. L. 95-142 added par. (3).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 7(e)(1) of Pub. L. 95-142 provided that: "The amendment made by subsection (d) [adding subsec. (c)(3) of this section] shall apply with respect to determinations and designations made on and after the date of the enactment of this Act [Oct. 25, 1977]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254a-1, 254d, 254f, 294h, 294n, 294t, 294u, 294x, 296m, 1395x, 2928g, of this title; title 5 section 8902; title 20 section 3053.

§ 254j. National Advisory Council on National Health Service Corps

[*See main edition for text of* (*a*)]

(b) Term of members; compensation; expenses

[*See main edition for text of* (*1*)]

(2) Members of the Council (other than members who are officers or employees of the United States), while attending meetings or conferences thereof or otherwise serving on the business of the Council, shall be entitled to receive for each day (including traveltime) in which they are so serving the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule; and while so serving away from their homes or regular places of business all members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government Service employed intermittently.

[*See main edition for text of* (*c*)]

(As amended July 10, 1979, Pub. L. 96-32, § 7(g), 93 Stat. 84.)

AMENDMENTS

1979—Subsec. (b)(2). Pub. L. 96-32 substituted "section 5703 of title 5" for "section 5703(b) of title 5".

§ 254k. Authorization of appropriations

(a) To carry out the purposes of this subpart, there are authorized to be appropriated $47,000,000 for the fiscal year ending September 30, 1978; $64,000,000 for the fiscal year ending September 30, 1979; and $82,000,000 for the fiscal year ending September 30, 1980.

[*See main edition for text of* (*b*)]

(As amended Nov. 10, 1978, Pub. L. 95-626, title I, § 122, 92 Stat. 3570; Sept. 29, 1979, Pub. L. 96-76, title II, § 202(c), 93 Stat. 582.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-76 substituted "$82,000,000" for "$70,000,000".

1978—Subsec. (a). Pub. L. 95-626 substituted "$64,000,000" for "$57,000,000" as the amount authorized to be appropriated for the fiscal year ending Sept. 30, 1979.

SUBPART III—HOME HEALTH SERVICES [NEW]

AMENDMENTS

1978—Pub. L. 95-626, title I, § 105(b), title II, § 207(a), Nov. 10, 1978, 92 Stat. 3560, 3585, struck out the heading "Part D—Lepers" and added the heading "Subpart III—Home Health Services".

§ 255. Home health services

(a) Grant authority; demonstration projects and programs; applications; authorization of appropriations

(1) For the purpose of demonstrating the establishment and initial operation of home health agencies (as defined in section 1395x(*o*) of this title) which will provide home health services (as defined in section 1395x(m) of this title) in areas in which such services are not

otherwise available, the Secretary may, in accordance with the provisions of this section, make grants to public and nonprofit private entities to meet the initial costs of establishing and operating such agencies and expanding the services available through existing agencies, and to meet the costs of compensating professional and paraprofessional personnel during the initial operation of such agencies or the expansion of services of existing agencies. Demonstration projects and programs are to be conducted, to the extent practicable, in rural and urban areas, in sparsely and densely populated areas, and in areas with inadequate means of transportation.

(2) In making grants under this subsection, the Secretary shall consider the relative needs of the several States for home health services and preference shall be given to areas within a State in which a high percentage of the population proposed to be served is composed of individuals who are elderly, medically indigent, or both.

(3) Applications for grants under this subsection shall be in such form and contain such information as the Secretary shall by regulation prescribe.

(4) Payments under grants under this subsection may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants.

(5) There are authorized to be appropriated for grants under this subsection $14,000,000 for the fiscal year ending September 30, 1979, $16,100,000 for the fiscal year ending September 30, 1980, and $18,500,000 for the fiscal year ending September 30, 1981.

(b) Training of professional and paraprofessional personnel; applications; payments; authorization of appropriations

(1) The Secretary may make grants to and enter into contracts with public and nonprofit private entities to assist them in demonstrating the training of professional and paraprofessional personnel to provide home health services (as defined in section 1395x(m) of this title).

(2) Applications for grants under this subsection shall be in such form and contain such information as the Secretary shall by regulation prescribe.

(3) Payments under grants under this subsection may be made in advance on the basis of estimates or by the way of reimbursement, with necessary adjustments on account of underpayments or overpayments, and in such installments and on such terms and conditions as the Secretary finds necessary to carry out the purposes of such grants. The authority of the Secretary to enter into contracts under this subsection shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(4) There are authorized to be appropriated for grants under this subsection $1,500,000 for the fiscal year ending September 30, 1979, $2,000,000 for the fiscal year ending September 30, 1980, and $2,500,000 for the fiscal year ending September 30, 1981.

(July 1, 1944, ch. 373, title III, § 339, as added Nov. 10, 1978, Pub. L. 95-626, title II, § 207(a), 92 Stat. 3585.)

PRIOR PROVISIONS

A prior section 339 of act July 1, 1944, ch. 373, title III, formerly § 331, 58 Stat. 698; June 25, 1948, ch. 654, § 4, 62 Stat. 1018; June 25, 1952, ch. 460, 66 Stat. 157; July 12, 1960, Pub. L. 86-624, § 29(b), 74 Stat. 419; renumbered Oct. 12, 1976, Pub. L. 94-484, title IV, § 407(b)(2), 90 Stat. 2268, which related to reception of persons suffering from leprosy in any hospital, was redesignated section 320 of act July 1, 1944 and transferred to section 247e of this title.

SUBPART IV—RESEARCH AND DEMONSTRATION PROJECTS IN PRIMARY CARE [NEW]

AMENDMENTS

1978—Pub. L. 95-626, title I, § 115(l), Nov. 10, 1978, 92 Stat. 3567, added the heading "Subpart IV—Research and Demonstration Projects in Primary Care".

§ 256. Primary care research and demonstration projects

(a) Grant and contract authority

The Secretary may make grants to, and enter into contracts with, public and private entities—

(1) to demonstrate new and innovative methods for the provision of primary health services and dental health services, or

(2) to conduct research on such methods or on existing methods for the provision of primary health services and dental health services,

to medical underserved populations or to such other populations as the Secretary determines are necessary to demonstrate or conduct research on particular methods.

(b) Demonstration and research areas

Grants and contracts may be made under subsection (a) of this section to demonstrate and conduct research on—

(1) methods of attracting and retaining primary care physicians, dentists, physician assistants, nurse practitioners, and other health professionals, both individually and as teams, to train and practice among medical underserved populations;

(2) differing types of organizational models and relationships, including federations of health service centers, designed to meet unique primary health and dental health service needs;

(3) management and technological improvements (including new or improved methods for biomedical communication and medical and financial recordkeeping and billing systems) to increase the productivity, effectiveness, efficiency, and financial stability of primary health and dental health service providers;

(4) methods of providing health promotion, disease prevention, and health education programs, including school health programs;

(5) methods of identifying, coordinating, and integrating existing primary health and dental health service programs with mental

health and social service programs to maximize use of available resources, avoid duplication of effort, and ensure a coordinated, comprehensive care system;

(6) specific services or mixtures of services appropriate for a given area, including ambulatory care, home health care, environmental health services (described in section 254c(a)(4) of this title), community outreach activities, transportation services, and other supplemental health services (as defined in section 254c(b)(2) of this title);

(7) the effect of availability of primary health and home health services in terms of reduction of emergency room visits, hospitalizations, and institutionalization in long-term care facilities;

(8) the use of mobile health screening clinics to provide preventive health care services to meet the needs of medical underserved populations; and

(9) such other projects as the Secretary determines to be necessary to further the purposes of this section.

(c) Non-alternative authority for project; coordination

(1) The Secretary may not make a grant or enter into a contract under this section for a project if the project can be carried out under the authority of any other provision (other than section 241, 242b, or 242c of this title) of this chapter.

(2) The Secretary shall, to the extent feasible, coordinate demonstration and research projects carried out under this section with any demonstration and research projects carried out under the Social Security Act [42 U.S.C. 301 et seq.] for the reimbursement of services which are the subject of projects under this section.

(d) Application for grant; amount; payments

(1) No grant may be made under this section unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary shall prescribe.

(2) The amount of any grant or contract under this section shall be determined by the Secretary.

(3) The Secretary may make payments under this section in advance or by way of reimbursement, and at such intervals and on such conditions as the Secretary may find necessary.

(e) Report to Congress

The Secretary shall submit an annual report to Congress not later than March 1 of each year (beginning with 1979) describing—

(1) the projects conducted under this section during the fiscal year ending in the previous year and why they could not be assisted under the authority of other provisions of this chapter;

(2) the amount of funds expended in such fiscal year for each project area set forth in subsection (b) of this section and, if more than 20 per centum of the amount appropriated for this section was expended on any single such project area, the reasons for such concentration of expenditures; and

(3) any recommendations resulting from the conduct of such projects.

In the first such report, the Secretary shall include the number of demonstration projects which were funded under section 1110 of the Social Security Act [42 U.S.C. 1310] during the fiscal year ending September 30, 1978, which were related to health services in rural medical underserved areas, and which could have been assisted under this section during the fiscal year ending September 30, 1979, but for subsection (c)(1) of this section.

(f) "Medical underserved population" defined

As used in this section, the term "medical underserved population" has the meaning given such term in section 254c(b)(3) of this title.

(g) Authorization of appropriations

(1) There are authorized to be appropriated for the purposes of funding grants and contracts under this section in areas that are not urbanized areas (as defined by the Census Bureau) $18,000,000 for the fiscal year ending September 30, 1979, $20,000,000 for the fiscal year ending September 30, 1980, and $22,000,000 for the fiscal year ending September 30, 1981.

(2) There are authorized to be appropriated for the purposes of funding grants and contracts under this section in urbanized areas (as defined by the Census Bureau) $4,000,000 for the fiscal year ending September 30, 1979, $4,500,000 for the fiscal year ending September 30, 1980, and $5,000,000 for the fiscal year ending September 30, 1981.

(3) The authority of the Secretary to enter into contracts under this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(4) The Secretary may continue to support, out of funds appropriated under this section, those demonstration projects which were funded under section 1110 of the Social Security Act [42 U.S.C. 1310] during fiscal year ending September 30, 1978, and which are related to health services in rural medical underserved areas, but only if such projects can not be carried out under the authority of any other provision (other than section 241, 242b, or 242c of this title) of this chapter.

(July 1, 1944, ch. 373, title III, § 340, as added Nov. 10, 1978, Pub. L. 95-626, title I, § 115(2), 92 Stat. 3567, and amended Dec. 12, 1979, Pub. L. 96-142, title III, § 301(a), 93 Stat. 1073.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(2), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

PRIOR PROVISIONS

A prior section 256, act July 1, 1944, ch. 373, title III, § 340, formerly § 332, 58 Stat. 698, renumbered Oct. 12, 1976, Pub. L. 94-484, title IV, § 407(b)(2), 90 Stat. 2268, which related to the apprehension, detention, treatment, and release of persons being treated for leprosy, was repealed by Pub. L. 95-626, title I, § 105(b), Nov. 10, 1978, 92 Stat. 3560. See section 247e(b) of this title.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-142, § 301(a)(1), struck out "which provide health services" following "public and private entities".

Subsec. (c)(1). Pub. L. 96-142, § 301(a)(2), inserted reference to sections 242b and 242c of this title.

Subsec. (g)(4). Pub. L. 96-142, § 301(a)(2), inserted reference to sections 242b and 242c of this title.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 301(b) of Pub. L. 96-142 provided that: "The amendments made by subsection (a) of this section [amending subsecs. (a), (c)(1), and (g)(4) of this section] shall take effect with respect to appropriations made under section 340 of the Public Health Service Act [this section] for fiscal years beginning after September 30, 1979."

SPECIAL REPORTS ON PRIMARY HEALTH CARE NEEDS OF IMMIGRANTS, NATIVE INDIANS, AND ALASKAN ESKIMOS; SUBMISSION TO CONGRESS NOT LATER THAN JUNE 30, 1979

Section 116(a), (b) of Pub. L. 95-626, which provided that, not later than June 30, 1979, the Secretary of Health, Education, and Welfare, in consultation with the Commissioner of the Immigration and Naturalization Service, and other persons develop and submit to Congress a report on the primary health care of immigrants containing an assessment of and recommendations for the access to health care services and the health needs of immigrants, and not later than June 30, 1979, the Secretary of Health, Education, and Welfare, in consultation with the Director of the Indian Health Service, and other persons and organizations develop and submit a report to Congress on the primary health care needs of each of the specific tribes of American Indians and Alaskan Natives, containing an assessment of and recommendations for the access of American Indians and Alaskan Natives in receiving health care services and alternative health delivery systems, was omitted from the Code as executed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300e-12 of this title.

§ 256a. Technical assistance demonstration grants and contracts

(a) Grant and contract authority

(1) The Secretary may make grants to, and enter into contracts with, public and private entities to assist such entities in meeting their costs of providing technical assistance to entities engaged in the planning, development, or operation (or in any combination of such activities) of migrant health centers under section 254b of this title, community health centers under section 254c of this title, or any other centers for the delivery of primary health care. The technical assistance with respect to which a grant may be made under this paragraph includes—

(A) assistance in the selection of sites for such centers,

(B) assistance in the selection of governing boards for such centers,

(C) assistance in the management of the service programs of such centers,

(D) assistance in the recruitment, selection, and retention of personnel (including members of the National Health Service Corps) for such centers,

(E) assistance in financial management of such centers, and

(F) assistance in the procurement of facilities, equipment, and supplies for such centers.

(2) In making grants and contracts under paragraph (1), the Secretary shall make such grants to, and enter into such contracts with—

(A) entities which will provide technical assistance on a statewide basis for the planning, development, and operation of centers to provide primary health care in urban and rural areas,

(B) entities which will provide technical assistance solely for the planning, development, and operation of centers to provide primary health care in large, densely populated areas,

(C) entities which will provide technical assistance solely for the planning, development, and operation of centers to provide primary health care in rural areas,

(D) entities which will provide technical assistance for the planning, development, and operation of centers to provide primary health care on a regional basis in large States, and

(E) entities which will provide technical assistance within several contiguous States for the planning, development, and operation of centers to provide primary health care.

Grants and contracts under paragraph (1) (other than those described in subparagraph (E) of this paragraph) to private entities may only be made to such entities to provide technical assistance in the States in which they are primarily engaged in business.

(b) Grant application; grant or contract limit

(1) No grant may be made under subsection (a) of this section unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be submitted in such form and manner and shall contain such information as the Secretary may require by regulation.

(2) The amount of any grant or contract under subsection (a) of this section shall be determined by the Secretary, except that no grant or contract to any entity in any fiscal year may exceed $500,000.

(c) Primary Health Care Advisory Committee

The Secretary shall establish a Primary Health Care Advisory Committee (hereinafter in this subsection referred to as the "Committee") to make recommendations respecting—

(1) the capabilities of applicants for grants and contracts under subsection (a) of this section to effectively carry out the projects for which the grants and contracts would be made;

(2) the renewal of grants and contracts under such subsection; and

(3) the evaluation to be made under section 106(b) of the Migrant and Community Health Centers Amendments of 1978.

The Committee shall consist of five members appointed by the Secretary, in accordance with section 217a of this title, from individuals who are not officers or employees of the Federal Government and who because of their expertise in providing technical assistance to primary health care centers are particularly qualified to serve on the Committee.

(d) Authorization of appropriations

(1) For the purpose of carrying out this section, there are authorized to be appropriated $3,000,000 for the fiscal year ending September 30, 1979, $3,000,000 for the fiscal year ending September 30, 1980, and $3,000,000 for the fiscal year ending September 30, 1981.

(2) The authority of the Secretary to enter into contracts under subsection (a) of this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(July 1, 1944, ch. 373, title III, § 340A, as added Nov. 10, 1978, Pub. L. 95-626, title I, § 106(a), 92 Stat. 3560.)

References in Text

Section 106(b) of the Migrant and Community Health Centers Amendments of 1978, referred to in subsec. (c)(3), is section 106(b) of Pub. L. 95-626, title I, Nov. 10, 1978, 92 Stat. 3561, which is set out as a note below.

Effectiveness Evaluation by Secretary; Recommendations and Report to Congress Not Later Than March 1, 1981; Assessment of Available Types of Continuing Education Programs; Report to Congress Not Later Than January 1, 1980

Section 106(b), (c) of Pub. L. 95-626 provided that:

"(b) Not later than March 1, 1981, the Secretary of Health, Education, and Welfare shall submit a report to Congress—

"(1) on the effectiveness of the entities assisted under section 340A of the Public Health Service Act [this section]—

"(A) in establishing centers which meet the requirements of section 329 or 330 of the Public Health Service Act [section 254b or 254c of this title] or other centers for the provision of primary health care,

"(B) in improving the acceptability, in the communities served, of migrant health centers, community health centers, and other centers engaged in the delivery of primary health care,

"(C) in improving the ability of such centers to attract and retain health professions personnel, and

"(D) in assisting such centers in reducing their dependence on public funding;

"(2) on the extent to which the effectiveness of entities assisted under grants and contracts under such section 340A [this section] depends on (A) the type of area to be served by the centers for which planning, development, and operation assistance was provided by such entities, and (B) the organizational structure of such entities;

"(3) comparing the effectiveness of entities assisted under such section 340A [this section] with the effectiveness of other entities assisted under other provisions of title III of the Public Health Service Act [this subchapter] in providing technical assistance described in paragraph (1); and

"(4) recommending the most effective methods for providing technical assistance described in paragraph (1).

"(c) The Secretary of Health, Education, and Welfare shall conduct an assessment of the various types of continuing education programs available for health professions personnel serving medical underserved populations and the effect such types of programs have on the retention of such personnel by centers engaged in the delivery of primary health care to such populations. The Secretary shall report the results of such assessment to Congress not later than January 1, 1980."

Termination of Advisory Committees

Pub. L. 93-641, § 6(a), Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act [this chapter] shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

Part E—Narcotic Addicts and Other Drug Abusers

§§ 257a, 258

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

Part F—Licensing of Biological Products and Clinical Laboratories and Control of Radiation

SUBPART 1—BIOLOGICAL PRODUCTS

§ 262. Regulation of biological products

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SUBPART 3—ELECTRONIC PRODUCT RADIATION CONTROL

§ 263b. Congressional declaration of purpose

Change of Name

The Secretary and the Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services, respectively, by section 3508 of Title 20, Education.

§ 263d. Program of control

Abolition of the Atomic Energy Commission

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 263h. Imports

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services, respectively, by section 3508 of Title 20, Education.

Part G—Quarantine and Inspection

§ 264. Regulations to control communicable diseases

Section Referred to in Other Sections

This section is refered to in sections 201, 247e, 266, 271 of this title; title 45 section 546.

§ 267. Quarantine stations, grounds, and anchorages

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

PART I—NATIONAL LIBRARY OF MEDICINE

§ 277. Board of Regents

(a) Establishment; composition; appointment of members; Chairman; executive secretary

There is established in the Public Health Service a Board of Regents of the National Library of Medicine (referred to in this part as the "Board") consisting of the Surgeons General of the Public Health Service, the Army, the Navy, and the Air Force, the Chief Medical Director of the Department of Medicine and Surgery of the Veterans' Administration, the Assistant Director for Biological and Medical Sciences of the National Science Foundation, and the Librarian of Congress, all of whom shall be ex officio members and ten members appointed by the Secretary. The ten appointed members shall be selected from among leaders in the various fields of the fundamental sciences, medicine, dentistry, public health, hospital administration, pharmacology, or scientific or medical library work, or in public affairs. At least six of the appointed members shall be selected from among leaders in the fields of medical, dental, or public health research or education. The Board shall annually elect one of the appointed members to serve as Chairman until the next election. The Secretary shall designate a member of the Library staff to act as executive secretary of the Board.

[*See main edition for text of* (*b*)]

(c) Terms of office; vacancies; reappointment

Each appointed member of the Board shall hold office for a term of four years, except that (A) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and (B) the terms of the members first taking office after August 3, 1956, shall expire as follows: three at the end of four years after August 3, 1956, three at the end of three years after August 3, 1956, two at the end of two years after August 3, 1956, and two at the end of one year after August 3, 1956, as designated by the Secretary at the time of appointment. None of the appointed members shall be eligible for reappointment within one year after the end of his preceding term.

(As amended Nov. 9, 1978, Pub. L. 95-622, title II, § 212, 92 Stat. 3421.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-622 substituted "by the Secretary" for "by the President, by and with the advice and consent of the Senate".

Subsec. (c). Pub. L. 95-622 substituted "by the Secretary" for "by the President".

§ 278. Acceptance and administration of gifts; establishment of memorials

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

PART J—ASSISTANCE TO MEDICAL LIBRARIES

§ 280b. Congressional findings and declaration of policy

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Authorization of appropriations

For the purpose of grants and contracts under sections 280b-3, 280b-4, 280b-5, 280b-7, and 280b-8 of this title, there are authorized to be appropriated $17,500,000 for the fiscal year ending June 30, 1975, $20,000,000 for the fiscal year ending June 30, 1976, $14,600,000 for the fiscal year ending September 30, 1978, $15,000,000 for the fiscal year ending September 30, 1979, $16,500,000 for the fiscal year ending September 30, 1980, and $18,500,000 for the fiscal year ending September 30, 1981.

(As amended Aug. 1, 1977, Pub. L. 95-83, title II, § 202, 91 Stat. 386; Nov. 9, 1978, Pub. L. 95-622, title II, § 211, 92 Stat. 3420.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-622 added provisions authorizing appropriations of $15,000,000 for the fiscal year ending Sept. 30, 1979, $16,500,000 for the fiscal year ending Sept. 30, 1980, and $18,500,000 for the fiscal year ending Sept. 30, 1981.

1977—Subsec. (c). Pub. L. 95-83 authorized appropriation of $14,600,000 for fiscal year ending Sept. 30, 1978.

§ 280b-11. Records and audit

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

PART K—QUALITY ASSURANCE

§ 280c. Repealed. Pub. L. 95-623, § 11(b), Nov. 9, 1978, 92 Stat. 3455

Section, act July 1, 1944, ch. 373, title III, § 399A, formerly § 399c, as added Dec. 29, 1973, Pub. L. 93-222, § 3, 87 Stat. 934, and renumbered July 29, 1975, Pub. L. 94-63, title VI, § 607(a), (c), 89 Stat. 351, provided for programs designed to assure the quality of health care.

SUBCHAPTER III—NATIONAL RESEARCH INSTITUTES

PART A—NATIONAL CANCER INSTITUTE

§ 281. Division in National Institutes of Health

The National Cancer Institute (in this part referred to as the "Institute") is a division of the National Institutes of Health.

(July 1, 1944, ch. 373, title IV, § 400, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 241(a)(1), 92 Stat. 3424.)

PRIOR PROVISIONS

A prior section 281, act July 1, 1944, ch. 373, title IV, § 401, 58 Stat. 707; June 16, 1948, ch. 481, § 6(b), 62 Stat. 469, which provided that the National Cancer Institute be a division in the National Institutes of Health, was omitted from the Code in the general revision of this part by Pub. L. 95-622.

CONGRESSIONAL FINDINGS AND DECLARATION OF PURPOSE

Section 2 of Pub. L. 92-218, Dec. 23, 1971, 85 Stat. 778, which stated the congressional findings and declaration of purpose for Pub. L. 92-218 (see Short Title of 1971 Amendments note set out under section 201 of this title) has been omitted from the Code in view of the general revision of this part by Pub. L. 95-622.

CROSS REFERENCES

April as Cancer Control Month, see section 150 of Title 36, Patriotic Societies and Observances.

§ 282. Powers and duties of Secretary; implementation authorities

(a) In carrying out the purposes of section 241 of this title with respect to cancer, the Secretary, through the Institute and in cooperation with the National Cancer Advisory Board, shall—

(1) conduct, assist, and foster research, investigations, experiments, and studies relating to the cause, prevention, and methods of diagnosis and treatment of cancer;

(2) promote the coordination of research conducted by the Institute and similar research conducted by other agencies and organizations and by individuals;

(3) provide clinical training and instruction in technical matters relating to the diagnosis and treatment of cancer;

(4) secure for the Institute consultation services and advice of cancer experts from the United States and abroad;

(5) cooperate with State health agencies in the prevention, control, and eradication of cancer; and

(6) procure, use, and lend radium as provided in subsection (b) of this section.

(b) In carrying out subsection (a) of this section, all appropriate provisions of section 241 of this title shall be applicable to the authority of the Secretary, and the Secretary is authorized—

(1) to purchase radium, from time to time and without regard to section 5 of title 41, and to make such radium available for the purposes of this part, both to the Service and by loan to other agencies and institutions for such consideration and subject to such conditions as he may prescribe; and

(2) to provide the necessary facilities where training and instruction may be given in all technical matters relating to the diagnosis and treatement of cancer to persons found by the Secretary to have proper technical qualifications and designated by him for such training or instruction and to fix and pay them a per diem allowance during such training or instruction.

(July 1, 1944, ch. 373, title IV, § 401, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 241(a)(1), 92 Stat. 3424.)

PRIOR PROVISIONS

A prior section 282, act July 1, 1944, ch. 373, title IV, § 402, 58 Stat. 707; Dec. 23, 1971, Pub. L. 92-218, §§ 3(b)(1), (2), 6(a)(2), 85 Stat. 784, 785; July 12, 1974, Pub. L. 93-348, title I, § 104(a)(3), 88 Stat. 346; July 23, 1974, Pub. L. 93-352, title I, § 102, 88 Stat. 358, which set forth the powers and duties of the Surgeon General and limitations on grant approval, was omitted from the Code in the general revision of this part by Pub. L. 95-622.

A prior section 401 of act July 1, 1944, ch. 373, title IV, 58 Stat. 707, which was classified to former section 281 of this title, was omitted from the Code in the general revision of this part by Pub. L. 95-622.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 286b of this title.

§ 283. National Cancer Program components

The National Cancer Program shall consist of (1) an expanded, intensified, and coordinated cancer research program encompassing the research programs conducted and supported by the Institute and the related research programs of the other research institutes and including an expanded and intensified research program for the prevention of cancer caused by occupational or environmental exposure to carcinogens, and (2) the other programs and activities of the Institute.

(July 1, 1944, ch. 373, title IV, § 402, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 241(a)(1), 92 Stat. 3425.)

PRIOR PROVISIONS

A prior section 283, act July 1, 1944, ch. 373, title IV, § 403, 58 Stat. 707; June 16, 1948, ch. 481, § 6(c), 62 Stat. 469; Dec. 23, 1971, Pub. L. 92-218, §§ 3(b)(3), 6(a)(2), (3), 85 Stat. 784, 785, which related to the authority of the Surgeon General, acceptance of conditional gifts, and review of grant-in-aid for cancer projects by the National Cancer Advisory Board, was omitted from the Code in the general revision of this part by Pub. L. 95-622. See section 286d of this title.

A prior section 402 of act July 1, 1944, ch. 373, title IV, 58 Stat. 707, which was classified to former section 282 of this title, was omitted from the Code in the general revision of this part by Pub. L. 95-622.

§ 284. Cancer control programs; establishment and support; scope

The Director of the Institute shall establish and support demonstration, education, and other programs for the detection, diagnosis, prevention, and treatment of cancer and for rehabilitation and counseling respecting cancer. Programs established and supported under this section shall include—

(1) locally initiated education and demonstration programs (and regional networks of such programs) to transmit research results and to disseminate information respecting the detection, diagnosis, prevention, and treatment of cancer and rehabilitation and counseling respecting cancer to physicians and other health professionals who provide care to individuals who have cancer;

(2) the demonstration of and the education of health professionals in—

(A) effective methods for the early detection of cancer and the identification of individuals with a high risk of developing cancer, and

(B) improved methods of patient referral to appropriate centers for early diagnosis and treatment of cancer; and

(3) the demonstration of new methods for the dissemination of information to the gen-

eral public concerning the early detection and treatment of cancer and information concerning unapproved and ineffective methods, drugs, and devices for the diagnosis, prevention, treatment, and control of cancer.

(July 1, 1944, ch. 373, title IV, § 403, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 241(a)(1), 92 Stat. 3425.)

PRIOR PROVISIONS

A prior section 284, act July 1, 1944, ch. 373, title IV, § 404, 58 Stat. 708; June 16, 1948, ch. 481, § 6(c), 62 Stat. 469; Dec. 23, 1971, Pub. L. 92-218, § 6(a)(4), 85 Stat. 785, which specified the functions of the National Cancer Advisory Board, was omitted from the Code in the general revision of this part by Pub. L. 95-622. See section 286b of this title.

A prior section 403 of act July 1, 1944, ch. 373, title IV, 58 Stat. 708, which was classified to former section 283 of this title, was omitted from the Code in the general revision of this part by Pub. L. 95-622.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 286e of this title.

§ 285. Duties and functions of Director of Institute; implementation authorities

(a) The Director of the Institute in carrying out the National Cancer Program shall—

(1) collect, analyze, and disseminate information (including information respecting nutrition programs for cancer patients and the relationship between nutrition and cancer) useful in the prevention, diagnosis, and treatment of cancer, including the establishment of an international cancer research data bank to collect, catalog, store, and disseminate insofar as feasible the results of cancer research undertaken in any country for the use of any person involved in cancer research in any country;

(2) establish or support the large-scale production or distribution of specialized biological materials and other therapeutic substances for research and set standards of safety and care for persons using such materials;

(3) support research in the cancer field outside the United States by highly qualified foreign nationals which research can be expected to inure to the benefit of the American people; support collaborative research involving American and foreign participants; and support the training of American scientists abroad and foreign scientists in the United States;

(4) support appropriate programs of education (including continuing education) and training in fundamental sciences and clinical disciplines for investigators, physicians, and allied health professionals for participation in clinical programs relating to cancer, including the use of training stipends, fellowships, and career awards;

(5) expeditiously utilize existing research facilities and personnel of the National Institutes of Health for accelerated exploration of opportunities in areas of special promise;

(6) encourage and coordinate cancer research by industrial concerns where such concerns evidence a particular capability for such research;

(7) provide and contract for a program to disseminate and interpret, on a current basis, for practitioners and other health professionals, scientists, and the general public, scientific and other information respecting the cause, prevention, diagnosis, and treatment of cancer;

(8)(A) prepare and submit, directly to the President for review and transmittal to Congress, an annual budget estimate (including an estimate of the number and type of personnel needed for the National Cancer Institute) for the National Cancer Program, after reasonable opportunity for comment (but without change) by the Secretary, the Director of the National Institutes of Health, and the National Cancer Advisory Board; and (B) receive from the President and the Office of Management and Budget directly all funds appropriated by Congress for obligation and expenditure by the Institute; and

(9) as soon as practicable after the end of each fiscal year, prepare in consultation with the National Cancer Advisory Board and submit to the Secretary, for simultaneous transmittal, not later than November 30 of each year, to the President and to the Congress, a report on the activities, progress, and accomplishments under the National Cancer Program during the preceding fiscal year, which shall include a report on the progress, activities, and accomplishments of, and expenditures for, the information services of the Program, and a plan for the Program during the next five years.

(b) The Director of the Institute (after consultation with the National Cancer Advisory Board) in carrying out his functions in administering the National Cancer Program and without regard to any other provision of this chapter is authorized—

(1) to obtain (in accordance with section 3109 of title 5, and if authorized by the National Cancer Advisory Board, but without regard to the limitation in such section on the number of days or the period of such service) the services of not more than one hundred and fifty-one experts or consultants who have scientific or professional qualifications;

(2) to acquire, construct, improve, repair, operate, and maintain cancer centers, laboratories, research, and other necessary facilities and equipment, and related accommodations as may be necessary, and such other real or personal property (including patents) as the Director deems necessary; to acquire, without regard to section 34 of title 40, by lease or otherwise through the Administrator of General Services, buildings or parts of buildings in the District of Columbia or communities located adjacent to the District of Columbia for the use of the Institute for a period not to exceed ten years;

(3) to appoint one or more advisory committees composed of such private citizens and officials of Federal, State, and local governments as he deems desirable to advise him with respect to his functions;

(4) to utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, or local

public agencies, with or without reimbursement therefor;

(5) to accept voluntary and uncompensated services;

(6) to accept unconditional gifts, or donations of services, money, or property, real, personal, or mixed, tangible or intangible;

(7) to enter into such contracts, leases, cooperative agreements, or other transactions, without regard to section 529 of title 31 and section 5 of title 41, as may be necessary in the conduct of his functions, with any public agency, or with any person, firm, association, corporation, or educational institution;

(8) to take necessary action to insure that all channels for the dissemination and exchange of scientific knowledge and information are maintained between the Institute and the other scientific, medical, and biomedical disciplines and organizations nationally and internationally;

(9) to award grants for new construction as well as alterations and renovations for improvement of basic research laboratory facilities, including those related to biohazard control, as deemed necessary for the National Cancer Program; and

(10) to call special meetings of the National Cancer Advisory Board at such times and in such places as the Director deems necessary in order to consult with, obtain advice from, or to secure the approval of projects, programs, or other actions to be undertaken without delay in order to gain maximum benefit from a new scientific or technical finding.

(July 1, 1944, ch. 373, title IV, § 404, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 241(a)(1), 92 Stat. 3425, and amended July 10, 1979, Pub. L. 96-32, § 7(f), 93 Stat. 84.)

Prior Provisions

A prior section 285, act July 1, 1944, ch. 373, title IV, § 405, 58 Stat. 708, which related to uses of appropriations, was omitted from the Code in the general revision of this part by Pub. L. 95-622. See section 289*l*-6 of this title.

A prior section 404 of act July 1, 1944, ch. 373, title IV, 58 Stat. 708, which was classified to former section 284 of this title, was omitted from the Code in the general revision of this part by Pub. L. 95-622.

Amendments

1979—Subsec. (a)(7). Pub. L. 96-32 substituted "general public, scientific" for "general public scientific".

Section Referred to in Other Sections

This section is referred to in sections 286e, 289*l*, 289*l*-8 of this title.

§ 286. Scientific review of research grants and programs by peer review groups; grant procedures and criteria

(a) The Director of the Institute shall, by regulation, provide for proper scientific review of all research grants and programs over which he has authority (1) by utilizing, to the maximum extent possible, appropriate peer review groups established within the National Institutes of Health and composed principally of non-Federal scientists and other experts in the scientific and disease fields, and (2) when appropriate, by establishing, with the approval of the National Cancer Advisory Board and the Director of the National Institutes of Health, other formal peer review groups as may be required.

(b) Under procedures approved by the Director of the National Institutes of Health, the Director of the National Cancer Institute may approve grants under this chapter for cancer research or training—

(1) if the direct costs of such research and training do not exceed $35,000, but only after appropriate review for scientific merit, and

(2) if the direct costs of such research and training exceed $35,000, but only after appropriate review for scientific merit and recommendation for approval by the National Cancer Advisory Board under section 286b(b)(3) of this title.

(July 1, 1944, ch. 373, title IV, § 405, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 241(a)(1), 92 Stat. 3427.)

Prior Provisions

A prior section 286, act July 1, 1944, ch. 373, title IV, § 406, 58 Stat. 708; June 16, 1948, ch. 481, § 6(c), 62 Stat. 469; Aug. 15, 1950, ch. 714, § 4(a), 64 Stat. 447, which related to additional authority, was omitted from the Code in the general revision of this part by Pub. L. 95-622. See section 289*l*-7 of this title.

A prior section 405 of act July 1, 1944, ch. 373, title IV, 58 Stat. 708, which was classified to former section 285 of this title, was omitted from the Code in the general revision of this part by Pub. L. 95-622.

Findings Respecting Review of Administrative Processes and Facilitation of Cancer Program; Report to Congress; Additional Appropriations

Pub. L. 92-218, § 4, Dec. 23, 1971, 85 Stat. 784, mandated a review by the President of all administrative processes under which the National Cancer Program will operate, including advisory council and peer group review, with a report and recommendations to be submitted to Congress within one year from Dec. 23, 1971, and also provided that the President ask the Congress without delay for additional appropriations as are required for the cancer program.

Section Referred to in Other Sections

This section is referred to in sections 286b, 289k of this title.

§ 286a. National cancer research and demonstration centers; establishment; supportive provisions; cooperative agreements for Federal payment of basic operating support; uses of Federal payments; support limitations; definition; period and extensions of support

(a) The Director of the Institute is authorized to provide for the establishment of new centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods for cancer. Such centers may be supported under subsection (b) of this section or under any other applicable provision of law.

(b) The Director of the Institute, under policies established by the Director of the National Institutes of Health and after consultation with the National Cancer Advisory Board, is authorized to enter into cooperative agreements with public or private nonprofit agencies or institutions to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for existing or new centers (including, but not limited to, centers established under subsection (a) of this section) for basic and clinical research into, training in, and demonstration of advanced diagnostic, prevention, and treatment methods for cancer. Federal payments under this subsection in support of such cooperative agreements may be used for (1) construction (notwithstanding any limitation under section 289*l*-6 of this title), (2) staffing and other basic operating costs, including such patient care costs as are required for research, (3) clinical training (including clinical training for allied health professionals, continuing education for health professionals and allied health professions personnel, and information programs for the public respecting cancer, and (4) demonstration purposes. The aggregate of payments (other than payments for construction) made to any center in support of such an agreement for its costs (other than indirect costs) described in the first sentence may not exceed $5,000,000 in any fiscal year, except that if in any fiscal year there is an increase, as reflected in the Consumer Price Index published by the Bureau of Labor Statistics, in the cost of a center for which payments may be made under such an agreement, the aggregate of payments in such year for such center may exceed $5,000,000 to include such increase and any such increase in any preceding fiscal year for which payments were made to such center under such an agreement to the extent that such increase resulted in payments in excess of $5,000,000. As used in this section, the term "construction" does not include the acquisition of land, and the term "training" does not include research training for which fellowship support may be provided under section 289*l*-1 of this title. Support of a center under this section may be for a period of not to exceed three years and may be extended by the Director of the Institute for additional periods of not more than three years each, after review of the operations of such center by an appropriate scientific review group established by the Director of the Institute.

(July 1, 1944, ch. 373, title IV, § 406, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 241(a)(1), 92 Stat. 3428.)

PRIOR PROVISIONS

A prior section 286a, act July 1, 1944, ch. 373, title IV, § 407, as added Dec. 23, 1971, Pub. L. 92-218, § 3(a), 85 Stat. 779, and amended July 12, 1974, Pub. L. 93-348, title I, § 104(a)(4), 88 Stat. 346; July 23, 1974, Pub. L. 93-352, title I, §§ 103-105, 88 Stat. 359; Nov. 9, 1978, Pub. L. 95-622, title II, § 235, 92 Stat. 3423, which set forth provisions relating to the National Cancer Program, was omitted from the Code in the general revision of this part by Pub. L. 95-622. See sections 283, 285, and 286c of this title.

A prior section 406 of act July 1, 1944, ch. 373, title IV, 58 Stat. 708, which was classified to former section 286 of this title, was omitted from the Code in the general revision of this part by Pub. L. 95-622.

§ 286b. National Cancer Advisory Board; establishment, membership, etc.; powers and functions

(a)(1) There is established in the Institute a National Cancer Advisory Board (hereinafter in this section referred to as the "Board") to be composed of twenty-nine members as follows:

(A) The Secretary, the Director of the Office of Science and Technology Policy, the Director of the National Institutes of Health, the chief medical officer of the Veterans' Administration, the Director of the National Institute for Occupational Safety and Health, the Director of the National Institute of Environmental Health Sciences, the Secretary of Labor, the Commissioner of the Food and Drug Administration, the Administrator of the Environmental Protection Agency, the Chairman of the Consumer Product Safety Commission (or their designees), and a medical officer designated by the Secretary of Defense shall be ex officio members of the Board.

(B) Eighteen members appointed by the President.

Not more than twelve of the appointed members of the Board shall be scientists or physicians, not more than eight of the appointed members shall be representatives from the general public, and not less than five of the appointed members shall be individuals knowledgeable in environmental carcinogenesis (including carcinogenesis involving occupational and dietary factors). The scientists and physicians appointed to the Board shall be appointed from persons who are among the leading scientific or medical authorities outstanding in the study, diagnosis, or treatment of cancer or in fields related thereto, and at least two of the physicians appointed to the Board shall be physicians primarily involved in treating individuals who have cancer. Each appointed member of the Board shall be appointed from among persons who by virtue of their training, experience, and background are especially qualified to appraise the programs of the Institute. The ex officio members of the Board shall be nonvoting members.

(2)(A) Appointed members shall be appointed for six-year terms, except that of the members first appointed six shall be appointed for a term of two years, and six shall be appointed for a term of four years, as designated by the President at the time of appointment.

(B) Any member appointed to fill a vacancy occurring prior to expiration of the term for which his predecessor was appointed shall serve only for the remainder of such term. Appointed members shall be eligible for reappointment and may serve after the expiration of their terms until their successors have taken office.

(C) A vacancy in the Board shall not affect its activities, and twelve members thereof shall constitute a quorum.

(3) The President shall designate one of the appointed members to serve as Chairman for a term of two years.

(4) The Board shall meet at the call of the Director of the Institute or the Chairman, but not less often than four times a year and shall advise and assist the Director of the Institute with respect to the National Cancer Program.

(5) The Director of the Institute shall designate a member of the staff of the Institute to act as Executive Secretary of the Board.

(6) The Board may hold such hearings, take such testimony, and sit and act at such times and places as the Board deems advisable to in-

vestigate programs and activities of the National Cancer Program.

(7) The Board shall submit a report to the Secretary for simultaneous transmittal by the Secretary, not later than November 30 of each year, to the President and the Congress, on the progress during the preceding fiscal year of the National Cancer Program toward the accomplishment of its objectives.

(8) Members of the Board who are not officers or employees of the United States shall receive for each day they are engaged in the performance of the duties of the Board compensation at rates not to exceed the daily equivalent of the annual rate in effect for GS-18 of the General Schedule, including traveltime; and all members, while so serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as such expenses are authorized by section 5703, title 5, for persons in the Government service employed intermittently.

(9) The Director of the Institute shall make available to the Board such staff, information, and other assistance as it may require to carry out its activities.

(b) The Board is authorized—

(1) to review research projects or programs conducted or authorized to be conducted under section 282 of this title relating to the study of the cause, prevention, or methods of diagnosis and treatment of cancer, and recommend to the Secretary any such projects which it believes show promise of making valuable contributions to human knowledge with respect to the cause, prevention, or methods of diagnosis and treatment of cancer;

(2) to collect information as to studies which are being carried on in the United States or any other country as to the cause, prevention, and methods of diagnosis and treatment of cancer, by correspondence or by personal investigation of such studies, and with the approval of the Secretary make available such information through the appropriate publications for the benefit of health agencies and organizations (public or private), physicians, or any other scientists, and for the information of the general public;

(3) to review applications for grants for research projects relating to cancer and to recommend to the Director for approval under section 286(b)(2) of this title those applications which show promise of making valuable contributions to human knowledge with respect to the cause or prevention of cancer or to methods of diagnosis or treatment of cancer;

(4) to recommend to the Secretary for acceptance conditional gifts pursuant to section 219 of this title; and

(5) to make recommendations to the Secretary with respect to carrying out the provisions of this part.

(July 1, 1944, ch. 373, title IV, § 407, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 241(a)(1), 92 Stat. 3429.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (a)(8), is set out under section 5332 of title 5, Government Organization and Employees.

PRIOR PROVISIONS

A prior section 286b, act July 1, 1944, ch. 373, title IV, § 408, as added Dec. 23, 1971, Pub. L. 92-218, § 3(a), 85 Stat. 781, and amended July 12, 1974, Pub. L. 93-348, title I, § 104(a)(5), 88 Stat. 347; July 23, 1974, Pub. L. 93-352, title I, § 106, 88 Stat. 359; Aug. 1, 1977, Pub. L. 95-83, title II, § 203(b)(1), 91 Stat. 386; Nov. 9, 1978, Pub. L. 95-622, title II, § 234, 92 Stat. 3423, which related to National Cancer Research and Demonstration Centers, was omitted from the Code in the general revision of this part by Pub. L. 95-622. See section 286a of this title.

A prior section 407 of act July 1, 1944, ch. 373, title IV, as added Dec. 23, 1971, Pub. L. 92-218, § 3(a), 85 Stat. 779, which was classified to former section 286a of this title, was omitted from the Code in the general revision of this part by Pub. L. 95-622.

IMPLEMENTATION OF MANDATED CHANGES IN APPOINTMENTS TO AND COMPOSITION OF NATIONAL CANCER ADVISORY BOARD

Section 241(a)(2) of Pub. L. 95-622 provided that: "The change in the manner of appointing members of the National Cancer Advisory Board and in the composition of such Board prescribed by the amendment made by paragraph (1) [enacting this part] shall apply with respect to appointments made to the Board after the date of the enactment of this Act [Nov. 9, 1978], and the President shall make appointments to such Board after such date in a manner which will bring about, at the earliest feasible time, the composition prescribed by such amendment."

APPOINTMENTS TO AND COMPOSITION OF NATIONAL CANCER ADVISORY BOARD AFTER NOV. 9, 1978

Appointments to Board and composition of such Board after Nov. 9, 1978, to be made in accordance with amendments to former section 286f(a) of this title by Pub. L. 95-622, see section 232(b) of Pub. L. 95-622, set out as note under section 286f of this title.

TERMINATION OF ADVISORY COMMITTEES

Pub. L. 93-641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act [this chapter] shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 286 of this title.

§ 286c. President's Cancer Panel; establishment, membership, etc.; functions

(a)(1) There is established the President's Cancer Panel (hereinafter in this section referred to as the "Panel") which shall be composed of three persons appointed by the President, who by virtue of their training, experience, and background are exceptionally qualified to appraise the National Cancer Program. At least two of the members of the Panel shall be distinguished scientists or physicians.

(2)(A) Members of the Panel shall be appointed for three-year terms, except that (i) in the case of two of the members first appointed, one shall be appointed for a term of one year and one shall be appointed for a term of two years, as designated by the President at the time of appointment, and (ii) any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(B) The President shall designate one of the members to serve as Chairman for a term of one year.

(C) Members of the Panel shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including traveltime) during which they are engaged in the actual performance of duties vested in the Panel, and shall be allowed travel expenses (including a per diem allowance) under section 5703(b) of title 5.

(3) The Panel shall meet at the call of the Chairman, but not less often than four times a year. A transcript shall be kept of the proceedings of each meeting of the Panel, and the Chairman shall make such transcript available to the public.

(b) The Panel shall monitor the development and execution of the National Cancer Program, and shall report directly to the President. Any delays or blockages in rapid execution of the Program shall immediately be brought to the attention of the President. The Panel shall submit to the President periodic progress reports on the Program and annually an evaluation of the efficacy of the Program and suggestions for improvements, and shall submit such other reports as the President shall direct.

(July 1, 1944, ch. 373, title IV, § 408, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 241(a)(1), 92 Stat. 3430.)

References in Text

The General Schedule, referred to in subsec. (a)(2)(C), is set out under section 5332 of title 5, Government Organization and Employees.

Section 5703 of title 5, referred to in subsec. (a)(2)(C), was amended generally by Pub. L. 94-22, § 4, May 19, 1975, 89 Stat. 85, and as so amended does not contain a subsec. (b).

Prior Provisions

A prior section 286c, act July 1, 1944, ch. 373, title IV, § 409, as added Dec. 23, 1971, Pub. L. 92-218, § 3(a), 85 Stat. 781, and amended July 23, 1974, Pub. L. 93-352, title I, § 107, 88 Stat. 359, Aug. 1, 1977, Pub. L. 95-83, title II, § 203(a)(1), 91 Stat. 386; Nov. 9, 1978, Pub. L. 95-622, title II, §§ 231(a), 236, 92 Stat. 3422, 3423, which related to Cancer control programs, was omitted from the Code in the general revision of this part by Pub. L. 95-622. See sections 284 and 286e of this title.

A prior section 408 of act July 1, 1944, ch. 373, title IV, as added Dec. 23, 1971, Pub. L. 92-218, § 3(a), 85 Stat. 781, which was classified to former section 286b of this title, was omitted from the Code in the general revision of this part by Pub. L. 95-622.

Termination of Advisory Committees

Pub. L. 93-641, § 6, Jan. 4, 1975, 88 Stat. 2275, set out as a note under section 217a of this title, provided that an advisory committee established pursuant to the Public Health Service Act [this chapter] shall terminate at such time as may be specifically prescribed by an Act of Congress enacted after Jan. 4, 1975.

§ 286d. Gifts and donations

The Secretary shall recommend acceptance of conditional gifts pursuant to section 219 of this title for study, investigation, or research into the cause, prevention, and methods of diagnosis and treatment of cancer, or for the acquisition of real property or the erection, equipment, or maintenance of premises, buildings, or equipment of the Institute, only after consultation with the National Cancer Advisory Board. Donations of $50,000 or over in aid of research under this part may be acknowledged by the establishment within the Institute of suitable memorials to the donors.

(July 1, 1944, ch. 373, title IV, § 409, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 241(a)(1), 92 Stat. 3431.)

Prior Provisions

A prior section 286d, act July 1, 1944, ch. 373, title IV, § 410, as added Dec. 23, 1971, Pub. L. 92-218, § 3(a), 85 Stat. 782, and amended July 23, 1974, Pub. L. 93-352, title I, § 108, 88 Stat. 359; Aug. 1, 1977, Pub. L. 95-83, title II, § 203(b)(3), 91 Stat. 386, which related to the authority of the Director of the National Cancer Institute, was omitted from the Code in the general revision of this part by Pub. L. 95-622. See section 285 of this title.

A prior section 409 of act July 1, 1944, ch. 373, title IV, as added Dec. 23, 1971, Pub. L. 92-218, § 3(a), 85 Stat. 781, which was classified to former section 286c of this title, was omitted from the Code in the general revision of this part by Pub. L. 95-622.

§ 286e. Funding

(a) Authorization of appropriations

For the purpose of carrying out this part (other than section 284 of this title), there are authorized to be appropriated $400,000,000 for the fiscal year ending June 30, 1972; $500,000,000 for the fiscal year ending June 30, 1973; $600,000,000 for the fiscal year ending June 30, 1974; $750,000,000 for the fiscal year ending June 30, 1975; $830,000,000 for the fiscal year ending June 30, 1976; $985,000,000 for the fiscal year ending September 30, 1977; $923,590,000 for the fiscal year ending September 30, 1978; $924,500,000 for the fiscal year ending September 30, 1979; and $927,000,000 for the fiscal year ending September 30, 1980.

(b) Additional authorization of appropriations

There are authorized to be appropriated to carry out section 284 of this title $20,000,000 for the fiscal year ending June 30, 1972; $30,000,000 for the fiscal year ending June 30, 1973; $40,000,000 for the fiscal year ending June 30, 1974; $53,500,000 for the fiscal year ending June 30, 1975; $68,500,000 for the fiscal year ending June 30, 1976; $88,500,000 for the fiscal year ending September 30, 1977; $84,560,000 for the fiscal year ending September 30, 1978; $90,500,000 for the fiscal year ending September 30, 1979; and $103,000,000 for the fiscal year ending September 30, 1980.

(c) Contractual requirements

The authority of the Secretary to enter into any contract for the conduct of a program under section 285(a)(7) of this title shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(July 1, 1944, ch. 373, title IV, § 410, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 241(a)(1), 92 Stat. 3431.)

PRIOR PROVISIONS

A prior section 286e, act July 1, 1944, ch. 373, title IV, § 410A, as added Dec. 23, 1971, Pub. L. 92-218, § 3(a), 85 Stat. 782, and amended Nov. 9, 1978, Pub. L. 95-622, title II, § 233, 92 Stat. 3423, which related to scientific review of research grants and programs, was omitted from the Code in the general revision of this part by Pub. L. 95-622. See section 286 of this title.

A prior section 410 of act July 1, 1944, ch. 373, title IV, as added Dec. 23, 1971, Pub. L. 92-218, § 3(a), 85 Stat. 782, which was classified to former section 286d of this title, was omitted from the Code in the general revision of this part by Pub. L. 95-622.

§§ 286f, 286g. Omitted

Section 286f, act July 1, 1944, ch. 373, title IV, § 410B, as added Dec. 23, 1971, Pub. L. 92-218, § 3(a), 85 Stat. 783, and amended Aug. 1, 1977, Pub. L. 95-83, title II, § 203(b)(2), 91 Stat. 386; Nov. 9, 1978, Pub. L. 95-622, title II, § 232(a), 92 Stat. 3422, which provided for the establishment and operation of the National Cancer Advisory Board, was omitted from the Code in the general revision of this part by Pub. L. 95-622, title II, § 241(a)(1), Nov. 9, 1978, 92 Stat. 3424. See section 286b of this title.

Section 286g, act July 1, 1944, ch. 373, title IV, § 410C, as added Dec. 23, 1971, Pub. L. 92-218, § 3(a), 85 Stat. 784, and amended July 23, 1974, Pub. L. 93-352, title I, § 109, 88 Stat. 359; Aug. 1, 1977, Pub. L. 95-83, title II, § 203(a)(2), 91 Stat. 386; Nov. 9, 1978, Pub. L. 95-622, title II, § 231(b), 92 Stat. 3422, which authorized appropriations for this part, other than former section 286c of this title, was omitted from the Code in the general revision of this part by Pub. L. 95-622, title II, § 241(a)(1), Nov. 9, 1978, 92 Stat. 3424. See section 286e of this title.

APPOINTMENTS TO AND COMPOSITION OF NATIONAL CANCER ADVISORY BOARD AFTER NOV. 9, 1978

Pub. L. 95-622, title II, § 232(b), Nov. 9, 1978, 92 Stat. 3422, provided that: "The amendments made by subsection (a) of this section [amending subsec. (a) of former section 286f of this title] respecting the manner of appointing members of the National Cancer Advisory Board and the composition of such Board shall apply with respect to appointments made to the Board after the date of the enactment of this Act [Nov. 9, 1978], and the President shall make appointments to such Board after such date in a manner which will bring about, at the earliest feasible time, the composition prescribed by such amendments."

PART B—NATIONAL HEART, LUNG, AND BLOOD INSTITUTE

§ 287a. Research and training in diseases of heart, blood vessel, lung, and blood and in management of blood resources

In carrying out the purposes of section 241 of this title with respect to heart, blood vessel, lung, and blood diseases and with respect to the use of blood and blood products and the management of blood resources the Secretary, through the Institute and in cooperation with the National Heart, Lung, and Blood Advisory Council (hereinafter in this part referred to as the "Council"), shall—

[*See main edition for text of (1) to (4)*]

(5) Establishment of information center

Establish an information center on research, prevention, diagnosis, and treatment of heart, blood vessel, lung, and blood diseases and on the use of blood and blood products and the management of blood resources, and collect and make available on a timely basis, through publications and other appropriate means, information as to, and the practical application of, research and other activities carried on pursuant to this part;

[*See main edition for text of (6) and (7)*]

(As amended Nov. 9, 1978, Pub. L. 95-622, title II, § 223(a), 92 Stat. 3421.)

AMENDMENTS

1978—Par. (5). Pub. L. 95-622 inserted "on a timely basis" following "make available".

§ 287b. National heart, blood vessel, lung, and blood diseases and blood resources

[*See main edition for text of (a)*]

(b) Transmittal of plan and report

[*See main edition for text of (1)*]

(2) The Director of the Institute shall, as soon as practicable after the end of each fiscal year, prepare in consultation with the Council and submit a report to the Secretary, for simultaneous transmittal by the Secretary, not later than November 30 of each year, to the President and to the Congress, on the activities, progress, and accomplishments under the Program during the preceding fiscal year and a plan for the Program during the next five years. Each such plan shall contain (A) an estimate of the number and type of personnel which will be required by the Institute to carry out the Program during the five years with respect to which the plan is submitted, and (B) recommendations for appropriations to carry out the program during such five years.

[*See main edition for text of (c)*]

(d) Assistant Director for Prevention Education, and Control; appointment; functions; special emphasis of program

There shall be in the Institute an Assistant Director for Prevention Education, and Control who shall be appointed by the Director of the Institute. The Director of the Institute, acting through the Assistant Director for Prevention Education, and Control, shall conduct a program to provide on a timely basis the public and the health professions with health information with regard to cardiovascular, blood and pulmonary diseases and blood resources. In the conduct of such program, special emphasis shall be placed upon dissemination of information regarding diet and nutrition, environmental pollutants, exercise, stress, hypertension, cigarette smoking, weight control, and other factors affecting the prevention of arteriosclerosis and other cardiovascular diseases and of pulmonary and blood diseases.

(As amended Nov. 9, 1978, Pub. L. 95-622, title II, §§ 222(a), 223(b), 92 Stat. 3421.)

AMENDMENTS

1978—Subsec. (b)(2). Pub. L. 95-622, § 222(a), substituted "submit a report to the Secretary, for simultaneous transmittal by the Secretary, not later than November 30 of each year, to the President and to the Congress," for "submit to the President for transmittal to the Congress a report".

Subsec. (d). Pub. L. 95-622, § 223(b), inserted "on a timely basis" following "to provide" and "and nutrition, environmental pollutants" following "regarding diet".

STUDY OF CIGARETTE SMOKING; REPORT AND RECOMMENDATIONS BY NOVEMBER 10, 1980

Pub. L. 95-626, title IV, § 403, Nov. 10, 1978, 92 Stat. 3591, provided that:

"(a) The Secretary of Health, Education, and Welfare shall conduct, or arrange for the conduct of, a study or studies of (1) the relative health risks associated with smoking cigarettes of varying levels of tar, nicotine, and carbon monoxide; and (2) the health risks associated with smoking cigarettes containing any substances commonly added to commercially manufactured cigarettes.

"(b) Within two years of the date of enactment of this part [Nov. 10, 1978], the Secretary shall report to the Congress the results of the study or studies conducted pursuant to subsection (a) and any recommendations for legislative or administrative action."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 287g, 289*l*-8 of this title.

§ 287c. Heart, blood vessel, lung, and blood disease prevention and control programs

[*See main edition for text of* (*a*)]

(b) Authorization of appropriations

There is authorized to be appropriated to carry out this section $25,000,000 for the fiscal year ending June 30, 1973, $35,000,000 for the fiscal year ending June 30, 1974, $45,000,000 for the fiscal year ending June 30, 1975, $10,000,000 for the fiscal year 1976, $30,000,000 for the fiscal year ending September 30, 1977, $30,000,000 for the fiscal year ending September 30, 1978, $40,000,000 for the fiscal year ending September 30, 1979 and $45,000,000 for the fiscal year ending September 30, 1980.

(As amended Aug. 1, 1977, Pub. L. 95-83, title II, § 204(a)(1), 91 Stat. 386; Nov. 9, 1978, Pub. L. 95-622, title II, § 221(a), 92 Stat. 3421.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-622 added provisions authorizing appropriations of $40,000,000 for the fiscal year ending Sept. 30, 1979, and $45,000,000 for the fiscal year ending Sept. 30, 1980.

1977—Subsec. (b). Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $30,000,000 for fiscal year ending Sept. 30, 1978.

§ 287d. National research and demonstration centers for heart, blood vessel, lung, and blood diseases and blood resources

(a) Research, training, demonstration, and disease prevention activities

(1) The Director of the Institute may provide for the development of—

(A) ten new centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for heart and blood vessel diseases,

[*See main edition for text of* (*B*)]

(C) ten new centers for basic and clinical research into, training in, and demonstration of, advanced diagnostic, prevention, and treatment methods (including methods of providing emergency medical services) for blood diseases and research into blood, in the use of blood products and in the management of blood resources.

(2) The centers developed under paragraph (1) shall, in addition to being utilized for research, training, and demonstrations, be utilized for the following prevention programs for cardiovascular, pulmonary, and blood diseases:

[*See main edition for text of* (*A*) *to* (*D*)]

(E) Programs of continuing education for health and allied health professionals in the diagnosis, prevention, and treatment of such diseases and information programs for the public respecting the prevention and early diagnosis and treatment of such diseases.

[*See main edition for text of* (*3*)]

(b) Payments under cooperative agreements with public or nonprofit agencies; use of funds; limitations; "construction" and "training" defined

The Director of the Institute, under policies established by the Director of the National Institutes of Health and after consultation with the Council, may enter into cooperative agreements with public or nonprofit private agencies or institutions to pay all or part of the cost of planning, establishing, or strengthening, and providing basic operating support for, existing or new centers (including centers established under subsection (a) of this section) for basic or clinical research into, training in, and demonstration of the management of blood resources and advanced diagnostic, prevention, and treatment methods for heart, blood vessel, lung, or blood diseases. Funds paid to centers under cooperative agreements under this subsection may be used for—

(1) construction, notwithstanding section 289*l*-6 of this title,

(2) staffing and other basic operating costs, including such patient care costs as are required for research,

(3) training, including training for allied health professions personnel, and

(4) demonstration purposes.

The aggregate of payments (other than payments for construction) made to any center under such an agreement for its costs (other than indirect costs) described in the first sentence may not exceed $5,000,000 in any fiscal year, except that if in any fiscal year there is an increase, as reflected in the Consumer Price Index published by the Bureau of Labor Statistics, in the costs of a center for which payments may be made under such an agreement, the aggregate of payments in such year for such center may exceed $5,000,000 to include such increase and any such increase in any preceding fiscal year for which payments were made to such center under such an agreement to the extent that such increase resulted in payments in excess of $5,000,000. Support of a center under this subsection may be for a period of not to exceed five years and may be tended by the Director of the Institute for additional periods of not more than five years each, after review of the operations of such center by an appropriate scientific review group established by the Director. As used in this section, the term "construction" does not include the acquisition of land; and the term "training" does not include research training for which fellowship support may be provided under section 289*l*-1 of this title.

(As amended Aug. 1, 1977, Pub. L. 95-83, title II, § 204(b)(1), (2), 91 Stat. 387; Nov. 9, 1978, Pub. L. 95-622, title II, §§ 224, 242(a), 92 Stat. 3421, 3432.)

AMENDMENTS

1978—Subsec. (a)(2)(E). Pub. L. 95-622, § 224, added subpar. (E).

Subsec. (b)(1). Pub. L. 95-622, § 242(a), substituted "section 289*l*-6 of this title" for "section 285 of this title".

1977—Subsec. (a)(1)(A). Pub. L. 95-83, § 204(b)(1)(A), substituted "and blood vessel diseases," for "diseases and for research in the use of blood and blood products and in the management of blood resources;".

Subsec. (a)(1)(C). Pub. L. 95-83, § 204(b)(1)(B), substituted "diseases and research into blood, in the use of blood products and" for ", blood vessel diseases, research in the use of blood products, and research".

Subsec. (b). Pub. L. 95-83, § 204(b)(2), substituted "in any fiscal year, except that if in any fiscal year there is an increase, as reflected in the Consumer Price Index published by the Bureau of Labor Statistics, in the costs of a center for which payments may be made under such an agreement, the aggregate of payments in such year for such center may exceed $5,000,000 to include such increase and any such increase in any preceding fiscal year for which payments were made to such center under such an agreement to the extent that such increase resulted in payments in excess of $5,000,000" for "in any year, except that the aggregate of such payments in any year may exceed such amount to the extent that the excess amount is attributable to increases in such year in appropriate costs as reflected in the Consumer Price Index published by the Bureau of Labor Statistics".

§ 287f. National Heart, Lung, and Blood Advisory Council

(a) Establishment; membership; ex officio members; selection of members

There is established in the Institute a National Heart, Lung, and Blood Advisory Council to be composed of twenty-three members as follows:

(1) The Secretary, the Director of the National Institutes of Health, the Director of the Office of Science and Technology Policy, and the chief medical officer of the Veterans' Administration (or their designees), and a medical officer designated by the Secretary of Defense, shall be ex officio members of the Council.

(2) Eighteen members appointed by the Secretary.

Eleven of the appointed members shall be selected from among the leading medical or scientific authorities who are skilled in the sciences relating to diseases of the heart, blood vessels, lungs, and blood; two of the appointed members shall be selected from persons enrolled in residency programs providing training in heart, blood vessel, lung, or blood diseases; and five of the appointed members shall be selected from members of the general public who are leaders in the fields of fundamental or medical sciences or in public affairs.

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title II, § 204(b)(3), 91 Stat. 387.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-83 substituted "Office of Science and Technology Policy" for "National Science Foundation".

§ 287g. Functions of Council

[*See main edition for text of* (*a*)]

(b) Assistance respecting section 287b Program; hearings; time and place for sessions; transmittal of report to President and Congress

[*See main edition for text of* (*1*)]

(2) The Council shall submit a report to the Secretary for simultaneous transmittal by the Secretary, not later than November 30 of each year, to the President and to the Congress on the progress of the Program toward the accomplishment of its objectives during the preceding fiscal year.

(As amended Nov. 9, 1978, Pub. L. 95-622, title II, § 222(b), 92 Stat. 3421.)

AMENDMENTS

1978—Subsec. (b)(2). Pub. L. 95-622 inserted "by the Secretary" following "transmittal".

§ 287h. Administration

(a) Authority of the Secretary; grants-in-aid

In carrying out the provisions of section 287a of this title all appropriate provisions of section 241 of this title shall be applicable to the authority of the Secretary, and except as provided in subsection (c) of this section, grants-in-aid for heart, blood vessel, lung, and blood disease research and training projects and projects with respect to the use of blood and blood products and the management of blood resources, shall be made only after review and recommendation of the Council.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title II, § 204(b)(4), 91 Stat. 387.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-83 struck out "made pursuant to section 287g of this title" following "Council".

§ 287i. Authorization of appropriations

For the purpose of carrying out this part (other than section 287c of this title), there is authorized to be appropriated $375,000,000 for the fiscal year ending June 30, 1973, $425,000,000 for the fiscal year ending June 30, 1974, $475,000,000 for the fiscal year ending June 30, 1975, $339,000,000 for fiscal year 1976, $373,000,000 for the fiscal year ending September 30, 1977, $426,320,000 for the fiscal year ending September 30, 1978, $470,000,000 for the fiscal year ending September 30, 1979, and $515,000,000 for the fiscal year ending September 30, 1980. Of the sums appropriated under this section for any fiscal year, not less than 15 per centum of such sums shall be reserved for programs under this part respecting diseases of the lung and not less than 15 per centum of such sums shall be reserved for programs under this part for programs respecting blood diseases and blood resources.

(As amended Aug. 1, 1977, Pub. L. 95-83, title II, § 204(a)(2), 91 Stat. 387; Nov. 9, 1978, Pub. L. 95-622, title II, § 221(b), 92 Stat. 3421.)

AMENDMENTS

1978—Pub. L. 95-622 added provisions authorizing appropriations of $470,000,000 for the fiscal year ending Sept. 30, 1979, and $515,000,000 for the fiscal year ending Sept. 30, 1980.

1977—Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $426,320,000 for fiscal year ending Sept. 30, 1978.

PART D—NATIONAL INSTITUTE OF ARTHRITIS, METABOLISM, AND DIGESTIVE DISEASES; NATIONAL INSTITUTE OF NEUROLOGICAL DISEASES AND STROKE; AND OTHER INSTITUTES

§ 289a. Institutes for research

NATIONAL COMMISSION ON DIGESTIVE DISEASES

Pub. L. 94-562, title III, § 301, Oct. 19, 1976, 90 Stat. 2650, as amended by Pub. L. 95-622, title II, § 267, Nov. 9, 1978, 92 Stat. 3437, provided that:

[*See main edition for text of* (a) *to* (h)]

"(i)(1) Not later than February 1, 1979, the Commission shall publish and transmit directly to the Congress a final report respecting its activities under this section. The report shall contain (A) the long-range plan required by subsection (g), (B) the expenditure estimates required by subsection (h), and (C) any recommendations of the Commission for legislation.

[*See main edition for text of* (2); (*j*)]

§ 289b. Establishment of national advisory councils or committees; composition; qualifications; appointment and tenure; expansion of functions of already established councils or committees

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 289c-1a. Associate Director for Diabetes

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 289c-3a. National Diabetes Advisory Board

[*See main edition for text of* (a) *to* (c)]

(d) Compensation and travel expenses

Members of the Board who are officers or employees of the Federal Government shall serve as members of the Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Board. While away from their homes or regular places of business in the performance of services for the Board, members of the Board shall be allowed travel expenses including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

[*See main edition for text of* (e) *to* (*l*)]

(As amended July 10, 1979, Pub. L. 96-32, § 7(g), 93 Stat. 84.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-32 substituted "section 5703 of title 5" for "section 5703(b) of title 5".

§ 289c-4. Arthritis Coordinating Committee; establishment; composition; chairman; report to Secretary; time; contents; meeting

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 289c-6. Multipurpose arthritis centers

[*See main edition for text of* (a) *to* (*f*)]

(g) Authorization of appropriations

For purposes of this section, there are authorized to be appropriated $11,000,000 for the fiscal year ending June 30, 1965, $8,000,000 for the fiscal year ending June 30, 1976, $20,000,000 for the fiscal year ending June 30, 1977, $18,700,000 for the fiscal year ending September 30, 1978, $19,000,000 for the fiscal year ending September 30, 1979, and $20,000,000 for the fiscal year ending September 30, 1980.

(As amended Nov. 9, 1978, Pub. L. 95-622, title II, § 263, 92 Stat. 3436.)

AMENDMENTS

1978—Subsec. (g). Pub. L. 95-622 struck out provision that not less than 20 per centum of the funds appropriated for each fiscal year under this subsection be used for the purposes of establishing new centers.

§ 289c-7. National Arthritis Advisory Board

[*See main edition for text of* (a) *to* (c)]

(d) Compensation and travel expenses

Members of the Board who are officers or employees of the Federal Government shall serve as members of the Board without compensation in addition to that received in their regular public employment. Other members of the Board shall receive compensation at rates not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule for each day (including traveltime) they are engaged in the performance of their duties as members of the Board. While away from their homes or regular places of business in the performance of services for the Board, members of the Board shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

[*See main edition for text of* (*e*) *to* (*l*)]

(As amended July 10, 1979, Pub. L. 96-32, § 7(g), 93 Stat. 84.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-32 substituted "section 5703 of title 5" for "section 5703(b) of title 5".

PART E—NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT AND NATIONAL INSTITUTE OF GENERAL MEDICAL SCIENCES

§ 289d. National Institute of Child Health and Human Development

SELECT PANEL FOR THE PROMOTION OF CHILD HEALTH

Pub. L. 95-626, title II, § 211, Nov. 10, 1978, 92 Stat. 3588, provided that:

"(a) The Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the 'Secretary') shall establish within the Office of the Secretary a Select Panel for the Promotion of Child Health (hereinafter in this section referred to as the 'panel').

"(b)(1) The panel, after reviewing all the significant medical, scientific, behavioral, and epidemiological studies concerning the promotion of child health and the prevention of childhood diseases and concerning the efficacy and efficiency of child health programs, shall—

"(A) formulate specific goals with respect to the promotion of the health status of children and expectant mothers in the United States;

"(B) develop a comprehensive national plan for achieving these goals and otherwise promoting the health of children in the United States; and

"(C) transmit to the Secretary, to the Committee on Interstate and Foreign Commerce of the House of Representatives, and to the Committee on Human Resources of the Senate, not later than eighteen months after the date of the enactment of this Act [Nov. 10, 1978], a report detailing the comprehensive national plan it has developed and recommendations for such administrative, legislative, and other actions as it deems appropriate to implement this plan and to otherwise promote the health of children in the United States.

"(2) The panel shall include in its comprehensive national plan (developed under paragraph (1)(B)) recommendations with respect to—

"(A) the appropriate type and quantity of preventive health care and other health services needed by children in general and by particular types of children at risk;

"(B) the appropriate methods (and providers) for delivering and financing the delivery of such services;

"(C) the appropriate methods for coordinating and consolidating, within an agency and between agencies, the administration of child health promotion programs;

"(D) the need for research into the delivery of such services and the promotion of child health;

"(E) the appropriate methods for instructing children and parents in methods of maintaining their health;

"(F) the encouragement of innovative programs to promote child health;

"(G) the appropriate methods (including demonstration programs) for applying research findings to delivery of health services to children and otherwise to promoting the health of children;

"(H) the appropriate relationship between child health promotion programs and health planning organizations;

"(I) the appropriate support of training of health personnel for child health promotion programs; and

"(J) the appropriate technical assistance to States to implement child health promotion programs.

"(c)(1) The panel shall be composed of the Assistant Secretary for Health and the Assistant Secretary for Planning and Evaluation, who shall serve as ex officio members, and of fifteen other members who shall be appointed by the Secretary not later than sixty days after the date of the enactment of this Act [Nov. 10, 1978]. Among members of the panel appointed by the Secretary, the Secretary shall appoint not less than three, nor more than five, individuals employed by the Department of Health, Education, and Welfare, and shall appoint representatives from the scientific, medical, dental, allied health, mental health, preventive health, public health, and education professions, as well as consumers and representatives from State and local health agencies.

"(2) The Secretary shall designate, at the time of appointment of members of the panel, one member to serve as chairperson and another to serve as vice chairperson of the panel.

"(3) Members of the panel shall serve for the life of the panel and the Secretary shall appoint individuals to fill vacancies on the panel as they may arise.

"(4) Each member of the panel (who is not a full-time officer or employee of the United States) shall be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule [set out as a note under section 5332 of Title 5, Government Organization and Employees] for each day (including traveltime) during which the member is engaged in the actual performance of duties vested in the panel. All the members of the panel shall be allowed, while away from their homes or regular places of business in the performance of service for the panel, travel expenses (including per diem in lieu of subsistence) in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

"(d)(1) Upon the request of the panel, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the panel to assist the panel in carrying out its functions.

"(2) The Secretary shall provide the panel with such administrative services and facilities as may be required to carry out its functions.

"(e)(1) The panel may, for purposes of carrying out its functions, hold such hearings, sit and act at such times and places, take such testimony, receive such evidence, and appoint such advisory committees as it may deem advisable.

"(2) The panel may secure directly from any department or agency of the United States information necessary to carry out its functions. Upon request of the chairperson of the panel, the head of each such department or agency shall, to the extent permitted by law, furnish the information and otherwise cooperate with the panel.

"(f) The panel shall cease to exist ninety days after the date of submittal of the report described in subsection (b)(1)(C).

"(g) There is authorized to be appropriated $1,000,000 for the fiscal year ending September 30, 1979, to carry out this section. Sums appropriated under this subsection shall remain available for expenditure until the date the panel ceases to exist."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 289f, 289g, 300c-12 of this title.

§ 289g. Research

REPORTS TO CONGRESSIONAL COMMITTEES; FUNDS ESTIMATE: TRANSMITTAL TO CONGRESSIONAL COMMITTEES

Section 2(c) of Pub. L. 93-270, which required the Secretary to report to specific Committees of the House of Representatives and Senate on applications approved for grants and contracts under this chapter for research relating to sudden infant syndrome within 90 days after the close of fiscal year 1975 and for each of the next two fiscal years and to transmit to specific Committees of the House of Representatives and Senate an estimate of the amount requested for such research by the National Institutes of Health within five days after the Budget is transmitted by the President to Congress for fiscal year 1976 and for each of the next two fiscal years, was omitted from the Code as executed.

PART F—NATIONAL EYE INSTITUTE

§ 289k. Research

The Secretary shall, through the National Eye Institute established under this part, carry out the purposes of section 241 of this title with respect to the conduct and support of research with respect to blinding eye diseases and visual disorders associated with general health and well-being, including the special health problems and requirements of the blind and the mechanism of sight and visual function, except that the Secretary shall determine the areas in which and the extent to which he will carry out such purposes of section 241 of this title through such Institute or an institute established by or under other provisions of this chapter, or both of them, when both such institutes have functions with respect to the same subject matter. The Secretary, through the Institute, may, effective October 1, 1978, and without regard to section 286 of this title, carry out a program of grants for public and nonprofit private vision research facilities.

(As amended Nov. 9, 1978, Pub. L. 95-623, § 11(c), 92 Stat. 3455.)

AMENDMENTS

1978—Pub. L. 95-623 authorized the Secretary to carry out a program of grants for public and nonprofit private vision research facilities.

PART G—NATIONAL INSTITUTE OF MENTAL HEALTH

§ 289k-1. National Institute of Mental Health

(a) Establishment; functions of Institute; functions of Secretary regarding mental illness prevention, treatment, and rehabilitation program

There is established the National Institute of Mental Health (hereinafter in this part referred to as the "Institute") to administer the programs and authorities of the Secretary with respect to mental health. The Secretary, acting through the Institute, shall, in carrying out the purposes of sections 241 and 242a of this title and the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 [42 U.S.C. 2689 et seq., 6000 et seq.] (other than part C of title II [42 U.S.C. 2689 et seq.]) with respect to mental illness, develop and conduct comprehensive health, education, training, research, and planning programs for the prevention and treatment of mental illness and for the rehabilitation of the mentally ill. The Secretary shall carry out through the Institute the administrative and financial management, policy development and planning, evaluation, and public information functions which are required for the implementation of such programs and authorities.

[*See main edition for text of* (b) *and* (c); *credits*]

REFERENCES IN TEXT

The Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, referred to in subsec. (a), is Pub. L. 88-164, Oct. 31, 1963, 77 Stat. 284, as amended, which is classified principally to subchapter III of chapter 33 (§ 2689 et seq.) and chapter 75 (§ 6000 et seq.) of this title. Part C of title II, also referred to in subsec. (a), is classified generally to part C (§ 2689i et seq.) of subchapter III of chapter 33 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

CODIFICATION

Subsec. (a) of this section is set out in this supplement to reflect the revised citation to the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963.

PART H—NATIONAL INSTITUTE ON AGING

§ 289k-2. Establishment

COMMITTEE ON MENTAL HEALTH AND ILLNESS OF THE ELDERLY

Pub. L. 94-63, title VI, § 603, July 29, 1975, 89 Stat. 347, as amended by Pub. L. 94-460, title III, § 303, Oct. 8, 1976, 90 Stat. 1960; Pub. L. 95-83, title III, § 313, Aug. 1, 1977, 91 Stat. 398, provided for the appointment of a Committee on Mental Health and Illness of the Elderly to make a study of and recommendations respecting the future needs for mental health facilities, etc., care of elderly, and proposals for implementing the recommendations of the 1971 White House Conference on Aging. A report on the findings of the Committee was to be submitted to Congress not later than Aug. 30, 1977, thirty days after submission of which the Committee ceased to exist.

§ 289k-4. Functions of Secretary acting through Institute

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 289k-5. Research program

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

PART I—GENERAL PROVISIONS

§ 289*l*. Directors of Institutes; appointment; direct reporting requirement

The Director of the National Institutes of Health shall be appointed by the President by and with the advice and consent of the Senate; and the Director of the National Cancer Institute shall be appointed by the President. Except as provided in section 285(a)(8) of this title, the Director of the National Cancer Institute shall report directly to the Director of the National Institutes of Health.

(As amended Nov. 9, 1978, Pub. L. 95-622, title II, § 242(b), 92 Stat. 3432.)

AMENDMENTS

1978—Pub. L. 95-622 substituted "section 285(a)(8) of this title" for "section 286a(b)(9) of this title".

EFFECTIVE DATE

Section 7 of Pub. L. 92-218 provided that:

"(a) This Act and the amendments made by this Act [which enacted sections 286a to 286g, and 289*l* of this title, and amended sections 218(a), (b), 241(d), (i), 282, 283(b), (c), and 284 of this title, and enacted provisions set out as notes under sections 281 and 286 of this title] shall take effect sixty days after the date of enactment of this Act [Dec. 23, 1971] or on such prior date after the date of enactment of this Act as the President shall prescribe and publish in the Federal Register.

"(b) The first sentence of section 454 of the Public Health Service Act (added by section 5 of this Act) [this section] shall apply only with respect to appointments made after the effective date of this Act (as prescribed by subsection (a)).

"(c) Notwithstanding the provisions of subsection (a), members of the National Cancer Advisory Board (authorized under section 410B of the Public Health Service Act, as added by this Act) [section 286f of this title] may be appointed, in the manner provided for in such section, at any time after the date of enactment of this Act [Dec. 23, 1971]. Such officers shall be compensated from the date they first take office, at the rates provided for in such section 410B [section 286f of this title]."

§ 289*l*-1. National Research Service Awards and grants for research or research training

(a) Biomedical and behavioral research and research training; grants to public and nonprofit private institutions; references to Institutes or Administration; residences use restrictions; Awards in subject areas with personnel needs

(1) The Secretary shall—

(A) provide National Research Service Awards for—

[*See main edition for text of* (*i*) *and* (*ii*)]

(iii) biomedical and behavioral research at public institutions and at nonprofit private institutions,

(iv) research at the National Center for Health Services Research, the National Center for Health Statistics, and the National Center for Health Care Technology,

(v) training at such Centers to undertake such research,

(vi) research on the matters set forth in section 242b(a)(2) of this title at public institutions and at nonprofit private institutions, and

(vii) pre- and post-doctoral training at such public and private institutions of individuals to undertake biomedical and behavioral research and the research described in clause (vi); and

(B) make grants to public institutions and to nonprofit private institutions to enable such institutions to make to individuals selected by them National Research Service Awards for research (and training to undertake biomedical and behavioral research and the research described in subparagraph (A)(vi)) in the matters described in subparagraph (A)(i).

A reference in this subsection to the National Institutes of Health or the Alcohol, Drug Abuse, and Mental Health Administration shall be considered to include the institutes, divisions, and bureaus included in the Institutes or under the Administration, as the case may be.

[*See main edition for text of* (*2*) *and* (*3*)]

(b) Applications for Awards: approval by Secretary, assurances of service requirement, sponsorship, form, submission, and information; review by appropriate advisory councils; applications for grants: approval by Secretary, form, submission, and information; limitation of Award period; stipends and allowances and other payments at non-Federal public or nonprofit private institutions

[*See main edition for text of* (*1*)]

(2) The making of grants under subsection (a)(1)(B) of this section for National Research Service Awards shall be subject to review and approval by the appropriate advisory councils within the Department of Health, Education, and Welfare (A) whose activities relate to the research or training under the Awards, or (B) at which such research or training will be conducted.

[*See main edition for text of* (*3*)]

(4) The period of any National Research Service Award made to any individual under subsection (a) of this section may not exceed—

(A) five years in the aggregate for predoctoral training, and

(B) three years in the aggregate for postdoctoral training,

unless the Secretary for good cause shown waives the application of such limit to such individual.

(5) National Research Service Awards shall provide for such stipends and allowances (including travel and subsistence expenses and dependency allowances), adjusted periodically to reflect increases in the cost of living for the recipients of the Awards as the Secretary may deem necessary. A National Research Service Award made to an individual for research or research training at a non-Federal public or nonprofit private institution shall also provide for payments to be made to the institution for the cost of support services (including the cost of faculty salaries, supplies, equipment, general research support, and related items) provided such individual by such institution. The amount of any such payments to any institution shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the institution for establishing and maintaining the quality of its biomedical and behavioral research and training programs.

(c) Health research, teaching, and health-related activities: participation of recipients of Awards; service period; recovery formula upon noncompliance with service requirement; obligation of service: cancellation, waiver or suspension

(1) [*See main edition for text of (A)*]

(B) Any individual who received a National Research Service Award and who is a physician, dentist, nurse, or other individual trained to provide health care directly to individual patients may, upon application to the Secretary, be authorized by the Secretary to—

(i) serve as a member of the National Health Service Corps, or

(ii) provide services in his specialty for a health maintenance organization to which payments may be made under section 1395mm of this title and which serves a medically underserved population (as defined in section 300e-1(7) of this title),

in lieu of engaging in health research or teaching if the Secretary determines that there are no suitable health research or teaching positions available to such individual.

[*See main edition for text of (C)*]

(2) For each month for which an individual receives a National Research Service Award which is made for a period in excess of three months, such individual shall—

(A) for one month engage in health research or teaching or any combination thereof which is in accordance with the usual patterns of academic employment, or, if so authorized, serve as a member of the National Health Service Corps, or

(B) if authorized under paragraph (1)(B) or (1)(C), for one month serve in the individual's specialty or engage in a health-related activity.

[*See main edition for text of (3)*]

(4)(A) If any individual to whom the requirement of paragraph (1) is applicable fails, within the period prescribed by paragraph (3), to comply with such requirement, the United States shall be entitled to recover from such individual an amount determined in accordance with the formula—

$$(A=\phi[t-s/t])$$

in which "A" is the amount the United States is entitled to recover; "ϕ" is the sum of the total amount paid under one or more National Research Service Awards to such individual; "t" is the total number of months in such individual's service obligation; and "s" is the number of months of such obligation served by him in accordance with paragraphs (1) and (2) of this subsection.

[*See main edition for text of (B)*]

(5)(A) Any obligation of any individual under paragraph (3) shall be canceled upon the death of such individual.

(B) The Secretary shall by regulation provide for the waiver or suspension of any such obligation applicable to any individual whenever compliance by such individual is impossible or would involve substantial hardship to such individual and if enforcement of such obligation with respect to any individual would be against equity and good conscience.

(d) Authorization of appropriations; availability for payments, grants, etc.

There are authorized to be appropriated to make payments under National Research Service Awards and under grants for such Awards $207,947,000 for the fiscal year ending June 30, 1975, $165,000,000 for fiscal year 1976, $185,000,000 for the fiscal year ending September 30, 1977, $161,390,000 for the fiscal year ending September 30, 1978, $197,500,000 for the fiscal year ending September 30, 1979, $210,000,000 for the fiscal year ending September 30, 1980, and $222,500,000 for the fiscal year ending September 30, 1981. Of the sums appropriated under this subsection, not less than 15 per centum shall be made available for payments under National Research Service Awards provided by the Secretary under subsection (a)(1)(A) of this section and not less than 50 per centum shall be made available for grants under subsection (a)(1)(B) of this section for National Research Service Awards. In any fiscal year not more than 4 per centum of the amount obligated to be expended under this section may be obligated for National Research Service Awards for periods of three months or less.

(As amended Aug. 1, 1977, Pub. L. 95-83, title II, § 205, 91 Stat. 387; Nov. 9, 1978, Pub. L. 95-622, title II, §§ 251-255, 92 Stat. 3433; Nov. 9, 1978, Pub. L. 95-623, § 11(d), 92 Stat. 3455.)

AMENDMENTS

1978—Subsec. (a)(1)(A). Pub. L. 95-623, § 11(d)(1), added cls. (iv)-(vi), redesignated as cl. (vii) former cl. (iv) and substituted therein "biomedical and behavioral research and the research described in clause (vi)" for "such research".

Subsec. (a)(1)(B). Pub. L. 95-623, § 11(d)(2), substituted in parenthetical text "biomedical and behavioral research and the research described in subparagraph (A)(vi)" for "such research".

Subsec. (b)(2). Pub. L. 95-622, § 252, substituted "The making of grants under subsection (a)(1)(B) of this section for National Research Service Awards" for "The award of the National Research Service Awards by the Secretary under subsection (a) of this section and the making of grants for such Awards".

Subsec. (b)(4). Pub. L. 95-622, § 253, added provision further limiting period of award to five years in the aggregate for predoctoral training.

Subsec. (b)(5). Pub. L. 95-622, § 254, inserted ", adjusted periodically to reflect increases in the cost of living" following "dependency allowances)".

Subsec. (c)(1)(B). Pub. L. 95-622, § 255(a), redesignated former cl. (iii) as (ii). Former cl. (ii), which related to service in a private practice specialty in a geographic area designated by the Secretary as requiring that specialty, was struck out.

Subsec. (c)(2). Pub. L. 95-622, § 255(b)(1), substituted in provisions preceding subpar. (A) "each month" for "each year" and "which is made for a period in excess of three months, such individual shall" for "he shall", in subpar. (A) "one month" for "twelve months", and in subpar. (B) "one month" for "twenty months".

Subsec. (c)(4)(A). Pub. L. 95-622, § 255(b)(2), substituted "s" for "½s" in the formula.

Subsec. (c)(5)(B). Pub. L. 95-622, § 255(b)(3), substituted "substantial hardship" for "extreme hardship".

Subsec. (d). Pub. L. 95-622, § 251, added provision authorizing appropriations of $197,500,000 for the fiscal year ending Sept. 30, 1979, $210,000,000 for the fiscal year ending Sept. 30, 1980, and $222,500,000 for the fiscal year ending Sept. 30, 1981, and provision that in any fiscal year not more than 4 per centum of the amount obligated to be expended under this section may be obligated for National Research Service Awards for periods of three months or less, substituted "15 per centum" for "25 per centum", and inserted "and not less than 50 per centum shall be made available for grants under subsection (a)(1)(B) of this section for National Research Service Awards" following "subsection (a)(1)(A) of this section".

1977—Subsec. (d). Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $161,390,000 for fiscal year ending Sept. 30, 1978.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 255(b) of Pub. L. 95-622 provided that: "The amendments made by subsection (a) [amending subsec. (c)(1)(B) of this section] shall apply only with respect to National Research Service Awards made under section 472 of the Public Health Service Act [this section] after the date of the enactment of this Act. [Nov. 9, 1978]."

NATIONAL COMMISSION FOR THE PROTECTION OF HUMAN SUBJECTS OF BIOMEDICAL AND BEHAVIORAL RESEARCH

Sections 201 to 205 of Pub. L. 93-348, as amended by Pub. L. 94-573, § 18(a), Oct. 21, 1976, 90 Stat. 2719, Pub. L. 95-203, § 5(a), Nov. 23, 1977, 91 Stat. 1454, relating to the establishment, membership, etc., of the National Commission for the Protection of Human Subjects of Biomedical and Behavioral Research, was repealed by Pub. L. 95-622, title III, § 302(b), Nov. 9, 1978, 92 Stat. 3442.

LIMITATION ON RESEARCH

Pub. L. 93-348, title II, § 213, July 12, 1974, 88 Stat. 353, setting forth limitations on research on a living human fetus, was repealed by Pub. L. 95-622, title III, § 302(b), Nov. 9, 1978, 92 Stat. 3442.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 286a, 287d, 289c-1, 294u of this title.

§ 289*l*-2. Studies respecting biomedical and behavioral research personnel

[*See main edition for text of* (a) *and* (b)]

(c) Report to Congressional committees

A report on the result of such study shall be submitted by the Secretary to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Human Resources of the Senate at least once every two years.

(As amended Nov. 9, 1978, Pub. L. 95-622, title II, § 256, 92 Stat. 3434; S. Res. 30, Mar. 7, 1979.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-622 substituted "at least once every two years" for "not later than September 30 of each year".

CHANGE OF NAME

The name of the Committee on Human Resources of the Senate was changed to the Committee on Labor and Human Resources effective Mar. 7, 1979, by Senate Resolution 30, 96th Congress. See, also, Rule XXV of the Standing Rules of the Senate adopted Nov. 14, 1979.

§ 289*l*-4. Peer review of grant applications and contract projects

(a) Regulations

The Secretary, after consultation with the Director of the National Institutes of Health, and, where appropriate, the Directors of the National Institute of Mental Health, the National Institute on Alcohol Abuse and Alcoholism, and the National Institute on Drug Abuse and the head of the Division of Nursing of the Health Resources Administration (or the successor to either such entity), shall by regulation require appropriate scientific peer review of—

(1) applications made after the effective date of such regulations for grants under this chapter for biomedical and behavioral research (including research under programs of such Division of Nursing); and

(2) biomedical and behavioral research and development contract projects to be administered after such effective date through an institute established under this subchapter, the National Institute on Alcohol Abuse and Alcoholism, the National Institute on Drug Abuse, or the Division of Nursing of the Health Resources Administration (or the successor to either such entity).

[*See main edition for text of* (b) *and* (c)]

(As amended Nov. 9, 1978, Pub. L. 95-622, title II, § 264, 92 Stat. 3436.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-622 inserted in provisions preceding par. (1) "and the head of the Division of Nursing of the Health Resources Administration (or the successor to either such entity)" following "National Institute on Drug Abuse", in par. (1) "(including research under programs of such Division of Nursing)" following "behavioral research", and in par. (2) "or the Division of Nursing of the Health Resources Administration (or the successor to either such entity)" following "National Institute on Drug Abuse".

§ 289*l*-6. Availability of appropriations

Appropriations to carry out the purposes of this subchapter shall be available for the acquisition of land or the erection of buildings only if so specified, but in the absence of express limitation therein may be expended in the District of Columbia for personal services, stenographic recording and translating services, by contract if deemed necessary, without regard to section 5 of title 41; traveling expenses (including the expenses of attendance at meetings when specifically authorized by the Secretary); rental, supplies and equipment, purchase and exchange of medical books, books of reference, directories, periodicals, newspapers, and press clippings; purchase, operation, and maintenance of motor-propelled passenger-carrying vehicles; printing and binding (in addition to that otherwise provided by law); and for all other necessary expenses in carrying out the provisions of this subchapter.

(July 1, 1944, ch. 373, title IV, § 477, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 241(b), 92 Stat. 3432.)

Section Referred to in Other Sections

This section is referred to in sections 286a, 287d of this title.

§ 289*l*-7. Other statutory, etc., authorities unaffected

This subchapter shall not be construed as limiting (1) the functions or authority of the Secretary under any other subchapter of this chapter, or of any officer or agency of the United States, relating to the study of the prevention, diagnosis, and treatment of any disease or diseases for which a separate institute is established under this chapter; or (2) the expenditure of money therefor.

(July 1, 1944, ch. 373, title IV, § 478, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 241(b), 92 Stat. 3432.)

§ 289*l*-8. Experts and consultants; employment authority; expense reimbursement requirements

(a) The Director of the National Institutes of Health may obtain (in accordance with section 3109 of title 5, but without regard to the limitation in such section on the number of days or the period of service) the services of not more than two hundred experts or consultants who have scientific or professional qualifications, for the National Institutes of Health and for each of the research institutes (other than the National Cancer Institute and the National Heart, Lung, and Blood Institute).

(b)(1) Experts and consultants whose services are obtained under subsection (a) of this section or under section 285(b)(1) or 287b(c)(1) of this title shall be paid or reimbursed for their expenses associated with traveling to and from their assignment location in accordance with sections 5724, 5724a(a)(1), 5724a(a)(3), and 5726(c) of title 5.

(2) Expenses specified in paragraph (1) may not be allowed in connection with the assignment of an expert or consultant whose services are obtained under this subsection, unless and until the expert or consultant agrees in writing to complete the entire period of his assignment or 1 year, whichever is shorter, unless separated or reassigned for reasons beyond his control that are acceptable to the Secretary. If the expert or consultant violates the agreement, the money spent by the United States for these expenses is recoverable from him as a debt due the United States. The Secretary may waive in whole or in part a right of recovery under this subsection with respect to an expert or consultant on assignment with the Secretary.

(July 1, 1944, ch. 373, title IV, § 479, as added Nov. 9, 1978, Pub. L. 95-622, title II, § 265, 92 Stat. 3436.)

Part J—Miscellaneous Provisions

§ 290a. Victims of fire

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER IV—CONSTRUCTION AND MODERNIZATION OF HOSPITALS AND OTHER MEDICAL FACILITIES

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 293a, 300q-2, 300s-6, 2005b, 2005d, 3188a, 3195, 4519 of this title.

Part A—Grants and Loans for Construction and Modernization of Hospitals and Other Medical Facilities

Part Referred to in Other Sections

This part is referred to in sections 291j-1, 300s of this title.

§ 291c. General regulations

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 291d. State plans

Transfer of Functions

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Section Referred to in Other Sections

This section is referred to in sections 291e, 291g, 291i, 291j-3, 291j-9, 291*l*, 291o, 1320a-1, 4728 of this title; title 12 sections 1715n, 1715w, 1715-7; title 21 section 1173.

§ 291e. Projects for construction or modernization

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

Part B—Loan Guarantees and Loans for Modernization and Construction of Hospitals and Other Medical Facilities

Part Referred to in Other Sections

This part is referred to in section 300s of this title; title 12 section 1717.

Part D—General Provisions

§ 291k. Federal Hospital Council

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER V—HEALTH RESEARCH AND TEACHING FACILITIES AND TRAINING OF PROFESSIONAL HEALTH PERSONNEL

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 235, 300d-5, 300*l*-2 of this title; title 12 section 1715z-7; title 38 section 5070.

PART A—GENERAL PROVISIONS

§ 292a. Definitions

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 292e. Records and audits

(a) Establishment and maintenance of records; regulation; contents

Each entity which receives a grant, loan, loan guarantee, or interest subsidy or which enters into a contract with the Secretary under this subchapter, shall establish and maintain such records as the Secretary shall by regulation or order require. Such records shall include records which fully disclose (A) the amount and disposition by such entity of the funds paid to it under such grant, loan, loan guarantee, interest subsidy, or contract, (B) the total cost of the project or undertaking for which such grant, loan, loan guarantee, interest subsidy, or contract is made, (C) the amount of that portion of the cost of the project or undertaking received by or allocated to such entity from other sources, and (D) such other records as will facilitate an audit conducted in accordance with generally accepted auditing standards.

(b) Annual financial audits; report to Secretary

Each entity which received a grant or entered into a contract under this subchapter shall provide for a biennial financial audit of any books, accounts, financial records, files, and other papers and property which relate to the disposition or use of the funds received under such grant or contract and such other funds received by or allocated to the project or undertaking for which such grant or contract was made. For purposes of assuring accurate, current, and complete disclosure of the disposition or use of the funds received, each such audit shall be conducted in accordance with such requirements concerning the individual or agency which conducts the audit, and such standards applicable to the performance of the audit, as the Secretary may by regulation provide. A report of each such audit shall be filed with the Secretary at such time and in such manner as he may require.

[*See main edition for text of* (c) *to* (e)]

(As amended Nov. 9, 1978, Pub. L. 95-623, § 11(f), 92 Stat. 3456.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-623, § 11(f)(1), designated provisions of second sentence as cls. (A)-(D), and in revising them substituted in cl. (A) as so designated, "the amount and disposition by such entity of the funds paid to it under such grant, loan, loan guarantee, interest subsidy, or contract" for "the amount and disposition of the total amount of funds received by such entity", in cl. (B) as so designated, "the total cost of the project or undertaking for which such grant, loan, loan guarantee, interest subsidy, or contract is made" for "the total cost of any project or undertaking for which funds were received", and in cl. (C) as so designated, "the amount of that portion of the cost of the project or undertaking received by or allocated to such entity from other sources" for "the total amount of that portion of the total cost of any project or undertaking received by or allocated to such entity from other sources" and reenacted as cl. (D) identical existing provision.

Subsec. (b). Pub. L. 95-623, § 11(f)(2), substituted requirements that: the entity provide for a biennial financial audit relating to the disposition or use of the funds received under the grant or contract and other funds received or allocated to the project or undertaking for which the grant or contract was made; the audit be conducted in accordance with such requirements concerning the individual or agency which conducts the audit, and such standards applicable to the performance of the audit, as the Secretary may by regulation provide for prior requirements that: the entity have an annual financial audit relating to the disposition or use of any funds received under the grant or contract and other funds received by or allocated to any project or undertaking for which funds received under the chapter were used, and other funds received under the chapter; the entity be responsible for providing and paying for the audit; and the audit be conducted by and certified to be accurate by an independent certified public accountant utilizing generally accepted auditing standards.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300t-12 of this title.

§ 292g. Delegation of authority

The Secretary may delegate the authority to administer any program authorized by this title to the administrator of a central or regional office or offices of the Department, except that the authority—

(1) to review and prepare comments on any application for a grant or contract under any such program (including any application for a continuation of such a grant or contract or for modification of such a contract) for purposes of presenting such application to the National Advisory Council on Health Professions Education, and

(2) to make such a grant, enter into such a contract, continue such a grant or contract, or modify such a contract,

shall not be delegated to any administrator of, or officer in, a regional office or offices of the Department.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(r), 91 Stat. 395.)

AMENDMENTS

1977—Pub. L. 95-83, in item (1), struck out the comma following "review" and "the merit of," preceding "any application" and inserted "(including any application for a continuation of such a grant or contract or for modification of such a contract)" following "program"; and, in item (2), substituted ", enter into such a contract, continue such a grant or contract, or modify such a contract" for "or enter into such a contract".

§ 292h. Health professions data

(a) Uniform reporting system; scope of information

The Secretary shall establish a program, including a uniform health professions data reporting system, to collect, compile, and analyze data on health professions personnel which program shall initially include data respecting all physicians and dentists in the States. The

Secretary is authorized to expand the program to include, whenever he determines it necessary, the collection, compilation, and analysis of data respecting pharmacists, optometrists, podiatrists, veterinarians, public health personnel, audiologists, speech pathologists, health care administration personnel, nurses, allied health personnel, medical technologists, and any other health personnel in States designated by the Secretary to be included in the program. Such data shall include data respecting the training, licensure status (including permanent, temporary, partial, limited, or institutional), place or places of practice, professional specialty, practice characteristics, place and date of birth, sex, and socio-economic background of health professions personnel and such other demographic information regarding health professions personnel as the Secretary may require.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Report to President and Congress

The Secretary shall assemble and submit to the President and Congress a report on the status of health professions personnel in the United States, which report shall include a description and analysis of the data collected pursuant to this section. Such report may be included as part of the report made under section 242m(a)(2)(C) of this title. Such report shall be submitted biennially, and the first such report shall be due not later than October 1, 1979.

(e) Personal data; consent for transfer; disclosure; program entity

(1) The Secretary and each program entity shall in securing and maintaining any record of individually identifiable personal data (hereinafter in this subsection referred to as "personal data") for purposes of this section—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) assure that no use is made of personal data which use is not within the purposes of this section unless an informed consent has been obtained from the individual who is the subject of such data; and

[*See main edition for text of* (*D*), (*2*) *to* (*4*); (*f*) *and* (*g*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(a), 91 Stat. 389; Nov. 9, 1978, Pub. L. 95-623, § 12(a), 92 Stat. 3457.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-623 substituted requirement of a biennial report, including a first report due no later than Oct. 1, 1979, for prior requirement of an annual report no later than Sept. 1 of each year.

1977—Subsec. (a). Pub. L. 95-83, § 307(a)(1), in the first sentence, inserted "program" preceding "shall initially" and substituted "States" for "United States and its territories and possessions".

Subsec. (e)(1)(C). Pub. L. 95-83, § 307(a)(2), inserted "use" following "personal data which".

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

CHIROPRACTIC HEALTH PROFESSIONS; STUDY

Section 903 of Pub. L. 94-484, as amended by Pub. L. 95-623, § 12(i)(2), Nov. 9, 1978, 92 Stat. 3457, which provided that the Secretary of Health, Education, and Welfare, arrange for a study to determine the national average annual per student educational cost for a degree of doctor of chiropractics, development methodologies for ascertaining the average annual cost of chiropractic education and the factors affecting variations in cost among schools, determine the current demand and supply of chiropractic services, and include an analysis of the current costs of chiropractic services, with an interim report submitted not later than Mar. 30, 1978, and a final report not later than Apr. 1, 1979, to the Secretary, and specific Committees of the Senate and House of Representatives, was omitted from the Code as executed.

§ 292i. Shared schedule residency training positions

[*See main edition for text of* (*a*)]

(b) Report to Congress

The Secretary shall report to Congress not later than February 1, 1980, on entities' compliance with subsection (a) of this section and shall include in such report recommendations for legislation to ensure compliance with such subsection.

[*See main edition for text of* (*c*)]

(As amended Nov. 9, 1978, Pub. L. 95-623, § 12(b), 92 Stat. 3457.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-623 extended date to Feb. 1, 1980, from Jan. 1, 1979, for the Secretary's report to Congress.

PART B—GRANTS AND LOAN GUARANTEES AND INTEREST SUBSIDIES FOR CONSTRUCTION OF TEACHING FACILITIES FOR MEDICAL, DENTAL, AND OTHER HEALTH PERSONNEL

§ 293a. Applications

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Regional health professions programs; definition

(1) An application for a grant under subsection (a) of section 293 of this title for the fiscal year ending September 30, 1977, for an affiliated clinical facility for the establishment or expansion of a regional health professions program may be filed by any public or other nonprofit agency if the application is approved by the school of veterinary medicine, optometry, podiatry, or pharmacy with which the facility is affiliated. Only that portion of the project to construct such a facility which the Secretary determines to be reasonably attributable to the need of the regional health professions program for the facility for teaching purposes shall be regarded as the project with respect to which payments may be made under section 293b of this title.

(2) In considering applications for grants under subsection (a) of section 293 of this title for the fiscal year ending September 30, 1977, the Secretary shall give special consideration to applications for facilities for the establishment or expansion of regional health professions programs.

[*See main edition for text of* (*3*); (*g*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(b), 91 Stat. 389.)

AMENDMENTS

1977—Subsec. (f). Pub. L. 95-83 substituted in pars. (1) and (2) "subsection (a) of section 293 of this title" for "subsection (a) of this section".

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

PART C—STUDENT ASSISTANCE

SUBPART I—FEDERAL PROGRAM OF INSURED LOANS TO GRADUATE STUDENTS IN HEALTH PROFESSIONS SCHOOLS

§ 294. Statement of purpose; authorization of appropriations

(a) The purpose of this subpart is to enable the Secretary to provide a Federal program of student loan insurance for students in (and certain former students of) eligible institutions.

[*See main edition for text of* (*b*)]

(As amended Dec. 19, 1977, Pub. L. 95-215, § 4(e)(1), 91 Stat. 1506.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-215 substituted "students in (and certain former students of) eligible institutions" for "students in eligible institutions".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-215 effective Oct. 1, 1977, see section 4(g) of Pub. L. 95-215, set out as an Effective Date of 1977 Amendment note under section 294d of this title.

§ 294a. Federal loan insurance program

(a) Scope and duration

The total principal amount of new loans made and installments paid pursuant to lines of credit (as defined in section 294j of this title) to borrowers covered by Federal loan insurance under this subpart shall not exceed $500,000,000 for the fiscal year ending September 30, 1978; $510,000,000 for the fiscal year ending September 30, 1979; and $520,000,000 for the fiscal year ending September 30, 1980. Thereafter, Federal loan insurance pursuant to this subpart may be granted only for loans made (or for loan installments paid pursuant to lines of credit) to enable students, who have obtained prior loans insured under this subpart, to continue or complete their educational program or to obtain a loan under section 294d(a)(1)(B) of this title to pay interest on such prior loans; but no insurance may be granted for any loan made or installment paid after September 30, 1982.

[*See main edition for text of* (*b*)]

(c) Student Loan Marketing Association; right to deal in loans

The Student Loan Marketing Association, established under part B of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.], is authorized to make advances on the security of, purchase, service, sell, or otherwise deal in, loans which are insured by the Secretary under this subpart.

(As amended Dec. 19, 1977, Pub. L. 95-215, § 4(e)(2)-(4), 91 Stat. 1506.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-215, § 4(e)(2), (3), substituted "to borrowers covered by Federal loan insurance" for "to students covered by Federal loan insurance" and added "or to obtain a loan under section 294d(a)(1)(B) of this title to pay interest on such prior loans" following "to continue or complete their educational program".

Subsec. (c). Pub. L. 95-215, § 4(e)(4), substituted "loans" for "student loans".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-215 effective Oct. 1, 1977, see section 4(g) of Pub. L. 95-215, set out as an Effective Date of 1977 Amendment note under section 294d of this title.

§ 294b. Limitations on individually insured loans and loan insurance

(a) The total of the loans made to a student in any academic year or its equivalent (as determined by the Secretary) which may be covered by Federal loan insurance under this subpart may not exceed $10,000 in the case of a student enrolled in a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or public health, and $7,500 in the case of a student enrolled in a school of pharmacy, except that in the case of loans to students in schools of medicine, osteopathy, and dentistry, the Secretary may increase the total of such loans which may be covered by Federal loan insurance to $15,000 if he determines that the costs of education at such schools requires such increase. The aggregate insured unpaid principal amount for all such insured loans made to any borrower shall not at any time exceed $50,000 in the case of a borrower who is or was a student enrolled in a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, podiatry, or public health, and $37,500 in the case of a borrower who is or was a student enrolled in a school of pharmacy, except that the Secretary may increase such amount for borrowers who are or were students in schools of medicine, osteopathy, and dentistry to $60,000 if he determines that the costs of education at such schools requires such increase. The annual insurable limit per student shall not be exceeded by a line of credit under which actual payments by the lender to the borrower will not be made in any year in excess of the annual limit.

[*See main edition for text of* (*b*)]

(As amended Dec. 19, 1977, Pub. L. 95-215, § 4(e)(5), 91 Stat. 1506; Sept. 29, 1979, Pub. L. 96-76, title II, § 201, 93 Stat. 582.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-76 added provisions excepting loans to students in schools of medicine, osteopathy, and dentistry from limitation.

1977—Subsec. (a). Pub. L. 95-215 substituted "borrower" for "student" following "insured loans made to any" and substituted "borrower who is or was a student" for "student" in two places.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-215 effective Oct. 1, 1977, see section 4(g) of Pub. L. 95-215, set out as an Effective Date of 1978 Amendment note under section 294d of this title.

§ 294d. Borrowers

(a) Eligibility; terms of insured student loans

A loan by an eligible lender shall be insurable by the Secretary under the provisions of this subpart only if—

(1) made to—

(A) a student who—

(i)(I) has been accepted for enrollment at an eligible institution, or (II) in the case of a student attending an eligible institution, is in good standing at that institution, as determined by the institution;

(ii) is or will be a full-time student (as defined in section 295f(c)(2) of this title) at the eligible institution;

(iii) in the case of a student in a school of medicine, osteopathy, or dentistry, has been authorized by the institution in accordance with section 294*l*(b)(2) of this title to receive a loan under this subpart;

(iv) has agreed that all funds received under such loan shall be used solely for tuition and other reasonable educational expenses, including fees, books, and laboratory expenses, incurred by such students;

(v) for the school year for which such loan is made, receives no funds from a loan insured under a Federal, State, or nonprofit program provided or assisted under part B of title IV of the Higher Education Act of 1965 [20 U.S.C. 1071 et seq.]; and

(vi) in the case of a pharmacy student, has satisfactorily completed three years of training; or

(B) an individual who—

(i) has previously had a loan insured under this subpart when the individual was a full-time student at an eligible institution;

(ii) is in a period during which, pursuant to paragraph (2), the principal amount of such previous loan need not be paid; and

(iii) has agreed that all funds received under the proposed loan shall be used solely for repayment of interest due on previous loans made under this subpart; and

(2) evidenced by a note or other written agreement which—

[*See main edition for text of* (*A*)]

(B) provides for repayment of the principal amount of the loan in installments over a period of not less than 10 years (unless sooner repaid) nor more than 15 years beginning not earlier than 9 months nor later than 12 months after the date on which the borrower ceases to be a participant in an accredited internship or residency program or (if he was not a participant in such a program) ceases to carry, at an eligible institution, the normal full-time academic workload as determined by the institution, except (i) as provided in clause (C) below, (ii) that the period of the loan may not exceed 23 years from the date of execution of the note or written agreement evidencing it, and (iii) that the note or other written instrument may contain such provisions relating to repayment in the event of default in the payment of interest or in the payment of the cost of insurance premiums, or other default by the borrower, as may be authorized by regulations of the Secretary in effect at the time the loan is made;

(C) provides that periodic installments of principal need not be paid, but interest shall accrue and be paid, during any period (i) during which the borrower is pursuing a full-time course of study at an eligible institution (or at an institution defined by section 435(b) of the Higher Education Act of 1965 [20 U.S.C. 1085(b)]), (ii) not in excess of three years during which the borrower is a participant in an accredited internship or residency program, (iii) not in excess of three years, during which the borrower is a member of the Armed Forces of the United States, (iv) not in excess of three years during which the borrower is in service as a volunteer under the Peace Corps Act [22 U.S.C. 2501 et seq.], (v) not in excess of three years during which the borrower is a member of the National Health Service Corps, or (vi) not in excess of three years during which the borrower is in service as a full-time volunteer under title I of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 4951 et seq.], and any such period shall not be included in determining the 15-year period or the 23-year period provided in clause (B) above;

(D) provides for interest on the unpaid principal balance of the loan at a yearly rate, not exceeding the applicable maximum rate prescribed and defined by the Secretary (within the limits set forth in subsection (b) of this section) on a national, regional, or other appropriate basis, which interest shall be compounded semiannually and payable in installments over the period of the loan, except that the note or other written agreement may provide that payment of any interest otherwise payable (i) before the beginning of the repayment period, (ii) during any period described in subparagraph (C), or (iii) during any other period of forbearance of payment of principal, may be deferred until not later than the date upon which repayment of the first installment of principal falls due or the date repayment of principal is required to resume (whichever is applicable) and may further provide that, on such date, the amount of the interest which has so accrued may be added to the principal;

(E) entitles the borrower to accelerate without penalty repayment of the whole or any part of the loan; and

[*See main edition for text of* (*F*)]

(b) Maximum rate of interest

No maximum rate of interest prescribed and defined by the Secretary for the purpose of paragraph (2)(D) of subsection (a) of this section may exceed 12 percent per annum on the unpaid principal balance of the loan.

[*See main edition for text of* (c)]

(d) Application of Federal and State laws

No provision of any law of the United States (other than subsections (a)(2)(D) and (b) of this section) or of any State that limits the rate or amount of interest payable on loans shall apply to a loan insured under this subpart.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(c)(1), (2), 91 Stat. 389, 390; Dec. 19, 1977, Pub. L. 95-215, § 4(a)-(d), (e)(6), 91 Stat. 1505, 1506.)

REFERENCES IN TEXT

The Higher Education Act of 1965, referred to in subsec. (a)(1)(A)(v), is Pub. L. 89-329, Nov. 8, 1965, 79 Stat. 1219, as amended. Part B of title IV of the Higher Education Act of 1965 is classified generally to part B (§ 1071 et seq.) of subchapter IV of chapter 28 of Title 20, Education. For complete classification of this Act to the Code, See Short Title note set out under section 1001 of Title 20 and Tables.

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-215, § 4(a), redesignated existing subpars. (A) to (G) as cls. (i) to (vi) of redesignated subpar. (A), and added subpar. (B).

Subsec. (a)(2)(B). Pub. L. 95-215, § 4(e)(6), substituted "borrower" for "student".

Pub. L. 95-83, § 307(c)(1), substituted "nor later than 12 months after the date on which the student ceases to be a participant in an accredited internship or residency program or (if he was not a participant in such a program) ceases" for "after the date on which the student completes his internship or residency training, and not later than the earlier of 12 months after such date or of 3 years after the date he ceases".

Subsec. (a)(2)(C)(i). Pub. L. 95-83, § 307(c)(2), inserted "(or at an institution defined by section 435(b) of the Higher Education Act of 1965)" following "eligible institution".

Subsec. (a)(2)(D). Pub. L. 95-215, § 4(b)(1), added ", except that the note or other written agreement may provide that payment of any interest otherwise payable (i) before the beginning of the repayment period, (ii) during any period described in subparagraph (C), or (iii) during any other period of forbearance of payment of principal, may be deferred until not later than the date upon which repayment of the first installment of principal falls due or the date repayment of principal is required to resume (whichever is applicable) and may further provide that, on such date, the amount of the interest which has so accrued may be added to the principal" following "over the period of the loan".

Subsec. (a)(2)(E). Pub. L. 95-215, § 4(b)(2), substituted "borrower" for "student borrower".

Subsec. (b). Pub. L. 95-215, § 4(c), substituted "12 percent per annum" for "10 percent per annum".

Subsec. (d). Pub. L. 95-215, § 4(d), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENTS

Section 4(g) of Pub. L. 95-215 provided that: "The amendments made by this section [amending sections 294, 294a, 294b, 294d, 294e, 294f, 294j, 294k, and 294*l* of this title] shall take effect on October 1, 1977."

Section 307(c)(7) of Pub. L. 95-83 provided that: "The amendments made by this subsection [amending sections 294d, 294e, 294h, and 294j of this title] shall take effect October 1, 1977."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 294a, 294e, 294f of this title.

§ 294e. Certificate of loan insurance

(a) Effective date of insurance

(1) If, upon application by an eligible lender, made upon such form, containing such information, and supported by such evidence as the Secretary may require, and otherwise in conformity with this section, the Secretary finds that the applicant has made a loan to an eligible borrower which is insurable under the provisions of this subpart, he may issue to the applicant a certificate of insurance covering the loan and setting forth the amount and terms of the insurance.

(2) Insurance evidenced by a certificate of insurance pursuant to subsection (a)(1) of this section shall become effective upon the date of issuance of the certificate, except that the Secretary is authorized, in accordance with regulations, to issue commitments with respect to proposed loans, or with respect to lines (or proposed lines) of credit, submitted by eligible lenders, and in that event, upon compliance with subsection (a)(1) of this section by the lender, the certificate of insurance may be issued effective as of the date when any loan, or any payment by the lender pursuant to a line of credit, to be covered by such insurance is made to a student described in section 294d(a)(1) of this title. Such insurance shall cease to be effective upon 60 days' default by the lender in the payment of any installment of the premiums payable pursuant to subsection (c) of this section.

[*See main edition for text of* (3)]

(b) Application for certificate of insurance by lender; contents; comprehensive insurance coverage certificate; loans payable beyond cutoff date in certificate

(1) In lieu of requiring a separate insurance application and issuing a separate certificate of insurance for each loan made by an eligible lender as provided in subsection (a) of this section, the Secretary may, in accordance with regulations consistent with section 294a of this title, issue to any eligible lender applying therefor a certificate of comprehensive insurance coverage which shall, without further action by the Secretary, insure all insurable loans made by that lender, on or after the date of the certificate and before a specified cutoff date, within the limits of an aggregate maximum amount stated in the certificate. Such regulations may provide for conditioning such insurance, with respect to any loan, upon compliance by the lender with such requirements (to be stated or incorporated by reference in the certificate) as in the Secretary's judgment will best achieve the purpose of this subsection while protecting the financial interest of the United States and promoting the objectives of this subpart, including (but not limited to) provisions as to the reporting of such loans and information relevant thereto to the Secretary and as to the payment of initial and other premiums and the effect of default therein, and in-

cluding provision for confirmation by the Secretary from time to time (through endorsement of the certificate) of the coverage of specific new loans by such certificate, which confirmation shall be incontestable by the Secretary in the absence of fraud or misrepresentation of fact or patent error.

(2) If the holder of a certificate of comprehensive insurance coverage issued under this subsection grants to a borrower a line of credit extending beyond the cutoff date specified in that certificate, loans or payments thereon made by the holder after that date pursuant to the line of credit shall not be deemed to be included in the coverage of that certificate except as may be specifically provided therein; but, subject to the limitations of section 294a of this title, the Secretary may, in accordance with regulations, make commitments to insure such future loans or payments, and such commitments may be honored either as provided in subsection (a) of this section or by inclusion of such insurance in comprehensive coverage under this subsection for the period or periods in which such future loans or payments are made.

[*See main edition for text of* (c)]

(d) Assignment of rights by lender; limitations

The rights of an eligible lender arising under insurance evidenced by a certificate of insurance issued to it under this section may be assigned by such lender, subject to regulation by the Secretary, only to (1) another eligible lender, or (2) the Student Loan Marketing Association.

(e) Loan consolidation by borrower; effect on loan insurance

The consolidation of the obligations of two or more federally insured loans obtained by a borrower in any fiscal year into a single obligation evidenced by a single instrument of indebtedness shall not affect the insurance by the United States. If the loans thus consolidated are covered by separate certificates of insurance issued under subsection (a) of this section, the Secretary may upon surrender of the original certificates issue a new certificate of insurance in accordance with that subsection upon the consolidated obligation. If the loans thus consolidated are covered by a single comprehensive certificate issued under subsection (b) of this section, the Secretary may amend that certificate accordingly.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(c)(3), (4), 91 Stat. 390; Dec. 19, 1977, Pub. L. 95-215, § 4(e)(8), (9), 91 Stat. 1506.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-215, § 4(e)(8), substituted "borrower" for "student".

Subsec. (a)(2). Pub. L. 95-83, § 307(c)(3), substituted "is made to a student described in section 294d(a)(1) of this title" for "was made".

Subsec. (b)(1). Pub. L. 95-215, § 4(e)(9), substituted "loan" for "student loan".

Subsec. (b)(2). Pub. L. 95-215, § 4(e)(8), substituted "borrower" for "student".

Subsec. (d). Pub. L. 95-83, § 307(c)(4), substituted "assigned by such lender, subject to regulation by the Secretary, only to (1) another eligible lender, or (2) the Student Loan Marketing Association" for "assigned as security by such lender only to another eligible lender, and subject to regulation by the Secretary".

Subsec. (e). Pub. L. 95-215, § 4(e)(9), substituted "borrower" for "student borrower".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-215 effective Oct. 1, 1977, see section 4(g) of Pub. L. 95-215, set out as an Effective Date of 1977 Amendment note under section 294d of this title.

Amendment by Pub. L. 95-83 effective Oct. 1, 1977, see section 307(c)(7) of Pub. L. 95-83, set out as an Effective Date of 1977 Amendment note under section 294d of this title.

§ 294f. Default by borrower under loan insurance program

(a) Substantial collection effort by lender; notice to Secretary; payment of loss

Upon default by the borrower on any loan covered by Federal loan insurance pursuant to this subpart, and after a substantial collection effort (including, if appropriate, commencement of a suit) as determined under regulations of the Secretary, the insurance beneficiary shall promptly notify the Secretary and the Secretary shall, if requested (at that time or after further collection efforts) by the beneficiary, or may on his own motion, if the insurance is still in effect, pay to the beneficiary the amount of the loss sustained by the insured upon that loan as soon as that amount has been determined.

[*See main edition for text of* (b)]

(c) Forbearance for benefit of borrower

Nothing in this section or in this subpart shall be construed to preclude any forbearance for the benefit of the borrower which may be agreed upon by the parties to the insured loan and approved by the Secretary or to preclude forbearance by the Secretary in the enforcement of the insured obligation after payment on that insurance.

[*See main edition for text of* (d) *to* (*f*)]

(g) Repealed. Pub. L. 95-598, title III, § 327, Nov. 6, 1978, 92 Stat. 2679

(As amended Dec. 19, 1977, Pub. L. 95-215, § 4(e)(10), 91 Stat. 1506; Nov. 6, 1978, Pub. L. 95-598, title III, § 327, 92 Stat. 2679.)

AMENDMENTS

1978—Subsec. (g). Pub. L. 95-598 repealed limitation respecting release of debt by a discharge in bankruptcy.

1977—Subsec. (a). Pub. L. 95-215 substituted "borrower" for "student borrower".

Subsec. (c). Pub. L. 95-215 substituted "borrower" for "student borrower".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-215 effective Oct. 1, 1977, see section 4(g) of Pub. L. 95-215, set out as an Effective Date of 1977 Amendment note under section 294d of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 294b, 294e of this title; title 11 section 523.

§ 294h. Responsibilities of Secretary

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Contract to assume repayment obligation of borrower; service in National Health Service Corps or in health manpower shortage area in lieu of repayment; limitations; damages for breach of contract by borrower; death of borrower; waiver or suspension of payment because of impossibility, hardship, or unconscionability

[*See main edition for text of* (*1*)]

(2) Except as provided in paragraphs (3) and (4), if an individual, who has entered into a written contract under paragraph (1), for any reason breaches his contract obligations with respect to serving in a health manpower shortage area for the period specified in the contract, the United States shall be entitled to recover damages from such individual in an amount determined in accordance with the formula

$$A^{3}\phi(t-s/t)$$

in which "A" is the amount the United States is entitled to recover; "ϕ" is the sum of the amounts paid by the Secretary under the contract to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the individual's period of obligated service; and "s" is the number of months of such period served by him in accordance with the contract. Any amount of damages which the United States is entitled to recover under this paragraph shall be paid to the United States not later than one year after the date of the breach of such contract obligations.

[*See main edition for text of* (*3*)]

(4) The Secretary shall by regulation provide for the waiver or suspension of any obligation of service or payment of any or all of the damages to which the United States is entitled under paragraph (2) whenever the Secretary determines that compliance by an individual with the contract is impossible or would involve extreme hardship to the individual and that recovery of such damages with respect to the individual would be unconscionable.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(c)(5), 91 Stat. 390.)

AMENDMENTS

1977—Subsec. (c)(2). Pub. L. 95-83, § 307(c)(5)(A), substituted provision respecting recovery of damages based on a prescribed formula for prior provision for recovery of an amount equal to three times the amount paid by the Secretary under the agreement to or on behalf of the borrower.

Subsec. (c)(4). Pub. L. 95-83, § 307(c)(5)(B), inserted "any obligation of service or" after "suspension of" and substituted "the contract" for "the agreement which was breached".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-83 effective Oct. 1, 1977, see section 307(c)(7) of Pub. L. 95-83, set out as an Effective Date of 1977 Amendment note under section 294d of this title.

§ 294i. Participation by Federal credit unions in Federal, State, and private student loan insurance programs

Notwithstanding any other provision of law, Federal credit unions shall, pursuant to regulations of the Administrator of the National Credit Union Administration, have power to make insured loans to eligible students in accordance with the provisions of this subpart relating to Federal insured loans.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(d), 91 Stat. 390.)

AMENDMENTS

1977—Pub. L. 95-83 substituted "Administrator of the National Credit Union Administration" for "Director of the Bureau of Federal Credit Unions".

EFFECTIVE DATE OF 1977 AMENDMENT

Section 307(d) of Pub. L. 95-83 provided in part that the amendment by Pub. L. 95-83 is effective Oct. 1, 1977.

§ 294j. Definitions

As used in this subpart:

(1) The term "eligible institution" means, with respect to a fiscal year, a school of medicine, osteopathy, dentistry, optometry, pharmacy, podiatry, veterinary medicine, or public health within the United States that (A) received a grant, or the Secretary determines met the requirements for receipt of a grant, under section 295f of this title for the preceding fiscal year, or (B) was not eligible to receive such a grant for such fiscal year solely because it did not meet the applicable requirements of section 295f-1(b)(3) of this title.

[*See main edition for text of* (*2*) *to* (*4*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(c)(6), 91 Stat. 390; Dec. 19, 1977, Pub. L. 95-215, § 4(f), 91 Stat. 1506.)

AMENDMENTS

1977—Par. (1). Pub. L. 95-215 substituted "or public health" for "and public health" in the existing provisions, inserted "(A)" following "that", and added ", or (B) was not eligible to receive such a grant for such fiscal year solely because it did not meet the applicable requirements of section 295f-1(b)(3) of this title".

Pub. L. 95-83 substituted "that received a grant, or the Secretary determines met the requirements for receipt of a grant, under section 295f of this title for the preceding year" for "that is receiving, or the Secretary determines is eligible to receive, a grant under section 295f of this title for such fiscal year".

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95-215 effective Oct. 1, 1977, see section 4(g) of Pub. L. 95-215, set out as an Effective Date of 1977 Amendment note under section 294d of this title.

Amendment by Pub. L. 95-83 effective Oct. 1, 1977, see section 307(c)(7) of Pub. L. 95-83, set out as an Effective Date of 1977 Amendment note under section 294d of this title.

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

§ 294k. Loans of deceased or disabled borrowers; repayment by Secretary from loan insurance fund

If a borrower who has received a loan dies or becomes permanently and totally disabled (as determined in accordance with regulations of the Secretary), the Secretary shall discharge the borrower's liability on the loan by repaying the amount owed on the loan from the fund established under section 294g of this title.

(As amended Dec. 19, 1977, Pub. L. 95-215, § 4(e)(12), 91 Stat. 1506.)

AMENDMENTS

1977—Pub. L. 95-215 substituted "borrower" for "student borrower".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub L. 15-215 effective Oct. 1, 1977, see section 4(g) of Pub. L. 95-215, set out as an Effective Date of 1977 Amendment note under section 294d of this title.

§ 294*l*. Eligibility of institutions; authority to prescribe regulations

(a) Notwithstanding any other provision of this subpart, the Secretary is authorized to prescribe such regulations as may be necessary to provide for—

(1) a fiscal audit of an eligible institution with regard to any funds obtained from a borrower who has received a loan insured under this subpart;

[*See main edition for text of* (*2*) *and* (*3*); (*b*)]

(As amended Dec. 19, 1977, Pub. L. 95-215, § 4(e)(13), 91 Stat. 1506.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-215 substituted "borrower" for "student".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-215 effective Oct. 1, 1977, see section 4(g) of Pub. L. 95-215, set out as an Effective Date of 1977 Amendment note under section 294d of this title.

SUBPART II—STUDENT LOANS

§ 294n. Loan provisions

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Payment of principal and interest for practice in physician etc. shortage areas; limitation; liability for reimbursement; election of loan cancellation under amended or original provisions

(1) In the case of any individual—

[*See main edition for text of* (*A*)]

(B) who (i) obtained one or more loans from a loan fund established under this subpart, or (ii) obtained, under a written loan agreement entered into before October 12, 1976, any other educational loan for his costs at a school of medicine, osteopathy, dentistry, veterinary medicine, optometry, pharmacy, or podiatry; and

[*See main edition for text of* (*C*)]

the Secretary shall make payments in accordance with paragraph (2), for and on behalf of that individual, on the principal of and interest on any loan of his described in subparagraph (B) of this paragraph which is outstanding on the date he begins the practice specified in the agreement described in subparagraph (C) of this paragraph.

(2) The payments described in paragraph (1) shall be made by the Secretary as follows:

[*See main edition for text of* (*A*) *to* (*C*)]

No payment may be made under this paragraph with respect to a loan described in paragraph (1)(B)(ii) unless the person on whose behalf the payment is to be made has submitted to the Secretary a certified copy of the agreement under which such loan was made. In any year the amount of payments that may be made under this paragraph with respect to such a loan may not exceed $10,000 and the total amount of payments that may be made under this paragraph with respect to such a loan may not exceed $50,000.

[*See main edition for text of* (*3*) *to* (*5*); (*g*) *to* (*l*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(e)(1), (2), 91 Stat. 390.)

AMENDMENTS

1977—Subsec. (f)(1)(B). Pub. L. 95-83, § 307(e)(1), designated existing provisions as cl. (i) and added cl. (ii).

Subsec. (f)(2). Pub. L. 95-83, § 307(e)(2), required submittal of a certified copy of the written loan agreement to the Secretary and prohibited payments with respect to such a loan in excess of $10,000 in any year and in excess of $50,000 as the total amount.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 307(e)(3) of Pub. L. 95-83 provided that: "The amendments made by this subsection [amending this section] shall be effective as of October 12, 1976."

SUBPART III—TRAINEESHIPS FOR STUDENTS IN SCHOOLS OF PUBLIC HEALTH AND OTHER GRADUATE PROGRAMS

§ 294r. Traineeships for students in schools of public health

(a) Grants to accredited schools and other public or nonprofit institutions

The Secretary may make grants to—

(1) accredited schools of public health, and

(2) other public or nonprofit institutions which provide graduate or specialized training in public health and which are not eligible to receive a grant under section 294s of this title,

to provide traineeships.

(b) Application; stipends, allowances; use of funds

[*See main edition for text of* (*1*)]

(2) Traineeships awarded under grants made under subsection (a) shall provide for tuition and fees and such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the trainees as the Secretary may deem necessary.

(3) In awarding traineeships under this section, each applicant shall assure to the satisfaction of the Secretary that at least the percent specified in paragraph (4) of the funds received under this section shall go to individuals who—

(A)(i) have previously received a postbaccalaureate degree, or

(ii) have three years of work experience in health services; and

(B) are pursuing a course of study in—

(i) biostatistics or epidemiology,

(ii) health administration, health planning, or health policy analysis and planning,

(iii) environmental or occupational health,

(iv) dietetics or nutrition,

(v) preventive medicine or dentistry, or

(vi) maternal and child health.

[*See main edition for text of* (*4*)]

(c) Authorization of appropriation

For payments under grants under subsection (a) of this section, there are authorized to be appropriated $7,500,000 for the fiscal year ending September 30, 1978; $9,000,000 for the fiscal year ending September 30, 1979; and $10,000,000 for the fiscal year ending September 30, 1980.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(f), 91 Stat. 391; Dec. 19, 1977, Pub. L. 95-215, § 3, 91 Stat. 1504; Sept. 29, 1979, Pub. L. 96-76, title II, § 206(a), 93 Stat. 583.)

AMENDMENTS

1979—Subsec. (b)(3)(B). Pub. L. 96-76 added cl. (vi).

1977—Subsec. (a). Pub. L. 95-215, § 3(a), designated existing provisions as par. (1) and added par. (2).

Subsec. (b)(2). Pub. L. 95-83 authorized payment of tuition and fees for trainees.

Subsec. (b)(3)(B)(v). Pub. L. 95-215, § 3(b), added cl. (v).

Subsec. (c). Pub. L. 95-215, § 3(c), substituted "$9,000,000" for "$8,000,000" in the appropriation authorization for the fiscal year ending Sept. 30, 1979, and "$10,000,000" for "$9,000,000" in the appropriation authorization for the fiscal year ending Sept. 30, 1980.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 307(f) of Pub. L. 95-83 provided in part that the amendment by Pub. L. 95-83 is effective Oct. 1, 1977.

§ 294s. Traineeships for students in other graduate programs

[*See main edition for text of* (*a*)]

(b) Application; stipends and allowances; use of funds

[*See main edition for text of* (*1*)]

(2) Traineeships awarded under grants made under subsection (a) of this section shall provide for tuition and fees and such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the trainees as the Secretary may deem necessary.

[*See main edition for text of* (*3*); (*c*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(f), 91 Stat. 391.)

AMENDMENTS

1977—Subsec. (b)(2). Pub. L. 95-83 authorized payment of tuition and fees for trainees.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 307(f) of Pub. L. 95-83 provided in part that the amendment by Pub. L. 95-83 is effective Oct. 1, 1977.

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 294r of this title.

SUBPART IV—NATIONAL HEALTH SERVICE CORPS SCHOLARSHIPS

§ 294t. National Health Service Corps Scholarship Program

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Priority in approval of applications and acceptance of contracts

In determining which applications under the Scholarship Program to approve (and which contracts to accept), the Secretary shall give priority—

[*See main edition for text of* (*1*)]

(2) second, to applications made (and contracts submitted)—

(A) for the school year beginning in calendar year 1978, by individuals who are entering their first, second, or third year of study in a course of study or program described in subsection (b)(1)(B) of this section in such school year;

(B) for the school year beginning in calendar year 1979, by individuals who are entering their first or second year of study in a course of study or program described in subsection (b)(1)(B) of this section in such school year; and

(C) for each school year thereafter, by individuals who are entering their first year of study in a course of study or program described in subsection (b)(1)(B) of this section in such school year.

[*See main edition for text of* (*e*)]

(f) Written contract; contents

The written contract (referred to in this subpart) between the Secretary and an individual shall contain—

(1) an agreement that—

(A) subject to paragraph (2), the Secretary agrees (i) to provide the individual with a scholarship (described in subsection (g) of this section) in each such school year or years for a period of years (not to exceed four school years) determined by the individual, during which period the individual is pursuing a course of study described in subsection (b)(1)(B) of this section, and (ii) to accept (subject to the availability of appropriated funds for carrying out subpart II of part D of subchapter II of this chapter) the individual into the Corps (or for equivalent service as otherwise provided in this subpart); and

[*See main edition for text of* (*B*)]

(2) a provision that any financial obligation of the United States arising out of a contract entered into under this subpart and any obligation of the individual which is conditioned thereon, is contingent upon funds being appropriated for scholarships under this subpart and to carry out the purposes of subpart II of part D of subchapter II of this chapter;

[*See main edition for text of* (*3*) *and* (*4*)]

(g) Scholarship provisions; contract with educational institution; increase in monthly stipend

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The amount of the monthly stipend, specified in paragraph (1)(B) and as previously adjusted (if at all) in accordance with this paragraph, shall be increased by the Secretary for each school year ending in a fiscal year beginning after September 30, 1978, by an amount (rounded to the next highest multiple of $1) equal to the amount of such stipend multiplied by the overall percentage (as set forth in the report transmitted to the Congress under section 5305 of title 5) of the adjustment (if such adjustment is an increase) in the rates of pay under the General Schedule made effective in the fiscal year in which such school year ends.

[*See main edition for text of* (*h*)]

(i) Annual report to Congress; contents

The Secretary shall report to Congress on March 1 of each year—

[*See main edition for text of* (*1*) *to* (*4*); (*j*)]

(As amended Dec. 19, 1977, Pub. L. 95-215, § 5, 91 Stat. 1506; Nov. 9, 1978, Pub. L. 95-623, § 12(c), 92 Stat. 3457; Nov. 10, 1978, Pub. L. 95-626, title I, § 113(b), 92 Stat. 3563; July 10, 1979, Pub. L. 96-32, § 7(i), 93 Stat. 84.)

References in Text

Subpart II of part D of subchapter II of this chapter, referred to in subsec. (f)(1)(A), (2), is classified to section 254d et seq. of this title.

Amendments

1979—Subsec. (g)(3). Pub. L. 96-32 substituted "section 5305 of title 5" for "section 5303 of title 5".

1978—Subsec. (f). Pub. L. 95-626 substituted "subpart II of part D" for "subpart II of part C" in pars. (1)(A) and (2).

Subsec. (i). Pub. L. 95-623 substituted March 1 for December 1 as the date for the Secretary's annual report to Congress.

1977—Subsec. (d)(2). Pub. L. 95-215 substituted provisions relating to the school years beginning in calendar years 1978 and 1979 for provisions relating to the school year ending in the fiscal year beginning Oct. 1, 1977.

Effective Date of 1977 Amendment

Section 5 of Pub. L. 95-215 provided in part that the amendment by Pub. L. 95-215 is effective Oct. 1, 1977.

Effective Date; Savings Provision; Credit for Period of Internship or Residency Before September 30, 1976, Toward Service Obligation

Section 408(b)(2) of Pub. L. 94-484, as amended, eff. Oct. 12, 1976, by Pub. L. 95-83, title III, § 307(p), Aug. 1, 1977, 91 Stat. 394, provided that:

"(A) Except as provided in subparagraphs (B) and (C), the amendment made by paragraph (1) of this subsection [enacting this subpart and repealing section 234 of this title] shall apply with respect to scholarships awarded under the National Health Service Corps Scholarship Program from appropriations for such Program for fiscal years beginning after September 30, 1977.

"(B) The provisions of section 225(f)(1) of the Public Health Service Act (as in effect on September 30, 1977) [former section 234(f)(1) of this title] prescribing the financial obligation of a participant in the Public Health and National Health Service Corps Scholarship Program who fails to complete an active duty service obligation incurred under that Program shall apply to any individual who received a scholarship under such Program from appropriations for such Program for any fiscal year ending before October 1, 1977.

"(C) If an individual received a scholarship under the Public Health and National Health Service Corps Scholarship Program for any school year beginning before the date of the enactment of this Act [Oct. 12, 1976], periods of internship or residency served by such individual in a facility of the National Health Service Corps or other facility of the Public Health Service shall be creditable in satisfying such individual's service obligation incurred under that Program for such scholarship or for any scholarship received under the National Health Service Corps Scholarship Program for any subsequent school year. If an individual received a scholarship under the Public Health and National Health Service Corps Program for the first time from appropriations for such Program for the fiscal year ending September 30, 1977, periods of internship or residency served by such individual in such a facility shall be creditable in satisfying such individual's service obligation incurred under that Program for such scholarship."

Section Referred to in Other Sections

This section is referred to in sections 254d, 294u, 294w, 294z of this title; title 10 section 2121.

§ 294u. Obligated service under contract

[*See main edition for text of* (*a*)]

(b) Notice to individual; information for informed decision; eligibility; notice to Secretary; qualification and appointment as commissioned officer; appointment as civilian member; deferment of obligated service

[*See main edition for text of* (*1*) *to* (*4*)]

(5)(A) With respect to an individual receiving a degree from a school of medicine, osteopathy, or dentistry, the date referred to in paragraphs (1) through (4) shall be the date upon which the individual completes the training required for such degree, except that the Secretary shall, at the request of such individual, defer such date until the end of the period of time (not to exceed three years or such greater period as the Secretary, consistent with the needs of the Corps, may authorize) required for the individual to complete an internship, residency, or other advanced clinical training. With respect to an individual receiving a degree from a school of veterinary medicine, optometry, podiatry, or pharmacy, the date referred to in paragraphs (1) through (4) shall be the date upon which the individual completes the training required for such degree, except that the Secretary shall, at the request of such individual, defer such date until the end of the period of time (not to exceed one year or such greater period as the Secretary, consistent with the needs of the Corps, may authorize) required for the individual to complete an internship, residency, or other advanced clinical training. No period of internship, residency, or other advanced clinical training shall be counted toward satisfying a period of obligated service under this subpart.

(B) With respect to an individual receiving a degree from an institution other than a school referred to in subparagraph (A), the date referred to in paragraphs (1) through (4) shall be the date upon which the individual completes his academic training leading to such degree.

[*See main edition for text of* (*c*)]

(d) Assignment of personnel

The Secretary shall assign individuals performing obligated service in accordance with a written contract under the Scholarship Program to health manpower shortage areas in accordance with subpart II of part D of subchapter II of this chapter. If the Secretary determines that there is no need in a health manpower shortage area (designated under section 254e of this title) for a member of the profession in which an individual is obligated to provide service under a written contract, the Secretary may detail such individual to serve his period of obligated service as a full-time member of such profession in such unit of the Department as the Secretary may determine.

[*See main edition for text of* (*e*)]

(As amended Nov. 10, 1978, Pub. L. 95-626, title I, § 113(b), 92 Stat. 3563; Sept. 29, 1979, Pub. L. 96-76, title II,§ 202 (a), (b), 93 Stat. 582.)

References in Text

Subpart II of part D of subchapter II of this chapter, referred to in subsec. (d), is classified to section 254d et seq. of this title.

Amendments

1979—Subsec. (b)(5)(A). Pub. L. 96-76, § 202(a), (b)(1), (2), added provisions authorizing a greater period than three years for individuals receiving degrees from schools of medicine, osteopathy, and dentistry, and provisions respecting individuals receiving degrees from schools of veterinary medicine, optometry, podiatry, and pharmacy, and substituted "No period" for "No such period".

Subsec. (b)(5)(B). Pub. L. 96-76, § 202(b)(3), substituted "referred to in subparagraph (A)" for "of medicine, osteopathy, or dentistry".

1978—Subsec. (d). Pub. L. 95-626 substituted "subpart II of part D" for "subpart II of part C".

§ 294w. Breach of scholarship contract

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Failure to commence or complete service obligation; formula to determine liability; payment to United States

If an individual breaches his written contract by failing (for any reason) either to begin such individual's service obligation in accordance with section 294u or 294v of this title or to complete such service obligation, the United States shall be entitled to recover from the individual an amount determined in accordance with the formula

$$A=3\phi([t-s/t])$$

in which "A" is the amount the United States is entitled to recover, "ϕ" is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States; "t" is the total number of months in the individual's period of obligated service; and "s" is the number of months of such period served by him in accordance with section 294u of this title or a written agreement under section 294v of this title. Any amount of damages which the United States is entitled to recover under this subsection shall, within the one year period beginning on the date of the breach of the written contract, be paid to the United States.

[*See main edition for text of* (*d*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(g), 91 Stat. 391.)

Amendments

1977—Subsec. (c). Pub. L. 95-83 substituted "'ϕ' is the sum of the amounts paid under this subpart to or on behalf of the individual and the interest on such amounts which would be payable if at the time the amounts were paid they were loans" for "'ϕ' is the sum of the amount paid under this subpart to or on behalf of the individual and the interest on such amount which would be payable if at the time it was paid it was a loan".

§ 294y. Authorization of appropriations

Section Referred to in Other Sections

This section is referred to in section 294y-1 of this title.

§ 294y-1. Indian Health Scholarships

(a) Authorization of appropriations

In addition to the sums authorized to be appropriated under section 294y(a) of this title to carry out the Scholarship Program, there are authorized to be appropriated $5,450,000 for the fiscal year ending September 30, 1978, $6,300,000 for the fiscal year ending September 30, 1979, $7,200,000 for the fiscal year ending September 30, 1980, and for each of the succeeding four fiscal years such sums as may be specifically authorized by an Act enacted after August 1, 1977, to provide scholarships under the Scholarship Program to provide physicians, osteopaths, dentists, veterinarians, nurses, optometrists, podiatrists, pharmacists, public health personnel, and allied health professionals to provide services to Indians. Such scholarships shall be designated "Indian Health Scholarships" and shall be made in accordance with this subpart, except as provided in subsection (b) of this section.

(b) Recipients; active duty service obligation

(1) The Secretary, acting through the Indian Health Service, shall determine the individuals who shall receive the Indian Health Scholarships, shall accord priority to applicants who are Indians, and shall determine the distribution of the scholarships on the basis of the relative needs of Indians for additional services by specific health professions.

(2) The active duty service obligation prescribed in the written contract entered into under this subpart shall be met by the recipient of an Indian Health Scholarship by service in the Indian Health Service, in a program assisted under title V of the Indian Health Care Improvement Act [25 U.S.C. 1651 et seq.], or in the private practice of his profession if, as determined by the Secretary in accordance with guidelines promulgated by him, such practice is situated in a physician or other health professional shortage area and addresses the health care needs of a substantial number of Indians.

(c) Indians

For purposes of this section, the term "Indians" has the same meaning given that term by subsection (c) of section 4 of the Indian Health Care Improvement Act [25 U.S.C. 1603(c)] and includes individuals described in clauses (1) through (4) of that subsection.

(July 1, 1944, ch. 373, title VII, § 757, as added Aug. 1, 1977, Pub. L. 95-83, title III, § 307(n)(1), 91 Stat. 392.)

REFERENCES IN TEXT

The Indian Health Care Improvement Act, referred to in subsec. (b)(2), is Pub. L. 94-437, Sept. 30, 1976, 90 Stat. 1400, as amended. Title V of the Indian Health Care Improvement Act is classified generally to subchapter IV (§ 1651 et seq.) of chapter 18 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 25 and Tables.

EFFECTIVE DATE

Section 307(n)(1) of Pub. L. 95-83 provided in part that this section is effective Oct. 1, 1977.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 1614.

SUBPART V—OTHER SCHOLARSHIPS

§ 294z. Scholarships for first year students of exceptional financial need

(a) Grants to schools

The Secretary shall make grants to a public or nonprofit school of medicine, osteopathy, dentistry, optometry, pharmacy, podiatry, or veterinary medicine which is accredited as provided in section 293a(b)(1)(B) of this title, for scholarships to be awarded by the school to full-time students thereof who are of exceptional financial need and who are in their first year of study at such school.

[*See main edition for text of (b) to (d)*]

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(h), 91 Stat. 391.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-83 struck out "in the school year ending in the fiscal year in which such grant is made" following "at such school".

EFFECTIVE DATE OF 1977 AMENDMENT

Section 307(h) of Pub. L. 95-83 provided in part that the amendment by Pub. L. 95-83 is effective Oct. 1, 1977.

PART D—GRANTS FOR FAMILY MEDICINE, TRAINING, TRAINEESHIPS, AND FELLOWSHIPS AND COMPUTER TECHNOLOGY HEALTH CARE DEMONSTRATION PROGRAMS

§ 295c. Eligibility for grants

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

§ 295d. Approval of grants

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

PART E—GRANTS TO IMPROVE QUALITY OF SCHOOLS OF MEDICINE, OSTEOPATHY, DENTISTRY, PUBLIC HEALTH, VETERINARY MEDICINE, OPTOMETRY, PHARMACY, AND PODIATRY

§ 295f. Capitation grants

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254d, 292c, 292h, 292j, 294d, 294j, 294t, 295f-1, 295f-2 of this title.

§ 295f-1. Eligibility for capitation grants

(a) General requirements

The Secretary shall not make a grant under section 295f of this title to any school in a fiscal year beginning after September 30, 1977, unless the application for the grant contains, or is supported by, assurances satisfactory to the Secretary that—

[*See main edition for text of (1) and (2)*]

(b) Medical schools

[*See main edition for text of (1)*]

(2)(A)(i) Unless, as determined under subparagraph (B), the number of filled first year positions on July 15, 1977, in direct or affiliated medical residency training programs in primary care is at least 35 percent of the number of filled first year positions on that date in all direct or affiliated medical residency training programs, to be eligible for a grant under section 295f of this title for the fiscal year ending

September 30, 1978, a school of medicine shall have on July 15, 1978, at least 35 percent of its filled first year positions, as determined under subparagraphs (C) and (D), in its direct or affiliated medical residency training programs in first year positions in such programs in primary care.

[*See main edition for text of* (*ii*) *and* (*iii*)]

(B) The Secretary shall determine what percent of all the positions filled, as of July 15, 1977, and July 15 of each subsequent year, in all direct or affiliated medical residency training programs are filled positions in such programs in primary care. In determining the number of such positions in primary care on July 15, 1977, or on July 15 of a subsequent year, the Secretary shall deduct from such number a number equal to the number of individuals who were in a first year position in any direct or affiliated medical residency training program in primary care as of July 15 of the previous year and who on the date for which the determination is to be made were not in any direct or affiliated medical residency training program in primary care. Each determination under this subparagraph shall, not later than the first December 31 occurring after the date for which the determination is made, be published in the Federal Register and reported in writing to each school of medicine in the States and to the Committee on Interstate and Foreign Commerce of the House of Representatives and to the Committee on Labor and Human Resources of the Senate.

(C) In determining if a school of medicine meets an applicable requirement of clause (i), (ii), or (iii) of subparagraph (A) for a fiscal year, the number of filled first year positions in direct or affiliated medical residency training programs of such school in primary care on July 15 in such fiscal year shall be reduced by the number of individuals who were in a first year position in a direct or affiliated medical residency training program of such school in primary care on July 15 in the previous fiscal year and who on July 15 in the fiscal year to which the requirement applies were not in a direct or affiliated medical residency training program of any school in primary care. Each determination, with respect to a school, under this subparagraph shall, not later than 45 days after the date on which the determination is made, be reported in writing to such school and to the Committee on Interstate and Foreign Commerce of the House of Representatives and to the Committee on Labor and Human Resources of the Senate.

[*See main edition for text of* (*D*)]

(E) The Secretary shall not make any grant under section 295f of this title to a school of medicine for any fiscal year if the Secretary, after providing notice and opportunity for a hearing, determines that such school—

[*See main edition for text of* (*i*) *and* (*ii*), (*F*)]

(3)(A) Except as provided under subparagraph (D), a school of medicine may not receive a grant under section 295f of this title to be made in the fiscal year ending September 30, 1978, unless its application for such grant contains or is supported by assurances satisfactory to the Secretary that such school will increase its enrollment of full-time, third-year students as prescribed by subparagraph (B).

(B) The enrollment increase referred to in subparagraph (A) is an enrollment increase in a school of medicine—

(i) which is to occur in school year 1978-1979,

(ii) in the number of full-time, third-year students over the number of full-time, second-year students who successfully completed the second-year program of such school in the preceding school year and enrolled in the third-year class of such school, and

(iii) which is not less than 5 per centum of the number of—

(I) full-time, first-year students enrolled in such school in school year 1977-1978, or

(II) full-time, third-year students enrolled in such school in school year 1977-1978,

whichever is less.

(C) In determining the number of full-time, third-year students enrolled in a school in a school year in which an increase is required by subparagraph (B)(i)—

(i) full-time, third-year students of such school who were not second-year students in such school and—

(I) who are not citizens of the United States,

(II) who were previously enrolled in a school of medicine to which the requirement of subparagraph (A) applies,

(III) who were previously enrolled in a school of medicine to which the requirement of subparagraph (A) does not apply because of subparagraph (D) and for whom a position in the third-year class of such school was available in such school year,

(IV) who first enrolled after October 12, 1976, in a school of medicine not in a State,

(V) who were previously enrolled in a school of dentistry or a school of osteopathy, or

(VI) who were previously enrolled in a school of medicine which is in a State and which is not accredited by the body or bodies approved for such purpose by the Commissioner of Education,

shall not be counted; and

(ii) full-time, second-year students enrolled in such year who are citizens of the United States and who were first enrolled before October 12, 1976, in a school of medicine not in a State shall be counted as third-year students.

(D) The Secretary may waive (in whole or in part) the requirement of subparagraph (A) for a school of medicine—

(i) if the Secretary determines, after receiving the written recommendation of the appropriate accreditation body or bodies (approved for such purpose by the Commissioner of Education) that compliance by such school with such requirement will prevent it from maintaining its accreditation;

(ii) upon a finding that, because of the inadequate size of the population served by the hospital or clinical facility in which such school conducts its clinical training, an increase in its enrollment of third-year students to meet such requirement will prevent it from providing high quality clinical training for each of its third-year students; or

(iii) if the Secretary determines that such school has made a good faith effort to meet the requirement of subparagraph (A) but has been unable to meet such requirement solely because there is an insufficient number of students who, under this paragraph, are eligible to be counted in determining if the school has met such requirement.

The requirement of subparagraph (A) does not apply to the application of a school of medicine for a grant under section 295f of this title if in school year 1977–1978 such school had an enrollment of full-time, first-year students which exceeded its enrollment in such school year of full-time, third-year students by at least 25 per centum.

(E) A school of medicine which did not receive a grant under section 295f of this title because it did not comply with the applicable requirements of this paragraph shall not be eligible to receive a grant under such section to be made in the fiscal year ending September 30, 1979, or in the next fiscal year.

[*See main edition for text of* (*c*)]

(d) Schools of dentistry

[*See main edition for text of* (*1*)]

(2) In the case of a school of dentistry which in school year 1976–1977 had at least six filled, first-year positions in dental specialty programs, in the school year beginning in the fiscal year ending September 30, 1978, and in each school year thereafter beginning in a fiscal year for which a grant under section 295f of this title is applied for, at least 70 percent of such a school's filled, first-year positions in dental specialty programs which are in excess of the number of filled, first-year positions in its programs in the school year beginning in the fiscal year ending September 30, 1977, shall be first-year positions in dental specialty programs in general dentistry or pedodontics.

[*See main edition for text of* (*3*) *and* (*4*)]

(5) The Secretary may—

(A) in the case of a school of dentistry which increased its enrollment of full-time first-year students in accordance with paragraph (3), waive (in whole or in part and under such conditions as the Secretary may prescribe) application of the requirement of subsection (a)(1) of this section that it maintain its increased enrollment of such students, and

(B) in the case of any school of dentistry, waive (in whole or in part) application of the requirement of any paragraph of this subsection,

if the Secretary determines determines,[1] after receiving the written recommendation of the appropriate accreditation body or bodies (approved for such purpose by the Commissioner of Education) that compliance by such school with such requirement will prevent it from maintaining its accreditation.

[*See main edition for text of* (*e*) *to* (*i*)]

(July 1, 1944, ch. 373, title VII, § 771, as added Oct. 12, 1976, Pub. L. 94–484, title V, § 502, 90 Stat. 2293, and amended S. Res. 4, Feb. 4, 1977; Aug. 1, 1977, Pub. L. 95–83, title III, § 307(i), 91 Stat. 391; Dec. 19, 1977, Pub. L. 95–215, §§ 1(a), 2, 91 Stat. 1503, 1504; Nov. 9, 1978, Pub. L. 95–623, §§ 11(g), 12(d), 92 Stat. 3456, 3457; S. Res. 30, Mar. 7, 1979; Sept. 29, 1979, Pub. L. 96–76, title II, § 207, 93 Stat. 583.)

CODIFICATION

Subsec. (a) is set out in part in this supplement to correct an error in citation in the main edition.

AMENDMENTS

1979—Subsec. (d)(5). Pub. L. 96–76 reworked existing provisions into cl. (B) and added cl. (A).

1978—Subsec. (b)(2)(B). Pub. L. 95–623, § 12(d), substituted "the first December 31 occurring" for "45 days" preceding "after the date for which the determination is made".

Subsec. (d)(5). Pub. L. 95–623, § 11(g), added par. (5).

1977—Subsec. (b)(2)(C). Pub. L. 95–83, § 307(i)(1), substituted where appearing the second time "training program of any school in primary care" for "training program of such school in primary care".

Subsec. (b)(2)(E). Pub. L. 95–83, § 307(i)(2), struck out from the introductory text "in the fiscal year" preceding "such school".

Subsec. (b)(3). Pub. L. 95–215, § 1(a), amended par. (3) generally and required schools of medicine, as a condition of capitation support, to increase their third-year enrollment in the 1978–1979 school year but, in making the increase, not to count transfer students who are not U.S. citizens, who are from medical schools which have a place for that student in the third year, who first enrolled in a foreign medical school after Oct. 12, 1976, who would be transferring from schools of dentistry or osteopathy, or who would be transferring from unaccredited U.S. schools of medicine, and authorized the Secretary to waive the requirement of an enrollment increase in certain cases.

Subsec. (b)(3)(A). Pub. L. 95–83, § 307(i)(3), substituted "in" for "immediately before" preceding "the fiscal year".

Subsec. (b)(3)(B). Pub. L. 95–83, § 307(i)(4), reenacted existing provisions, and, among other changes, inserted (i)(II), substituted in (ii)(I) "in a school of medicine not in a State, and, in the case of a student described in clause (i)(II), successfully completed a program described in such clause" for "in such school of medicine", and substituted in the last sentence "among the schools of medicine in the States adequate to fill the needs of students identified in accordance with the preceding sentence" for "adequate to fill the needs of students described in subparagraph (B) among the schools of medicine in the States".

Subsec. (d)(2). Pub. L. 95–215, § 2, limited the requirement that, in order to be eligible for capitation grants, dental schools must provide assurances that at least 70 percent of any of the school's new residency programs be in general dentistry or pedodontics by adding provisions under which the requirement would be applicable only to dental schools which, in school year 1976-1977, had at least six first year positions in dental specialty programs.

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[1] So in original.

CHANGE OF NAME

The name of the Committee on Human Resources of the Senate was changed to the Committee on Labor and Human Resources effective Mar. 7, 1979, by Senate Resolution 30, 96th Congress. See, also, Rule XXV of the Standing Rules of the Senate adopted Nov. 14, 1979.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 307(i)(1) of Pub. L. 95-83 provided in part that the amendment of subsec. (b)(2)(C) of this section by section 307(i)(1) of Pub. L. 95-83 is effective Oct. 1, 1977.

Section 307(i)(2) of Pub. L. 95-83 provided in part that the amendment of subsec. (b)(2)(E) of this section by section 307(i)(2) of Pub. L. 95-83 is effective Oct. 1, 1977.

Section 307(i)(3) of Pub. L. 95-83 provided in part that the amendment of subsec. (b)(3)(A) of this section by section 307(i)(3) of Pub. L. 95-83 is effective Oct. 1, 1977.

Section 307(i)(4) of Pub. L. 95-83 provided in part that the amendment of subsec. (b)(3)(B) of this section by section 307(i)(4) of Pub. L. 95-83 is effective Oct. 1, 1977.

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254a-1, 293a, 294j, 295f, 295f-2 of this title.

§ 295f-2. Applications for capitation, start-up, special project, and financial distress grants

[*See main edition for text of* (*a*)]

(b) Eligibility conditions

To be eligible for a grant under section 295f of this title or subsection (a) or (b) of section 295g-8 of this title the applicant must (1) be a public or other nonprofit school of medicine, osteopathy, dentistry, public health, veterinary medicine, optometry, pharmacy, or podiatry, and (2) be accredited by a recognized body or bodies approved for such purpose by the Commissioner of Education, except that the requirement of this clause shall be deemed to be satisfied if (A) in the case of a school which by reason of no, or an insufficient, period of operation is not, at the time of application for a grant under this part, eligible for such accreditation, the Commissioner finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the school will meet the accreditation standards of such body or bodies prior to the beginning of the academic year following the normal graduation date of students who are in their first year of instruction at such school during the fiscal year in which the Secretary makes a final determination as to approval of the application, or (B) in the case of any other school, the Commissioner finds after such consultation and after consultation with the Secretary that there is reasonable ground to expect that, with the aid of a grant (or grants) under those sections, having regard for the purposes of the grant for which application is made, such school will meet such accreditation standards within a reasonable time.

[*See main edition for text of* (*c*) *and* (*d*)]

(e) References to year class of students

For purposes of administering the requirements of section 295f-1 of this title, a reference to a year class of students is a reference to students enrolled in that class for the first time, except that a student who, for other than academic reasons, withdraws from a year class before the end of an academic year or does not complete an academic year shall not be considered as having been enrolled in a year class in that academic year.

(As amended Dec. 19, 1977, Pub. L. 95-215, §§ 1(b), 8(c), 91 Stat. 1504, 1507; Nov. 9, 1978, Pub. L. 95-623, § 12(j), 92 Stat. 3457.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-623 added provision that a student shall not be considered as having been enrolled in a year class in the academic year when, for other than academic reasons, the student withdraws from a year class before the end of an academic year or does not complete an academic year.

1977—Subsec. (b). Pub. L. 95-215, § 8(c), substituted "section 295g-8 of this title" for "section 778", thereby correcting a typographical error under which the "section 778" reference, not being susceptible of translation to a Code section, had been carried in text as originally enacted.

Subsec. (e). Pub. L. 95-215, § 1(b), added subsec. (e).

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 254a-1 of this title.

PART F—GRANTS AND CONTRACTS FOR PROGRAMS AND PROJECTS

§ 295g-1. Area health education centers

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Activities of the participating schools

Each medical or osteopathic school participating in an area health education center program shall—

[*See main edition for text of* (*1*) *to* (*4*)]

The requirement of paragraph (3) shall not apply to a medical or osteopathic school participating in an area health education center program if another such school participating in the same program meets the requirement of that paragraph.

(d) Area served by the center; activities of the center

[*See main edition for text of* (*1*)]

(2) Each area health education center shall—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) provide for or conduct a medical residency training program in family medicine, general internal medicine, or general pediatrics in which no fewer than six individuals are enrolled in first-year positions in such program;

[*See main edition for text of* (*D*) *to* (*H*)]

Any area health education center which is participating in an area health education center program in which another center has a medical residency training program described in subparagraph (C) need not provide for or conduct such a medical residency training program.

[*See main edition for text of* (*e*) *to* (*g*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(j), 91 Stat. 392; Sept. 29, 1979, Pub. L. 96-76, title II, § 203, 93 Stat. 582.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-76 added provisions following par. (4) relating to applicability of par. (3).

1977—Subsec. (d)(2)(C). Pub. L. 95-83 required the area health education centers to provide a medical residency training program in general pediatrics.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 307(j) of Pub. L. 95-83 provided in part that the amendment by Pub. L. 95-83 is effective Oct. 1, 1977.

TRANSITIONAL PROVISIONS AND REPORT ON AREA HEALTH EDUCATION CENTERS; REPORT TO CONGRESS

Section 802 of Pub. L. 94-484, as amended by Pub. L. 96-76, title II, § 204, Sept. 29, 1979, 93 Stat. 583, provided that:

"(a) For the fiscal year ending September 30, 1978, and for the next three fiscal years there are authorized to be appropriated such sums as may be necessary to continue payments to entities under contracts entered into under section 774 of the Public Health Service Act (as in effect on September 30, 1977) [section 295f-4 of this title] for projects for area health education centers, except that no payment under such a contract shall be made to an entity which had not first entered into such a contract before October 12, 1976, (1) in the fiscal year ending September 30, 1979, unless the entity provides assurances satisfactory to the Secretary that not later than September 30, 1979, the project for which the payment is to be made will be a project described in subsection (a) of section 781 of such Act (as added by this Act) [section 295g-1 of this title] and the entity, and its application will meet the requirements of subsections (b), (c), and (d) of such section, or (2) for any fiscal year beginning after September 30, 1979. Such payments may only be made from such sums for the periods and amounts specified in such contracts.

[*See main edition for text of* (*b*)]

§ 295g-2. Education of returning United States students from foreign medical schools

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Reports to Secretary; analysis and evaluation of information to Congress

Any school of medicine or osteopathy which receives a grant under this subsection in the fiscal year ending September 30, 1978, shall submit to the Secretary before June 30, 1979, a report on the deficiencies (if any) identified by the school in the foreign medical education of the students trained by such school under the program for which such grant was made. The Secretary shall compile the reports submitted under the preceding sentence, and before March 1, 1980 submit to the Congress his analysis and evaluation of the information contained in such reports.

[*See main edition for text of* (*d*)]

(As amended Nov. 9, 1978, Pub. L. 95-623, § 12(e), 92 Stat. 3457.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-623 extended to Mar. 1, 1980, from Sept. 30, 1979, the date for submission to Congress of analysis and evaluation of information.

§ 295g-8. Project grant authority for start-up assistance, financial distress, interdisciplinary training, and curriculum development

[*See main edition for text of* (*a*)]

(b) Grants and contracts for specified purposes; terms, conditions, and requirements; application; funds from non-Federal sources; technical assistance; administration report

[*See main edition for text of* (*1*) *to* (*3*)]

(4) The Secretary may provide to any school eligible for a grant under this subsection technical assistance to enable the school to conduct a comprehensive cost analysis study of its operations, to identify operational inefficiencies, and to develop or carry out appropriate operational, managerial, and financial reforms.

(5) The Secretary shall prepare and submit on or before October 1, 1979, a report on the administration of this subsection. Such report shall give special emphasis to a description of the results of any comprehensive cost analysis study carried out under paragraph (2)(B) and any operational, managerial, and financial reforms instituted under paragraph (2)(C).

(6) Redesignated (5)

[*See main edition for text of* (c) *and* (*d*)]

(e) Authorization of appropriations

[*See main edition for text of* (*1*)]

(2) From the sums authorized to be appropriated under paragraph (1) not more than—

[*See main edition for text of* (*A*)]

(B) $10,000,000 may be obligated or expended for the purposes of subsection (b) of this section.

[*See main edition for text of* (*f*) *and* (*g*)]

(As amended Nov. 9, 1978, Pub. L. 95-623, § 12(f), 92 Stat. 3457; Sept. 29, 1979, Pub. L. 96-76, title II, § 205, 93 Stat. 583.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-76, § 205(a), struck out par. (4), relating to limitations on grants. Former pars. (5) and (6) were redesignated as (4) and (5), respectively.

Subsec. (e)(2)(B). Pub. L. 96-76, § 205(b), substituted "$10,000,000" for "$5,000,000".

1978—Subsec. (b)(6). Pub. L. 95-623 extended date to Oct. 1, 1979, from Sept. 30, 1978, for submission of administration report.

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 295f-2 of this title.

§ 295g-9. Training in emergency medical services

(a) Authority of Secretary; grants to and contracts with appropriate educational and public entities

(1) The Secretary may make grants to and enter into contracts with hospitals having training programs which meet requirements established by the Secretary, schools of medicine, dentistry, osteopathy, and nursing, training centers for allied health professions, other appropriate educational entities, and other appropriate public entities (as defined in paragraph (2)) to assist in meeting the cost of training programs in the techniques and methods of providing emergency medical services (including the skills required in connection with the provision of ambulance service), to assist in meeting the cost of training (including the cost of establishing programs for the training) of physicians in emergency medicine, especially training which affords clinical experience in providing medical services in emergency medical services systems receiving assistance under subchapter X of this chapter and to provide financial assistance (in the form of traineeships and fellowships) to residents who plan to specialize or work in the practice of emergency medicine.

[*See main edition for text of* (2); (*b*) *to* (*f*)]

(g) Authorization of appropriations; minimum expenditures for training physicians in emergency medicine

(1) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $10,000,000 for the fiscal year ending June 30, 1974, and each of the next five fiscal years, $5,000,000 for the fiscal year ending September 30, 1980, $7,000,000 for the fiscal year ending September 30, 1981, and $8,000,000 for the fiscal year ending September 30, 1982.

[*See main edition for text of* (2)]

(As amended Oct. 21, 1976, Pub. L. 94-573, § 12, 90 Stat. 2717, as amended July 10, 1979, Pub. L. 96-32, § 7(h), 93 Stat. 84; Aug. 1, 1977, Pub. L. 95-83, title III, § 307(k), 91 Stat. 392; Dec. 12, 1979, Pub. L. 96-142, title I, § 102, 93 Stat. 1067.)

CODIFICATION

Amendment by section 7(h) of Pub. L. 96-32 to section 12 (a) and (b) of Pub. L. 94-573, substituting "Section 789" for "Section 776", was an amendment to the directory language of section 12 (a) and (b) of Pub. L. 94-573 and required no change in text.

AMENDMENTS

1979—Subsec. (g)(1). Pub. L. 96-142 authorized appropriations of $5,000,000; $7,000,000; and $8,000,000 for fiscal years ending Sept. 30, 1980 through 1982, respectively.

1977—Subsec. (a)(1). Pub. L. 95-83 substituted ", to assist in meeting the cost of training (including the cost of establishing programs for the training) of physicians in emergency medicine, especially training which affords clinical experience in providing medical services in emergency medical services systems receiving assistance under subchapter X of this chapter, and to provide financial assistance (in the form of traineeships and fellowships) to residents who plan to specialize or work in the practice of emergency medicine" for "and to assist in meeting the cost of training, and establishment of programs for the training, of physicians in emergency medicine, especially training programs affording clinical experience in emergency medical services systems receiving assistance under subchapter X of this chapter".

EFFECTIVE DATE OF 1979 AMENDMENT

Section 108 of Pub. L. 96-142 provided that: "The amendments made by this title to section 789 and title XII of the Public Health Service Act [amending sections 295g-9, 300d-1, 300d-3, 300d-5, 300d-6, 300d-8, and 300d-21 of this title] shall take effect with respect to appropriations made under those provisions for fiscal years beginning after September 30, 1979."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300d-7 of this title.

PART G—PROGRAMS FOR PERSONNEL IN HEALTH ADMINISTRATION AND IN ALLIED HEALTH

SUBPART I—PUBLIC HEALTH PERSONNEL

§ 295h. Grants for graduate programs in health administration

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

§ 295h-1. Special projects for accredited schools of public health and graduate programs in health administration

(a) Grants for specified programs

The Secretary may make grants to assist accredited schools of public health in meeting the costs of special projects to develop new programs or to expand existing programs in—

(1) biostatistics or epidemiology,

(2) health administration, health planning, or health policy analysis and planning,

(3) environmental or occupational health,

(4) dietetics and nutrition, or

(5) maternal and child health.

(b) Grants to assist educational institutions in meeting the cost of special projects

The Secretary may make grants to assist educational institutions in meeting the costs of special projects in—

(1) biostatistics or epidemiology,

(2) health administration, health planning, or health policy analysis and planning,

(3) environmental or occupational health, or

(4) dietetics and nutrition.

[*See main edition for text of* (*c*)]

(As amended Nov. 10, 1978, Pub. L. 95-626, title I, § 121, 92 Stat. 3570; Sept. 29, 1979, Pub. L. 96-76, title II, § 206(b), 93 Stat. 583.)

AMENDMENTS

1979—Subsec. (a)(5). Pub. L. 96-76 added par. (5).

1978—Subsec. (b). Pub. L. 95-626 substituted "The Secretary may make grants to assist educational institutions in meeting the costs of special projects in" for "The Secretary may make grants to assist those public or non-profit educational entities (including graduate schools of social work) which have accredited programs described in paragraph (2) in meeting the costs of special projects to develop new programs or to expand existing programs in" in the introductory provisions, struck out the designation "(1)" at the beginning of the subsection, substituted the numbers "(1)" to "(4)" for the letters "(A)" to "(D)" in the enumerated clauses, and struck out par. (2) which had defined "accredited program".

§ 295h-2. Statistics and annual report

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Report to congressional committees; legislative recommendations

The Secretary shall submit biennially to the Committee on Interstate and Foreign Commerce of the House of Representatives and to the Committee on Labor and Human Resources of the Senate a report on—

(1) the statistics and other information developed pursuant to subsection (a) of this section, and

(2) the activities conducted under this subpart, including an evaluation of such activities.

Such report shall contain such recommendations for legislation as the Secretary determines are needed to improve the programs authorized under this subpart. The Office of Management and Budget may review such report before its submission to such Committees, but the Office may not revise the report or delay its submission beyond the date prescribed for its submission and may submit to such Committees its comments respecting such report. The first report under this subsection shall be submitted not later than October 1, 1979.

[*See main edition for text of* (*d*)]

(As amended Nov. 9, 1978, Pub. L. 95-623, § 12(g), 92 Stat. 3457; S. Res. 30, Mar. 7, 1979.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-623 substituted requirement of a biennial for an annual report and extended the date for submission of the first report by Oct. 1, 1979, instead of Dec. 1, 1978.

CHANGE OF NAME

The name of the Committee on Human Resources of the Senate was changed to the Committee on Labor and Human Resources effective Mar. 7, 1979, by Senate Resolution 30, 96th Congress. See, also, Rule XXV of the Standing Rules of the Senate adopted Nov. 14, 1979.

SUBPART II—ALLIED HEALTH PERSONNEL

§ 295h-4. Definitions

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

STUDIES AND STATISTICAL REPORT ON ALLIED HEALTH PERSONNEL; PERSONAL DATA: CONSENT FOR TRANSFER, DISCLOSURE, PROGRAM ENTITY; REPORTS TO CONGRESSIONAL COMMITTEES: LEGISLATIVE RECOMMENDATIONS; "ALLIED HEALTH PERSONNEL" DEFINED

Section 702 of Pub. L. 94-484, as amended by Pub. L. 95-623, § 12(i)(1), Nov. 9, 1978, 92 Stat. 3457, which required the Secretary of Health, Education, and Welfare, not later than Oct. 1, 1979, to submit to specific Committees of the House of Representatives and Senate a report identifying the types, cost of educating, and shortages of allied health personnel and establishing classifications for such personnel, a report, in coordination with the National Center for Health Statistics, containing statistics on such personnel, and a report on activities conducted under this subpart and which provided protections for individually identifiable personal data obtained for the purposes of the reports, was omitted from the Code as executed.

§ 295h-5. Project grants and contracts with eligible entities

(a) Description of specific projects

The Secretary shall make grants to and enter into contracts with eligible entities to assist them in meeting the costs of planning, developing, demonstrating, operating, and evaluating projects relating to:

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Establishment or improvement of programs of recruitment, training, and retraining of allied health personnel.

[*See main edition for text of* (*5*) *and* (*6*); (*b*)]

(c) Eligible entities

For purposes of subsection (a) of this section, the term "eligible entities" means entities which are—

[*See main edition for text of* (*1*)]

(2) States, political subdivisions of States, or regional and other public bodies representing States or political subdivisions of States or both;

(3) entities which have a working arrangement (meeting such requirements as the Secretary may by regulation prescribe) with an entity described in paragraph (1); or

(4) other public or nonprofit private entities capable, as determined by the Secretary, of carrying out projects described in subsection (a) of this section.

[*See main edition for text of* (*d*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(*l*), (m), 91 Stat. 392.)

AMENDMENTS

1977—Subsec. (a)(4). Pub. L. 95-83, § 307(*l*), substituted "or improvement of programs" for "of methods".

Subsec. (c)(4). Pub. L. 95-83, § 307(m), added par. (4).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 307(*l*) of Pub. L. 95-83 provided in part that the amendment of subsec. (a)(4) of this section by section 307(*l*) of Pub. L. 95-83 is effective Oct. 1, 1977.

Section 307(m) of Pub. L. 95-83 provided in part that the amendment of subsec. (c)(2), (3), (4) of this section by section 307(m) of Pub. L. 95-83 is effective Oct. 1, 1977.

SUBCHAPTER VI—NURSE TRAINING

Part A—Assistance for Expansion and Improvement of Nurse Training

SUBPART I—CONSTRUCTION ASSISTANCE

§ 296. Authorization of appropriations for construction grants

There are authorized to be appropriated for grants to assist in the construction of new facilities for collegiate, associate degree, or diploma schools of nursing, and for grants to assist in the replacement or rehabilitation of existing facilities for such schools, $35,000,000 for the fiscal year ending June 30, 1972, $40,000,000 for the fiscal year ending June 30, 1973, $45,000,000 each for the fiscal years ending June 30, 1974, and June 30, 1975, $20,000,000 for fiscal year 1976, $20,000,000 for fiscal year 1977, $20,000,000 for fiscal year 1978, and $2,000,000 for the fiscal year ending September 30, 1980.

(As amended Sept. 29, 1979, Pub. L. 96-76, title I, § 102, 93 Stat. 579.)

Amendments

1979—Pub. L. 96-76 authorized appropriations of $2,000,000 for the fiscal year ending Sept. 30, 1980.

Study Respecting Determinations of Need for Continued Support of Specific Nursing Education Programs, Practice of Nursing in Medically Underserved Areas, and Maintenance or Re-Entry of Nurses into Profession; Conduct of Study; Report to Congressional Committees on Recommendations

Section 113 of Pub. L. 96-76 provided that:

"(a)(1) The Secretary of Health, Education, and Welfare (hereinafter in this section referred to as the 'Secretary') shall arrange, in accordance with subsection (b), for the conduct of a study—

"(A) to determine the need to continue a specific program of Federal financial support for nursing education,

"(B) to determine the reasons nurses do not practice in medically underserved areas and to develop recommendations for actions which could be taken to encourage nurses to practice in such areas, and

"(C) to determine the rate at which and the reasons for which nurses leave the nursing profession and to develop recommendations for actions which could be taken to encourage nurses to remain or reenter the nursing profession, including actions involving practice settings conducive to the retention of nurses.

"(2) The part of the study described in paragraph (1)(A), shall include consideration of the following:

"(A) The need for nurses under the present health care delivery system and under such system as it may be modified by increased use of ambulatory care facilities or as it may be changed by the enactment of legislation for national health insurance. Determination of such need shall include determination of the need for nurses trained in each type of school of nursing (as defined in section 853(2) of the Public Health Service Act) [section 298b(2) of this title], for nurses with graduate training in the varying nurse practitioner clinical specialties, and for nurse administrators and nurse educators.

"(B) The cost of nursing education and a comparison of the cost of education at each type of school of nursing (as so defined) and comparison of the cost of each of the graduate programs of nursing.

"(C) The availability of other sources of support for nursing education, including support under general programs of Federal financial support for postsecondary education, under State and other public programs, and from private sources.

"(b)(1) The Secretary shall first request the National Academy of Sciences (hereinafter in this section referred to as the 'Academy'), acting through the Institute of Medicine, to conduct the study, required by subsection (a), under an arrangement whereby the actual expenses incurred by the Academy directly related to the conduct of such study will be paid by the Secretary. If the Academy agrees to such request, the Secretary shall enter into such an agreement with the Academy.

"(2) If the Academy declines the Secretary's request to conduct such study under such an arrangement, then the Secretary, after consulting with the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives, shall enter into a similar arrangement with another appropriate public or nonprofit private entity to conduct such study.

"(3) Any arrangement entered into under paragraph (1) or (2) of this subsection for the conduct of a study shall require that such study be completed and reports thereon be submitted within such period as the Secretary may require to meet the requirements of subsection (c).

"(4) The Secretary shall undertake such preliminary activities as may be necessary to enable the Secretary to enter into an arrangement for the conduct of the study at the earliest possible date.

"(c) Not later than six months after the date the arrangement for the conduct of the study is entered into under subsection (b), the Secretary and the entity conducting the study shall each report to the Committee on Human Resources [now Committee on Labor and Human Resources] of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives their respective preliminary recommendations respecting the matters described in subparagraphs (A), (B), and (C) of subsection (a)(1) and, if a need for continued Federal financial support for nursing is found, the form in which the support should be provided. Not later than two years after such date, the Secretary and the entity which conducted the study shall each report to such Committees recommendations respecting such matters (including the form of Federal financial support for nursing) and the basis for such recommendations."

Information Respecting Supply and Distribution of and Requirements for Nurses; Determination Procedures; Surveys and Collection of Dates; Annual Report to Congress on Determinations, Etc.; Review by Office of Management and Budget of Report Prior to Submission

Section 951 of Pub. L. 94-63, as amended by Pub. L. 95-623, § 12(h), Nov. 9, 1978, 92 Stat. 3457, provided that:

[*See main edition for text of* (*a*)]

"(b) Not later than October 1, 1979, and October 1 of each odd-numbered year thereafter, the Secretary shall report to the Congress—

[*See main edition for text of* (*1*) *to* (*3*); (*c*)]

§ 296d. Loan guarantees and interest subsidies for construction of training facilities by nonprofit nursing schools

(a) Eligible applicants; amount of loan guarantee

In order to assist nonprofit private schools of nursing to carry out construction projects for training facilities, the Secretary may, during the period beginning July 1, 1971, and ending with the close of September 30, 1980, guarantee (in accordance with this section and subject to subsection (f) of this section) to non-Federal lenders or the Federal Financing Bank making loans to such schools for such construction projects payment when due of the principal of and interest on any loan for construction of such facilities if the loan was made to a school which is eligible (as determined under regulations of the Secretary) for a grant under this subpart to assist a construction project for such facilities. The Secretary may make commitments, on behalf of the United States, to make such loan guarantees prior to the making of such loans. No such loan guarantee may, except under such special circumstances and under such conditions as are prescribed by regulations, apply to any amount which, when added to any grant for construction under this subpart or any other law of the United States, exceeds 90 per centum of the cost of construction of the project.

(b) Restrictions on interest subsidy payments

In the case of any nonprofit private school of nursing which is eligible (as determined under regulations of the Secretary) for a grant under this subpart to assist a construction project for training facilities, and to whom a loan has been made by a non-Federal lender or the Federal Financing Bank to assist it in carrying out such project, the Secretary, during the period beginning July 1, 1971, and ending with the close of September 30, 1980, may, subject to subsection (f) of this section, pay to the holder of such loan (and for and on behalf of the school which received such loan) amounts sufficient to reduce by not to exceed 3 per centum per annum the net effective interest rate otherwise payable on such loan.

[*See main edition for text of* (*c*) *and* (*d*)]

(e) Establishment of loan guaranty and interest subsidy fund; authorization of appropriations; insufficient sums in fund

There is established in the Treasury a loan guarantee and interest subsidy fund (hereinafter in this subsection referred to as the "fund") which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, (1) to enable him to discharge his responsibilities under guarantees issued by him under this section, and (2) for interest subsidy payments authorized by this section. There are authorized to be appropriated from time to time such amounts as may be necessary to provide the sums required for the fund; except that the amount appropriated for interest subsidy payments may not exceed $1,000,000 in the fiscal year ending June 30, 1972, $2,000,000 in the fiscal year ending June 30, 1973, $4,000,000 in the fiscal year ending June 30, 1974, or in the next fiscal year, $1,000,000 in fiscal year 1976, $1,000,000 in fiscal year 1977, and $1,000,000 in fiscal year 1978 and in each of the next two fiscal years. There shall also be deposited in the fund amounts received by the Secretary or other property or assets derived by him from his operations under this section, including any money derived from the sale of assets. If at any time the sums in the fund are insufficient to enable the Secretary to discharge his responsibilities under guarantees issued by him under this section or to make interest subsidy payments authorized by this section, he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury, but only in such amounts as may be specified from time to time in appropriation Acts. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued hereunder and for that purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, and the purposes for which the securities may be issued under that Act are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this subsection shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from the fund.

[*See main edition for text of* (*f*) *and* (*g*)]

(As amended Sept. 29, 1979, Pub. L. 96-76, title I, § 103, 93 Stat. 579.)

AMENDMENTS

1979—Subsecs. (a) and (b). Pub. L. 96-76, § 103(a), substituted "1980" for "1978".

Subsec. (e). Pub. L. 96-76, § 103(b), added "and in each of the next two fiscal years" following "1978".

SUBPART II—CAPITATION GRANTS

§ 296e. Grants for institutional support

(a) Computation

The Secretary shall make annual grants to schools of nursing for the support of the education programs of such schools. The amount of the annual grant to each such school with an approved application shall be computed for each fiscal year as follows:

(1) Each collegiate school of nursing shall receive $400 for each undergraduate full-time student enrolled in each of the last two years of such school in such fiscal year.

(2) Each associate degree school of nursing shall receive (A) the product of $275 and one-half of the number of full-time students enrolled in the first year of such school in such year, and (B) $275 for each full-time student enrolled in the last year of such school in such fiscal year.

(3) Each diploma school of nursing shall receive $250 for each full-time student enrolled in such school in such fiscal year.

[*See main edition for text of* (*b*)]

(c) Requirements

(1) The Secretary shall not make a grant under subsection (a) of this section to any school of nursing in a fiscal year beginning after June 30, 1975, unless the application for such grant contains or is supported by reasonable assurances satisfactory to the Secretary that—

(A) the first-year enrollment of full-time students in the school in the school year beginning in the fiscal year in which the grant applied for is to be made will not be less than the first-year enrollment of such students in the school in the preceding school year; and

(B) that the school will expend in carrying out its function as a school of nursing, during the school year for which such grant is sought, an amount of funds (other than funds for construction as determined by the Secretary) from non-Federal sources which is at least as great as the average amount of funds expended by such applicant for such purposes (excluding expenditures of a nonrecurring nature) in the three school years immediately preceding the school year for which such grant is sought.

The requirement of subparagraph (A) shall be in addition to the requirements of section 296a(b)(2)(D) of this title, where applicable.

(2) The Secretary shall not make a grant under subsection (a) of this section to any school of nursing in a fiscal year beginning after June 30, 1975, unless one of the following requirements is met:

(A) The application for such grant shall contain or be supported by reasonable assurances satisfactory to the Secretary that for the school year beginning in the fiscal year in which such grant is to be made and for each school year thereafter beginning in a fiscal year in which such a grant is made the first year enrollment of full-time students in such school will exceed the number of such students enrolled in the school year beginning during the fiscal year ending June 30, 1975—

[*See main edition for text of* (*i*) *and* (*ii*)]

(B) The school has provided reasonable assurance satisfactory to the Secretary that it will carry out, in accordance with a plan submitted by the school to the Secretary and approved by him, at least two of the following programs in the school year beginning in the fiscal year in which such grant is to be made and in each school year thereafter beginning in a fiscal year in which such a grant is made:

[*See main edition for text of* (*i*) *to* (*iv*); (*d*) *and* (*e*)]

(f) Authorization of appropriations

(1) There are authorized to be appropriated $78,000,000 for the fiscal year ending June 30, 1972, $82,000,000 for the fiscal year ending June 30, 1973, $88,000,000 each for the fiscal years ending June 30, 1974 and June 30, 1975, $50,000,000 for fiscal year 1976, $55,000,000 for fiscal year 1977, $55,000,000 for fiscal year 1978 and $24,000,000 for the fiscal year ending September 30, 1980 for grants under this section.

[*See main edition for text of* (*2*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(*o*)(1)-(4), 91 Stat. 393; Sept. 29, 1979, Pub. L. 96-76, title I, § 104, 93 Stat. 579.)

AMENDMENTS

1979—Subsec. (f)(1). Pub. L. 96-76 authorized appropriations of $24,000,000 for fiscal year ending September 30, 1980.

1977—Subsec. (a). Pub. L. 95-83, § 307(*o*)(1), (2), inserted in introductory text "for each fiscal year" following "shall be computed" and substituted wherever appearing in pars. (1) to (3) "such fiscal year" for "such year".

Subsec. (c)(1)(A). Pub. L. 95-83, § 307(o)(3)(A), substituted "beginning in" for "beginning after".

Subsec. (c)(1)(B). Pub. L. 95-83, § 307(o)(4), substituted "school" for "fiscal" wherever appearing.

Subsec. (c)(2)(A), (B). Pub. L. 95-83, § 307(o)(3)(B), substituted in subpars. (A) and (B) "the school year beginning in the fiscal year" for "the school year beginning after the close of the fiscal year".

SUBPART IV—SPECIAL PROJECTS

§ 296k. Grants and contracts for special projects

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Authorization of appropriations

For payments under grants and contracts under this section there are authorized to be appropriated $15,000,000 for fiscal year 1976, $15,000,000 for fiscal year 1977, $15,000,000 for fiscal year 1978, and $17,000,000 for the fiscal year ending September 30, 1980. Not less than 10 per centum of the funds appropriated under this subsection for any fiscal year shall be used for payments under grants and contracts to meet the costs of the special projects described in subsection (a)(3) of this section.

(As amended Sept. 29, 1979, Pub. L. 96-76, title I, § 105, 93 Stat. 579.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-76 authorized appropriations of $17,000,000 for fiscal year ending Sept. 30, 1980.

§ 296*l*. Grants and contracts for advanced nurse training programs; covered costs; authorization of appropriations

[*See main edition for text of* (*a*)]

(b) For payments under grants and contracts under this section there are authorized to be appropriated $15,000,000 for fiscal year 1975, $20,000,000 for fiscal year 1977, $25,000,000 for fiscal year 1978, and $13,500,000 for the fiscal year ending September 30, 1980.

(As amended Sept. 29, 1979, Pub. L. 96-76, title I, § 106, 93 Stat. 579.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-76 authorized appropriations of $13,500,000 for fiscal year ending Sept. 30, 1980.

§ 296m. Grants and contracts for nurse practitioner training programs

(a) Covered costs; priorities for applications; definition; guidelines for programs; minimum requirements for guidelines

(1) The Secretary may make grants to and enter into contracts with public or nonprofit private schools of nursing, medicine, and public health, public or nonprofit private hospitals, and other public or nonprofit private entities to meet the cost of projects to—

(A) plan, develop, and operate,
(B) significantly expand, or
(C) maintain existing,

programs for the training of nurse practitioners. The Secretary shall give special consideration to applications for grants or contracts for programs for the training of nurse practitioners who will practice in health manpower shortage areas (designated under section 254e of this title) and for the training of nurse practitioners which emphasize training respecting the special problems of geriatric patients and training to meet the particular needs of nursing home patients.

[*See main edition for text of* (*2*)]

(b) Traineeship programs

(1) The Secretary may make grants to and enter into contracts with schools of nursing, medicine, and public health, public or nonprofit private hospitals, and other nonprofit entities to establish and operate traineeship programs to train nurse practitioners who are residents of a health manpower shortage area (designated under section 254e of this title).

(2) Traineeships funded under this subsection shall include 100 percent of the costs of tuition, reasonable living and moving expenses (including stipends), books, fees, and necessary transportation.

(3) A traineeship funded under this subsection shall not be awarded unless the recipient enters into a commitment with the Secretary to practice as a nurse practitioner in a health manpower shortage area (designated under section 254e of this title).

(c) Required assurances in applications

No grant may be made or contract entered into for a project to plan, develop, and operate a program for the training of nurse practitioners unless the application for the grant or contract contains assurances satisfactory to the Secretary that the program will upon its development meet the guidelines which are in effect under subsection (a)(2)(B) of this section; and no grant may be made or contract entered into for a project to expand or maintain such a program unless the application for the grant or contract contains assurances satisfactory to the Secretary that the program meets the guidelines which are in effect under such subsection.

(d) Additional covered costs

The costs for which a grant or contract under this section may be made may include costs of preparation of faculty members in order to conform to the guidelines established under subsection (a)(2)(B) of this section.

(e) Authorization of appropriations

For payments under grants and contracts under this section there are authorized to be appropriated $15,000,000 for fiscal year 1976, $20,000,000 for fiscal year 1977, $25,000,000 for fiscal year 1978, and $15,000,000 for the fiscal year ending September 30, 1980.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(*o*)(5)(A), 91 Stat. 393; Sept. 29, 1979, Pub. L. 96-76, title I, § 107, 93 Stat. 579.)

AMENDMENTS

1979—Subsec. (e). Pub. L. 96-76 authorized appropriations of $15,000,000 for fiscal year ending Sept. 30, 1980.

1977—Subsec. (a)(1). Pub. L. 95-83, § 307(o)(5)(A)(i), inserted in last sentence following "contracts for programs" text reading "for the training of nurse practitioners who will practice in health manpower shortage areas (designated under section 254e of this title) and".

Subsecs. (b) to (e). Pub. L. 95-83, § 307(o)(5)(A)(ii), added subsec. (b) and redesignated as subsecs. (c) to (e) former subsecs. (b) to (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 307(*o*)(5)(C) of Pub. L. 95-83 provided that: "The amendments made by this paragraph [amending this section and section 297 of this title] shall be effective as of October 12, 1976."

PART B—ASSISTANCE TO NURSING STUDENTS

SUBPART I—TRAINEESHIPS

§ 297. Grants to cover costs of traineeships for training of professional nurses

(a) Authority of Secretary; special considerations; preferences; payments; limitations

[*See main edition for text of* (*1*)]

(2) In making grants for traineeships under this subsection, the Secretary shall give special consideration to applications for traineeship programs which conform to guidelines established by the Secretary under section 296m(a)(2)(B) of this title.

[*See main edition for text of* (*3*)]

(b) Authorization of appropriations

There are authorized to be appropriated for the purposes of this section $15,000,000 for the fiscal year ending June 30, 1976, $20,000,000 for the fiscal year ending September 30, 1977, $25,000,000 for the fiscal year ending September 30, 1978, and $15,000,000 for the fiscal year ending September 30, 1980.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 307(*o*)(5)(B), 91 Stat. 394; Sept. 29, 1979, Pub. L. 96-76, title I, § 108, 93 Stat. 579.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-76 authorized appropriations of $15,000,000 for fiscal year ending Sept. 30, 1980.

1977—Subsec. (a)(2). Pub. L. 95-83, § 307(*o*)(5)(B)(1), struck out text following "traineeship programs" reading "(A) for the training of nurse practitioners who will practice in health manpower shortage areas (designated under section 254e of this title), and (B) for traineeship programs".

Subsec. (b). Pub. L. 95-83, § 307(*o*)(5)(B)(2), (3), struck out subsec. (b) provisions relating to grants and contracts for establishment and operation of traineeship programs for residents of health manpower shortage areas, amount of award, and service commitment in health manpower shortage areas and redesignated as subsec. (b) provisions of former subsec. (c).

Subsec. (c). Pub. L. 95-83, § 307(o)(5)(B)(3), redesignated former subsec. (c) as (b).

§ 297-1. Grants to cover costs of traineeships for training of nurse anesthetists; authority of Secretary; program eligibility; payments; limitations; authorization of appropriations

(a)(1) The Secretary may make grants to public or private nonprofit institutions to cover the costs of traineeships for the training, in programs which meet such requirements as the Secretary shall by regulation prescribe and which are accredited by an entity or entities designated by the Commissioner of Education, of licensed, registered nurses to be nurse anesthetists.

(2) Payments to institutions under this subsection may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary. Such payments may be used only for traineeships and shall be limited to such amounts as the Secretary finds necessary to cover the costs of tuition and fees, and a stipend and allowances (including travel and subsistence expenses) for the trainees.

(b) For the purpose of making grants under subsection (a) of this section, there are authorized to be appropriated $2,000,000 for the fiscal year ending September 30, 1980.

(July 1, 1944, ch. 373, title VIII, § 831, as added Sept. 29, 1979, Pub. L. 96-76, title I, § 111, 93 Stat. 580.)

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

SUBPART II—STUDENT LOANS

§ 297a. Loan agreements; student loan fund; provisions of agreements

[*See main edition for text of* (*a*)]

(b) Each agreement entered into under this section shall—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) provide that loans may be made from such fund only to students pursuing a full-time or half-time course of study at the school leading to a baccalaureate or associate degree in nursing or an equivalent degree or a diploma in nursing, or to a graduate degree in nursing, and that while the agreement remains in effect no such student who has attended such school before October 1, 1980, shall receive a loan from a loan fund established under section 424 of title 20, and

[*See main edition for text of* (*5*)]

(As amended Sept. 29, 1979, Pub. L. 96-76, title I, § 109(a), 93 Stat. 579.)

AMENDMENTS

1979—Subsec. (b)(4). Pub. L. 96-76 substituted "1980" for "1978".

§ 297b. Loan provisions

[*See main edition for text of* (*a*)]

(b) Terms and conditions

Loans from any such student loan fund by any school shall be made on such terms and conditions as the school may determine; subject, however, to such conditions, limitations, and requirements as the Secretary may prescribe (by regulation or in the agreement with the school) with a view to preventing impairment of the capital of such fund to the maximum extent practicable in the light of the objective of enabling the student to complete his course of study; and except that—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) in the case of a student who received such a loan before September 29, 1979, an amount up to 85 per centum of any such loan made before such date (plus interest thereon) shall be canceled for full-time employment as a professional nurse (including teaching in any of the fields of nurse training and service as an administrator, supervisor, or consultant in any of the fields of nursing) in any public or nonprofit private agency, institution, or organization (including neighborhood health centers), at the rate of 15 per centum of the amount of such loan (plus interest) unpaid on the first day of such service for each of the first, second, and third complete year of such service, and 20 per centum of such amount (plus interest) for each complete fourth and fifth year of such service;

[*See main edition for text of* (*4*) *to* (*7*); (*c*) *to* (*j*)]

(As amended Sept. 29, 1979, Pub. L. 96-76, title I, § 112, 93 Stat. 580.)

AMENDMENTS

1979—Subsec. (b)(3). Pub. L. 96-76 added provisions requiring conditions to be applicable to loans arising prior to Sept. 29, 1979.

§ 297c. Authorization of appropriations for student loan funds

There are authorized to be appropriated for allotments under section 297d of this title to schools of nursing for Federal capital contributions to their student loan funds established under section 297a of this title, $25,000,000 for fiscal year 1976, $30,000,000 for fiscal year 1977, $35,000,000 for fiscal year 1978, and $13,500,000 for the fiscal year ending September 30, 1980. For the fiscal year ending September 30, 1981, and for each of the next two succeeding fiscal years there are authorized to be appropriated such sums as may be necessary to enable students who have received a loan for any academic year ending before October 1, 1980, to continue or complete their education.

(As amended Sept. 29, 1979, Pub. L. 96-76, title I, § 109(b), 93 Stat. 580.)

AMENDMENTS

1979—Pub. L. 96-76 authorized appropriations of $13,500,000 for fiscal year ending Sept. 30, 1980, and substituted provisions relating to authorizations of appropriations through the fiscal year ending Sept. 30, 1981, for loans for any academic year ending before Oct. 1, 1980, for provisions relating to authorizations of appropriations for fiscal year 1979, for loans for any academic year ending before Oct. 1, 1978.

§ 297e. Distribution of assets from loan funds

(a) After September 30, 1983, and not later than December 31, 1983, there shall be a capital distribution of the balance of the loan fund established under an agreement pursuant to section 297a of this title by each school as follows:

(1) The Secretary shall first be paid an amount which bears the same ratio to such balance in such fund at the close of September 30, 1983, as the total amount of the Federal capital contributions to such fund by the Secretary pursuant to section 297a(b)(2)(A) of this title bears to the total amount in such fund derived from such Federal capital contributions and from funds deposited therein pursuant to section 297a(b)(2)(A) of this title.

(2) The remainder of such balance shall be paid to the school.

(b) After December 31, 1983, each school with which the Secretary has made an agreement under this subpart shall pay to the Secretary, not less often than quarterly, the same proportionate share of amounts received by the school after September 30, 1983, in payment of principal or interest on loans made from the loan fund established pursuant to such agreement as was determined for the Secretary under subsection (a) of this section.

(As amended July 10, 1979, Pub. L. 96-32, § 7(j), 93 Stat. 84; Sept. 29, 1979, Pub. L. 96-76, title I, § 109(c), 93 Stat. 580.)

AMENDMENTS

Subsec. (a). Pub. L. 96-76, § 109(c)(1), substituted "September 30, 1983, and not later than December 31, 1983" for "September 30, 1980, and not later than December 31, 1981". Prior to amendment, subsec. (a) referred to "December 31, 1980" rather than to "December 31, 1981" as cited in the directory language of Pub. L. 96-76. See below for explanation of amendment by Pub. L. 96-32.

Pub. L. 96-32 substituted "December 31, 1980" for "September 30, 1977". See Codification note set out under this section in the main edition.

Subsec. (a)(1). Pub. L. 96-76, § 109(c)(2), substituted "1983" for "1980".

Subsec. (b). Pub. L. 96-76, § 109(c)(3), substituted "1983" for "1980" wherever appearing therein.

SUBPART III—SCHOLARSHIP GRANTS TO SCHOOLS OF NURSING

§ 297j. Scholarship grants

[*See main edition for text of* (*a*)]

(b) Amount of grants

The amount of the grant under subsection (a) of this section for the fiscal year ending June 30, 1976, and for each of the next four fiscal years to each such school shall be equal to $3,000 multiplied by one-tenth of the number of full-time students of such school. For the fiscal year ending September 30, 1981, and for each of the two succeeding fiscal years, the grant under subsection (a) of this section shall be such amount as may be necessary to enable such school to continue making payments under scholarship awards to students who initially received such awards out of grants made to the school for fiscal years ending before October 1, 1980.

(c) Recipients of scholarships; uses of funds; limitation on amount of scholarship

(1) Scholarships may be awarded by schools from grants under subsection (a) of this section—

(A) only to individuals who have been accepted by them for enrollment, and individuals enrolled and in good standing, as full-time or half-time students, in the case of awards from such grants for the fiscal year ending June 30, 1976, and the next four fiscal years; and

(B) only to individuals enrolled and in good standing as full-time or half-time students who initially received scholarship awards out of such grants for a fiscal year ending prior to October 1, 1980, in the case of awards from such grants for the fiscal year ending September 30, 1981, and each of the two succeeding fiscal years.

[*See main edition for text of* (*2*); (*d*) *and* (*e*)]

(As amended Sept. 29, 1979, Pub. L. 96-76, title I, § 110(a), (b), 93 Stat. 580.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-76, § 110(a), substituted "next four" for "next two", "1981" for "1979", and "1980" for "1978".

Subsec. (c)(1). Pub. L. 96-76, § 110(b), substituted in par. (A) "next four" for "next two" and in par. (B) substituted "1980" for "1978", and "1981" for "1979".

ADDITIONAL APPROPRIATIONS FOR SCHOLARSHIPS NOT AUTHORIZED FOR FISCAL YEAR ENDING SEPTEMBER 30, 1979, BY PUB. L. 96-76

Section 110(c) of Pub. L. 96-76 provided that: "The amendments made by subsections (a) and (b) [amending subsecs. (b) and (c)(1) of this section], do not authorize appropriations for the fiscal year ending September 30, 1979, for scholarships under section 845 of the Public Health Service Act [this section] in addition to the amount available for such scholarships under section 101(a) of Public Law 95-482 [Oct. 18, 1978, 92 Stat. 1603]."

PART C—GENERAL

§ 298. National Advisory Council on Nurse Training

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

§ 298b. Definitions

For the purposes of this subchapter—

[*See main edition for text of* (*1*) *to* (*5*)]

(6) The term "accredited" when applied to any program of nurse education means a program accredited by a recognized body or bodies,

or by a State Agency, approved for such purpose by the Commissioner of Education, and when applied to a hospital, school, college, or university (or unit thereof) means a hospital, school, college, or university (or a unit thereof) which is accredited by a recognized body or bodies, or by a State agency, approved for such purpose by the Commissioner of Education, except that a program, or a hospital, school, college, or university (or a unit thereof), which is not, at the time of the application under this subchapter, eligible for accreditation by such a recognized body or bodies, shall be deemed accredited for purposes of this subchapter in the following cases if the Commissioner of Education finds, after consultation with the appropriate accreditation body or bodies, that there is reasonable assurance that the program, or the hospital, school, college, or university (or unit thereof), will meet the accreditation standards of such body or bodies (A) in the case of an applicant under subpart I of part A of this subchapter for a grant for a project for construction of a new school (which shall include a school that has not had a sufficient period of operation to be eligible for accreditation), (i) upon completion of such project and other construction projects (if any) then under construction or planned and to be commenced within a reasonable time, or (ii) if later, then prior to the beginning of the first academic year following the normal graduation date of the first entering class in such school; (B) in the case of a school applying for a grant under section 296e of this title for any fiscal year, prior to the beginning of the first academic year following the normal graduation date of the class which is the entering class for such fiscal year (or is the first such class in such year if there is more than one); and (C) in the case of a school seeking an agreement under section 297a of this title for establishment of a student loan fund, prior to the beginning of the academic year following the normal graduation date of students who are in their first year of instruction at such school during the fiscal year in which the agreement with such school is made under section 297a of this title; except that the provisions of this clause shall not apply for purposes of section 297d of this title. For the purpose of this paragraph, the Commissioner of Education shall publish a list of recognized accrediting bodies, and of State agencies, which he determines to be reliable authority as to the quality of training offered.

[*See main edition for text of* (7) *to* (10)]

(As amended July 10, 1979, Pub. L. 96-32, § 7(k), 93 Stat. 84.)

AMENDMENTS

1979—Subsec. (6). Pub. L. 96-32 substituted "this clause" for "this clause (3)".

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

§ 298b-3. Delegation of authority to administer programs; exceptions

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER VII—EDUCATION, RESEARCH, TRAINING, AND DEMONSTRATIONS IN HEART DISEASE, CANCER, STROKE, AND RELATED DISEASES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 235, 236, 300*l* of this title; title 38 section 5070.

§ 299a. Authorization of appropriations

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 299e. National Advisory Council on Regional Medical Programs

CHANGE OF NAME

The officials of the Department of Health, Education, and Welfare were redesignated officials of the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 299i. Records and audit

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER VIII—POPULATION RESEARCH AND VOLUNTARY FAMILY PLANNING PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 300a-26 of this title; title 20 section 3062.

§ 300. Project grants and contracts for family planning services

(a) Authority of Secretary

The Secretary is authorized to make grants to and enter into contracts with public or nonprofit private entities to assist in the establishment and operation of voluntary family planning projects which shall offer a broad range of acceptable and effective family planning methods and services (including natural family planning methods, infertility services, and services for adolescents).

[*See main edition for text of* (b)]

(c) Authorization of appropriations

For the purpose of making grants and contracts under this section, there are authorized to be appropriated $30,000,000 for the fiscal year ending June 30, 1971; $60,000,000 for the fiscal year ending June 30, 1972; $111,500,000 for the fiscal year ending June 30, 1973, $111,500,000 each for the fiscal years ending June 30, 1974, and June 30, 1975; $115,000,000 for fiscal year 1976; $115,000,000 for the fiscal year ending September 30, 1977; $136,400,000 for the fiscal year ending September 30, 1978; $200,000,000 for the fiscal year ending September 30, 1979; $230,000,000 for the fiscal year ending September 30, 1980; and $264,500,000 for the fiscal year ending September 30, 1981.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 305(a), 91 Stat. 388; Nov. 8, 1978, Pub. L. 95-613, § 1(a)(1), (b)(1), 92 Stat. 3093.)

Amendments

1978—Subsec. (a). Pub. L. 95-613, § 1(a)(1), added provisions relating to infertility services and services for adolescents.

Subsec. (c). Pub. L. 95-613, § 1(b)(1), authorized appropriations of $200,000,000 for fiscal year ending Sept. 30, 1979, $230,000,000 for fiscal year ending Sept. 30, 1980, and $264,500,000 for fiscal year ending Sept. 30, 1981.

1977—Subsec. (c). Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $136,400,000 for fiscal year ending Sept. 30, 1978.

Study as to Discrimination by Schools of Medicine, Nursing, or Osteopathy Against Applicants Because of Reluctance or Willingness to Participate in Abortions or Sterilizations; Report Not Later Than February 1, 1978

Pub. L. 95-215, § 7, Dec. 19, 1977, 91 Stat. 1507, which provided that the Secretary of Health, Education, and Welfare conduct a study and report to specific committees of Congress not later than Feb. 1, 1978, as to whether schools of medicine, nursing, or osteopathy discriminate against applicants because of the applicant's reluctance or unwillingness to participate in the performance of abortions or sterilizations contrary to religious beliefs or moral convictions, was omitted from the Code as executed.

Section Referred to in Other Sections

This section is referred to in sections 300a-1, 300a-4 of this title.

§ 300a-1. Training grants and contracts; authorization of appropriations

[*See main edition for text of* (*a*)]

(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $2,000,000 for the fiscal year ending June 30, 1971; $3,000,000 for the fiscal year ending June 30, 1972; $4,000,000 for the fiscal year ending June 30, 1973; $3,000,000 each for the fiscal years ending June 30, 1974 and June 30, 1975; $4,000,000 for fiscal year ending 1976; $5,000,000 for the fiscal year ending September 30, 1977; $3,000,000 for the fiscal year ending September 30, 1978; $3,100,000 for the fiscal year ending September 30, 1979; $3,600,000 for the fiscal year ending September 30, 1980, and $4,100,000 for the fiscal year ending September 30, 1981.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 305(b), 91 Stat. 389; Nov. 8, 1978, Pub. L. 95-613, § 1(b)(2), 92 Stat. 3093.)

Amendments

1978—Subsec. (b). Pub. L. 95-613 authorized appropriations of $3,100,000 for fiscal year ending Sept. 30, 1979, $3,600,000 for fiscal year ending Sept. 30, 1980, and $4,100,000 for fiscal year ending Sept. 30, 1981.

1977—Subsec. (b). Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $3,000,000 for fiscal year ending Sept. 30, 1978.

§ 300a-2. Research activities, grants and contracts; authorization of appropriations; availability of appropriated funds

[*See main edition for text of* (*a*)]

(b)(1) To carry out subsection (a) of this section there are authorized to be appropriated $55,000,000 for fiscal year 1976, $60,000,000 for the fiscal year ending September 30, 1977, $68,500,000 for the fiscal year ending September 30, 1978, $105,000,000 for the fiscal year ending September 30, 1979, $120,800,000 for the fiscal year ending September 30, 1980, and $138,900,000 for the fiscal year ending September 30, 1981.

(2) No funds appropriated under any provision of this chapter (other than this subsection) may be used to conduct or support the research described in subsection (a) of this section or for the administration of this section.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 305(c), 91 Stat. 389; Nov. 8, 1978, Pub. L. 95-613, § 1(b)(3), 92 Stat. 3093; July 10, 1979, Pub. L. 96-32, § 1(a), 93 Stat. 82.)

Amendments

1979—Subsec. (b)(1). Pub. L. 95-613, as amended by Pub. L. 96-32, substituted "$120,800,000" for "$3,600,000" as the authorized appropriation for the fiscal year ending Sept. 30, 1980.

1978—Subsec. (b)(1). Pub. L. 95-613 authorized appropriations of $105,000,000 for fiscal year ending Sept. 30, 1979, $3,600,000 for fiscal year ending Sept. 30, 1980, and $138,000,000 for fiscal year ending Sept. 30, 1981.

1977—Subsec. (b). Pub. L. 95-83 substituted in par. (1) provision for an appropriate authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $68,500,000 for fiscal year ending Sept. 30, 1978, and prohibited in par. (2) use of funds for administration of this section.

Effective Date of 1979 Amendment

Section 1(b) of Pub. L. 96-32 provided that: "The amendment made by subsection (a) [amending subsec. (b)(1) of this section] shall be effective as of November 8, 1978."

§ 300a-3. Informational and educational materials development grants and contracts; authorization of appropriations

[*See main edition for text of* (*a*)]

(b) For the purpose of making payments pursuant to grants and contracts under this section, there are authorized to be appropriated $750,000 for the fiscal year ending June 30, 1971; $1,000,000 for the fiscal year ending June 30, 1972; $1,250,000 for the fiscal year ending June 30, 1973; $909,000 each for the fiscal years ending June 30, 1974, and June 30, 1975; $2,000,000 for fiscal year 1976; $2,500,000 for the fiscal year ending September 30, 1977; $600,000 for the fiscal year ending September 30, 1978; $700,000 for the fiscal year ending September 30, 1979; $805,000 for the fiscal year ending September 30, 1980; and $926,000 for the fiscal year ending September 30, 1981.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 305(d), 91 Stat. 389; Nov. 8, 1978, Pub. L. 95-613, § 1(b)(4), 92 Stat. 3093.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-613 authorized appropriations of $700,000 for fiscal year ending Sept. 30, 1979, $805,000 for fiscal year ending Sept. 30, 1980, and $926,000 for fiscal year ending Sept. 30, 1981.

1977—Subsec. (b). Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $600,000 for fiscal year ending Sept. 30, 1978.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300a-4 of this title.

§ 300a-4. Grants and contracts

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Suitability of informational or educational materials

(1) A grant may be made or a contract entered into under section 300 or 300a-3 of this title only upon assurances satisfactory to the Secretary that informational or educational materials developed or made available under the grant or contract will be suitable for the purposes of this subchapter and for the population or community to which they are to be made available, taking into account the educational and cultural background of the individuals to whom such materials are addressed and the standards of such population or community with respect to such materials.

(2) In the case of any grant or contract under section 300 of this title, such assurances shall provide for the review and approval of the suitability of such materials, prior to their distribution, by an advisory committee established by the grantee or contractor in accordance with the Secretary's regulations. Such a committee shall include individuals broadly representative of the population or community to which the materials are to be made available.

(As amended Nov. 8, 1978, Pub. L. 95-613, § 1(a)(2), 92 Stat. 3093.)

AMENDMENTS

1978—Pub. L. 95-613 added subsec. (d).

§ 300a-6a. Plans and reports

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 300a-7. Sterilization or abortion

(a) Prohibition of public officials and public authorities from imposition of certain requirements contrary to religious beliefs or moral convictions

The receipt of any grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C. 201 et seq.] the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6000 et seq.] by any individual or entity does not authorize any court or any public official or other public authority to require—

[*See main edition for text of* (*1*) *and* (*2*)]

(b) Discrimination prohibition

(1) No entity which receives a grant, contract, loan, or loan guarantee under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], or the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6000 et seq.] after June 18, 1973, may—

[*See main edition for text of* (*A*), (*B*), *and concluding par.,* (*2*); (*c*)]

(d) Prohibition on entities receiving Federal grant, etc., from discriminating against applicants for training or study because of refusal of applicant to participate on religious or moral grounds

No entity which receives, after September 29, 1979, any grant, contract, loan, loan guarantee, or interest subsidy under the Public Health Service Act [42 U.S.C. 201 et seq.], the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.] or the Developmental Disabilities Assistance and Bill of Rights Act [42 U.S.C. 6000 et seq.] may deny admission or otherwise discriminate against any applicant (including applicants for internships and residencies) for training or study because of the applicant's reluctance, or willingness, to counsel, suggest, recommend, assist, or in any way participate in the performance of abortions or sterilizations contrary to or consistent with the applicant's religious beliefs or moral convictions.

(As amended Pub. L. 96-76, title II, § 208, Sept. 29, 1979, 93 Stat. 583.)

REFERENCES IN TEXT

Public Health Service Act, referred to in subsecs. (a), (b), and (d), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to this chapter (§ 201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The Community Mental Health Centers Act, referred to in subsecs. (a), (b), and (d), is title II of Pub. L. 88-164, as added Pub. L. 94-63, title III, § 303, July 29, 1975, 89 Stat. 309, and amended, which is classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2689 of this title and Tables.

The Developmental Disabilities Services and Facilities Construction Act, referred to in subsecs. (a) and (b), is title I of Pub. L. 88-164, as added Pub. L. 94-103, Oct. 4, 1975, 89 Stat. 496, and amended, now known as the Developmental Disabilities Assistance and Bill of Rights Act, which is classified generally to chapter 75 (§ 6000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

The Developmental Disabilities Assistance and Bill of Rights Act, referred to in subsec. (d), is title I of Pub. L. 88-164, as added by Pub. L. 94-103, Oct. 4, 1975, 89 Stat. 496, and amended, which is classified generally to chapter 75 (§ 6000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

CODIFICATION

Portions of subsecs. (a) and (b) are set out in this supplement to reflect the revised citation to the Developmental Disabilities Services and Facilities Construction Act.

Subsec. (d) was in the original designated "(e)" and has been editorially redesignated as "(d)" to reflect the probable intent of Congress.

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-76 added subsec. (d). See Codification note set out above.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER VIII-A—ADOLESCENT PREGNANCIES [NEW]

PART A—GRANT PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 300a-41 of this title.

§ 300a-21. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) adolescents are at a high risk of unwanted pregnancy;

(2) in 1975, almost 1,000,000 adolescents became pregnant and nearly 600,000 carried their babies to term;

(3) pregnancy and childbirth among adolescents, particularly young adolescents, often results in severe adverse health, social, and economic consequences, including: a higher percentage of pregnancy and childbirth complications; a higher incidence of low-birth-weight babies; a higher frequency of developmental disabilities; higher infant mortality and morbidity; a decreased likelihood of completing schooling; a greater likelihood that adolescent marriage will end in divorce; and higher risks of unemployment and welfare dependency;

(4) an adolescent who becomes pregnant once is likely to experience rapid repeat pregnancies and childbearing, with increased risks;

(5) the problems of adolescent pregnancy and parenthood are multiple and complex and are best approached through a variety of integrated and essential services;

(6) such services, including a wide array of educational and supportive services, often are not available to the adolescents who need them, or are available but fragmented and thus of limited effectiveness in preventing pregnancies and future welfare dependency; and

(7) Federal policy therefor should encourage the development of appropriate health, educational, and social services where they are now lacking or inadequate, and the better coordination of existing services where they are available in order to prevent unwanted early and repeat pregnancies and to help adolescents become productive, independent contributors to family and community life.

(b) Therefore, the purposes of this subchapter are—

(1) to establish better coordination, integration, and linkages among existing programs in order to expand and improve the availability of, and access to, needed comprehensive community services which assist in preventing unwanted initial and repeat pregnancies among adolescents, enable pregnant adolescents to obtain proper care and assist pregnant adolescents and adolescent parents to become productive independent contributors to family and community life, with primary emphasis on services to adolescents who are 17 years of age and under and are pregnant or who are parents;

(2) to expand the availability of such services that are essential to that objective; and

(3) to promote innovative, comprehensive, and integrated approaches to the delivery of such services.

(Pub. L. 95-626, title VI, § 601, Nov. 10, 1978, 92 Stat. 3595.)

REFERENCES IN TEXT

This subchapter, referred to in subsec. (b), in the original read "this Act" (Pub. L. 95-626) and probably was meant to refer to title VI, §§ 601 to 608, and title VII, § 701, of Pub. L. 95-626, Nov. 10, 1978, 92 Stat. 3595 to 3601, which are classified to this subchapter.

CODIFICATION

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

STUDY OF ADOLESCENT PREGNANCY; REPORT NOT LATER THAN NOVEMBER 10, 1979

Section 801 of Pub. L. 95-626, which provided that the Secretary of Health, Education, and Welfare contract with an independent entity to perform a study of the problem of adolescent pregnancies, evaluating the effectiveness of existing programs and suggesting the most effective means for reducing or eliminating unwanted adolescent pregnancies, and report the results of this study to the Congress not later than Nov. 10, 1979, was omitted from the Code as executed.

§ 300a-22. Definitions

For the purposes of this subchapter, the term—

(1) "Secretary" means the Secretary of the Department of Health, Education, and Welfare;

(2) "eligible person" means—

(A) with regard to the provision of all necessary core services and such necessary supplemental services as may be available, a pregnant adolescent or an adolescent parent; or

(B) with regard to the provision of the services described in paragraphs (4)(A), (4)(B), and (4)(G) and referral to such other services which may be appropriate, a nonpregnant adolescent;

(3) "eligible grant recipient" means a public or nonprofit private organization or agency which demonstrates, to the satisfaction of the Secretary, the capability of providing in a single setting all core services or the capability of creating a network through which all core services would be provided;

(4) "core services" means those services which shall be provided by all grantees which are—

(A) pregnancy testing, maternity counseling, and referral services;

(B) family planning services, except that such services for nonpregnant adolescents shall be limited to counseling and referral unless suitable and appropriate family planning services are not otherwise available in the community;

(C) primary and preventive health services including pre- and post-natal care;

(D) nutrition information and counseling;

(E) referral for screening and treatment of venereal disease;

(F) referral to appropriate pediatric care;

(G) educational services in sexuality and family life (including sex education), and including family planning information;

(H) referral to appropriate educational and vocational services;

(I) adoption counseling and referral services; and

(J) referral to other appropriate health services.

(5) "supplemental services" means those services which may be provided and are—

(A) child care sufficient to enable the adolescent parent to continue her education or to enter into employment;

(B) consumer education and homemaking;

(C) counseling for extended family members of the eligible person;

(D) transportation; and

(E) such other services consistent with the purposes of this subchapter as the Secretary may approve in accordance with regulations promulgated by the Secretary;

(6) "adolescent parent" means a parent under the age of 21.

(Pub. L. 95-626, title VI, § 602, Nov. 10, 1978, 92 Stat. 3595.)

References in Text

This subchapter, referred to in the introduction and in par. (5)(E), in the original read "this Act" (Pub. L. 95-626) and probably was meant to refer to title VI, §§ 601 to 608, and title VII, § 701, of Pub. L. 95-626, Nov. 10, 1978, 92 Stat. 3595 to 3601, which are classified to this subchapter.

Codification

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 300a-23. Authority to make grants

The Secretary may make grants to further the purposes of this subchapter to eligible grant recipients which have submitted an application which the Secretary finds meets the requirements of section 300a-26 of this title for projects which the Secretary determines will help communities provide core and supplemental services in easily accessible locations, assure a continuity of services and appropriate assistance, and coordinate, integrate, and establish linkages among such services. Projects shall, as appropriate, provide, supplement, or improve the quality of such services, and in providing services, give primary emphasis to adolescents who are 17 years of age or under and are pregnant or who are parents.

(Pub. L. 95-626, title VI, § 603, Nov. 10, 1978, 92 Stat. 3596.)

References in Text

This subchapter, referred to in text, in the original read "this Act" (Pub. L. 95-626) and probably was meant to refer to title VI, §§ 601 to 608, and title VII, § 701, of Pub. L. 95-626, Nov. 10, 1978, 92 Stat. 3595 to 3601, which are classified to this subchapter.

Codification

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

§ 300a-24. Uses of grants

(a) Funds provided under this subchapter may be used by grantees only to—

(1) provide core services to eligible persons;

(2) coordinate, integrate, and provide linkages among providers of core, supplemental, and other services for eligible persons in furtherance of the purposes of this subchapter;

(3) provide supplemental services where such services are not adequate or not available to eligible persons in the community and which are essential to the care of pregnant adolescents and to the prevention of adolescent pregnancy;

(4) plan for the administration and coordination of pregnancy prevention and pregnancy-related services for adolescents (including family life and sex education), which will further the objectives of this subchapter; and

(5) fulfill assurances required for grant approval by section 300a-26 of this title.

(b) Grantees shall charge fees for services only pursuant to a fee schedule, approved by the Secretary as a part of the application described in section 300a-26 of this title, which bases fees charged by the grantee on the income of the eligible person or the parents or legal guardians of the eligible person and takes into account the difficulty adolescents face in obtaining resources to pay for services. In no case may a grantee discriminate with regard to the provision of services to any individual because of that individual's inability to provide payment for such services.

(Pub. L. 95-626, title VI, § 604, Nov. 10, 1978, 92 Stat. 3597.)

References in Text

This subchapter, referred to in subsec. (a), in the original read "this Act" (Pub. L. 95-626) and probably was meant to refer to title VI, §§ 601 to 608, and title VII, § 701, of Pub. L. 95-626, Nov. 10, 1978, 92 Stat. 3595 to 3601, which are classified to this subchapter.

Codification

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

§ 300a-25. Priorities, amounts, and duration of grants

(a) Priority applicants

In approving applications for grants under this subchapter, the Secretary shall give priority to applicants who—

(1) serve an area where there is a high incidence of adolescent pregnancy;

(2) serve an area where the incidence of low-income families is high and where the availability of pregnancy-related services is low;

(3) show evidence of having the ability to bring together a wide range of needed care and, as appropriate, supplemental services in comprehensive single-site projects, or to establish a well-integrated network of such services (appropriate for the target population and geographic area to be served including the special needs of rural areas) for adolescents at risk of initial or repeat pregnancies;

(4) will utilize to the maximum extent feasible, existing available programs and facilities such as neighborhood and primary health care centers, family planning clinics, children and youth centers, maternal and infant health centers, regional rural health facilities, school and other educational programs, mental health programs, nutrition programs, recreation programs, and other ongoing pregnancy prevention and pregnancy-related services;

(5) make use, to the maximum extent feasible, of other Federal, State, and local funds, programs, contributions, and other third-party reimbursements;

(6) can demonstrate a community commitment to the program by making available to the project non-Federal funds, personnel, and facilities; and

(7) have involved the community to be served, including public and private agencies, adolescents, and families, in the planning and implementation of the project.

(b) Factors determining amount of grant

(1) The amount of a grant under this subchapter shall be determined by the Secretary, based on factors such as the incidence of adolescent pregnancy in the geographic area to be served, and the adequacy of pregnancy prevention and pregnancy-related services in the area to be served.

(2) In making grants under this subchapter, the Secretary shall consider the special needs of rural areas and, to the maximum extent practicable, shall distribute funds in consideration of the relative number of adolescents in such areas in need of such services.

(c) Limitations; waiver

(1) A grantee may not receive funds under this subchapter for a period in excess of 5 years.

(2) Subject to paragraph (3), a grant made under this subchapter may not exceed 70 percent of the costs of a project assisted under this subchapter for the first and second years of the project. In each year succeeding the second year of the project the amount of the Federal grant under this subchapter shall decrease by no less than 10 percent of the amount of the Federal grant under this subchapter in the preceding year.

(3) The Secretary may waive the limitation specified in paragraph (2) in any year in accordance with criteria established by regulation.

(Pub. L. 95-626, title VI, § 605, Nov. 10, 1978, 92 Stat. 3597.)

References in Text

This subchapter, referred to in text, in the original read "this Act" (Pub. L. 95-626) and probably was meant to refer to title VI, §§ 601 to 608, and title VII, § 701, of Pub. L. 95-626, Nov. 10, 1978, 92 Stat. 3595 to 3601, which are classified to this subchapter.

Codification

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

§ 300a-26. Requirements for grant approval

(a) Applications

An application for a grant under this subchapter shall be in such form and contain such information as the Secretary may require, and shall include—

(1) an identification of the incidence of adolescent pregnancy and related problems;

(2) a description of the economic conditions and income levels in the geographic area to be served;

(3) a description of existing pregnancy prevention and pregnancy-related services (including family life and sex education), and including where, how, by whom and to whom they are provided, and the extent to which they are coordinated in the geographic area to be served;

(4) a description of the major unmet needs for services for adolescents at risk of initial or repeat pregnancies, the number of adolescents currently served in the area, and the number of adolescents not being served in the area;

(5) a description of how all of the core services will be provided in the project using funds under this subchapter or otherwise provided by the grantee, to whom they will be provided, how they will be coordinated, integrated, and linked with other related programs and services and the source or sources of funding of such core services;

(6) a description of how adolescents needing services other than those provided directly by the grantee will be identified and how access and appropriate referral to those services (such as medicaid; public assistance; employment services; child care services for adolescent parents; and other city, county, and State programs related to adolescent pregnancy) will be provided including a description of the plan to coordinate such services with activities funded under this subchapter;

(7) a description of any fee schedule to be used for any services provided directly by the grantee and the method by which it was de-

rived, together with assurances that the applicant will make every reasonable effort to collect reimbursement for its costs in providing services to persons who are entitled to have payment made on their behalf for such services under any Federal or other government program or private insurance program;

(8) a description of the grantee's capacity to continue services as Federal funds decrease and in the absence of Federal assistance;

(9) a description of the results expected from the provision of services and activities, and the procedures to be used for evaluating those results;

(10) a summary of the views of public agencies, providers of services, and the general public in the geographic area to be served, of the proposed use of the funds provided under a grant provided under this subchapter and a description of procedures used to obtain those views, and, in the case of applicants who propose to coordinate services administered by a State, the written comments of the appropriate State officials responsible for such services;

(11) assurances that the applicant will have an ongoing quality assurance program;

(12) assurances that the applicant shall have a system for maintaining the confidentiality of patient records in accordance with regulations promulgated by the Secretary;

(13) assurances that the applicant will demonstrate its financial responsibility by the use of such accounting procedures and other requirements as may be prescribed by the Secretary;

(14) assurances that the applicant (A) has or will have a contractual or other arrangement with the agency of the State, in which it provides services, which administers or supervises the administration of a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] for the payment of all or a part of the applicant's costs in providing health services to persons who are eligible for medical assistance under such a State plan, or (B) has made or will make every reasonable effort to enter into such an arrangement;

(15) assurances that the applicant has made or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing health services to persons who are entitled to benefits under title V of the Social Security Act [42 U.S.C. 701 et seq.], to medical assistance under a State plan approved under title XIX of such Act [42 U.S.C. 1396 et seq.], or to assistance for medical expenses under any other public assistance program or private health insurance program;

(16) assurances that the applicant has or will make and will continue to make every reasonable effort to collect appropriate reimbursement for its costs in providing services to persons entitled to services under title XX of the Social Security Act [42 U.S.C. 1397 et seq.];

(17) assurances that the applicant (A) has prepared a schedule of fees or payments for the provision of its services designed to cover its reasonable costs of operation and a corresponding schedule of discounts to be applied to the payment of such fees or payments, which discounts are adjusted on the basis of the patient's ability to pay, (B) has made and will continue to make every reasonable effort (i) to secure from patients payment for services in accordance with such schedules, and (ii) to collect reimbursement for health or other services on the basis of the full amount of fees and payments for such services without application of any discount, and (C) has submitted to the Secretary such reports as he may require to determine compliance with this paragraph;

(18) assurances that the applicant will make maximum use of funds available under title X of the Public Health Service Act [42 U.S.C. 300 et seq.];

(19) assurances that the acceptance by any individual of family planning services or family planning or population growth information (including educational materials) provided through financial assistance under this part shall be voluntary and shall not be a prerequisite to eligibility for or receipt of any other service furnished by the applicant;

(20) assurances that fees collected by the applicant for services rendered in accordance with this subchapter shall be used by the applicant to further the purposes of this subchapter;

(21) assurances that unemancipated minors requesting services from the applicant will be encouraged, whenever feasible, to consult with their parents with respect to such services;

(22) assurances that all pregnant adolescents receiving services will be informed of the availability of counseling (either by the entity providing core services or through a referral agreement with such other entity which provides such counseling) on all options, regarding her pregnancy;

(23) assurances that primary emphasis for services paid for with funds under this subchapter shall be given to pregnant adolescents and adolescent parents 17 and under who are not able to obtain needed assistance through other means; and

(24) assurances that funds received under this subchapter shall not supplant funds received from any other Federal, State, or local program or any private sources of funds.

(b) Reports

Each grantee which participates in the program established by this part shall make such reports concerning its use of Federal funds as the Secretary may require. Reports shall include the impact the project has had on reducing the rate of first and repeat pregnancies among adolescents, and the effect on factors usually associated with welfare dependency.

(c) Review by State Governors of grant applications

The Secretary shall provide the Governor of each State copies of applications received for grants under this subchapter from applicants within such State. The Governor shall have a period of 60 days from receipt of such copies to review and submit comments to the Secretary.

(d) Availability of core services

No application submitted for a grant under this subchapter may be approved unless the Secretary is satisfied that core services shall be available through the grantee within a reasonable time after such grant is received.

(Pub. L. 95-626, title VI, § 606, Nov. 10, 1978, 92 Stat. 3598.)

REFERENCES IN TEXT

This subchapter, referred to in subsecs. (a), (c), and (d), in the original read "this Act" (Pub. L. 95-626) and probably was meant to refer to title VI, §§ 601 to 608, and title VII, § 701, of Pub. L. 95-626, Nov. 10, 1978, 92 Stat. 3595 to 3601, which are classified to this subchapter.

The Social Security Act, referred to in subsec. (a)(14), (15), (16), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles V, XIX, and XX of the Social Security Act are classified generally to subchapters V (§ 701 et seq.), XIX (§ 1396 et seq.), and XX (§ 1397 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Public Health Service Act, referred to in subsec. (a)(18), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title X of the Public Health Services Act is classified generally to subchapter VIII (§ 300 et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300a-23, 300a-24 of this title.

§ 300a-27. Authorization of appropriations

For the purpose of carrying out this part, there are authorized to be appropriated $50,000,000 for the fiscal year ending September 30, 1979, $65,000,000 for the fiscal year ending September 30, 1980 and $75,000,000 for the fiscal year ending September 30, 1981.

(Pub. L. 95-626, title VI, § 607, Nov. 10, 1978, 92 Stat. 3601.)

CODIFICATION

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

§ 300a-28. Use of funds to pay for performance of abortion prohibited

No funds for grants made under the provisions of this subchapter may be used for payment for the performance of an abortion.

(Pub. L. 95-626, title VI, § 608, Nov. 10, 1978, 92 Stat. 3601.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this Act" (Pub. L. 95-626) and probably was meant to refer to title VI, §§ 601 to 608, and title VII, § 701, of Pub. L. 95-626, Nov. 10, 1978, 92 Stat. 3595 to 3601, which are classified to this subchapter.

CODIFICATION

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

§ 300a-29. Review of grants and contracts by health systems agency and Statewide Health Coordinating Council

A grant or contract made under this subchapter shall be considered, for purposes of sections 1513(e) and 1524(c)(6) of the Public Health Service Act, [42 U.S.C. 300*l*-2(e), 300m-3(c)(6)], to be a grant or contract made under that Act [42 U.S.C. 201 et seq.].

(Pub. L. 95-626, title III, § 301, Nov. 10, 1978, 92 Stat. 3590.)

REFERENCES IN TEXT

This subchapter, referred to in text, in the original read "this Act" (Pub. L. 95-626) and probably was meant to refer to title VI, §§ 601 to 608, and title VII, § 701, of Pub. L. 95-626, Nov. 10, 1978, 92 Stat. 3595 to 3601, which are classified to this subchapter.

Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to this chapter (§ 201 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

CODIFICATION

Section was enacted as title III of the Health Services and Centers Amendments of 1978 (Pub. L. 95-626), and not as part of the Public Health Service Act which comprises this chapter nor as part of titles VI or VII of the Health Services and Centers Amendments of 1978 (Pub. L. 95-626) which comprises this subchapter.

PART B—IMPROVING COORDINATION OF FEDERAL AND STATE PROGRAMS

§ 300a-41. Coordination of policies and programs

(a) Interference; technical assistance; legislative modifications; priorities

The Secretary shall coordinate, consistent with provisions of other Federal law respecting coordination of such policies and programs, Federal policies and programs providing services related to prevention of initial and repeat adolescent pregnancies. Among other things, the Secretary shall—

(1) require that grantees under part A of this subchapter report periodically on Federal, State, and local programs or policies that interfere with the delivery and coordination of pregnancy prevention and pregnancy-related services to adolescents;

(2) provide technical assistance to assure that coordination by grantees of Federal programs at the State and local level will be facilitated;

(3) recommend legislative modifications of programs of the Department of Health, Education, and Welfare that provide pregnancy-related services in order to facilitate their use as a base for delivery of more comprehensive pregnancy prevention and pregnancy-related services to adolescents;

(4) give funding priority, where appropriate, to grantees using single or coordinated grant applications for multiple programs; and

(5) give priority, where appropriate, to providing funding under existing Federal programs to projects providing comprehensive pregnancy prevention and pregnancy-related services.

(b) State coordination

A State using funds provided under part A of this subchapter to improve the delivery of pregnancy prevention and pregnancy-related services throughout the State shall coordinate its activities with programs of local grantees, if any, that are funded under part A of this subchapter.

(c) Evaluation

The Secretary shall set aside, in each fiscal year, not less than 1 per centum nor more than 3 per centum of the funds appropriated under this subchapter for evaluation of activities under this subchapter and shall designate a program unit to carry out such evaluations, which shall be a program unit other than the unit having primary administrative responsibility for carrying out the grant program authorized by this subchapter. The Secretary shall submit to the appropriate committees of the Congress, not later than February 1, 1981, and periodically thereafter copies of summaries of all such evaluations.

(d) Program unit responsibilities

The program unit responsible for carrying out the activities under this subchapter shall report directly to the Assistant Secretary for Health in consultation and in coordination with the Deputy Assistant Secretary for Population Affairs.

(Pub. L. 95-626, title VII, § 701, Nov. 10, 1978, 92 Stat. 3601.)

References in Text

This subchapter, referred to in subsec. (c), in the original read "this Act" (Pub. L. 95-626) and probably was meant to refer to title VI, §§ 601 to 608, and title VII, § 701, of Pub. L. 95-626, Nov. 10, 1978, 92 Stat. 3595 to 3601, which are classified to this subchapter.

Codification

Section was enacted as part of the Health Services and Centers Amendments of 1978, and not as part of the Public Health Service Act which comprises this chapter.

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER IX—GENETIC DISEASES, HEMOPHILIA PROGRAMS, AND SUDDEN INFANT DEATH SYNDROME

Part A—Genetic Diseases

§ 300b. Testing and counseling programs and information and education programs

(a)(1) The Secretary, through an identifiable administrative unit within the Department of Health, Education, and Welfare, may make grants to public and nonprofit private entities, and may enter into contracts with public and private entities, for projects to plan, establish and operate voluntary genetic testing and counseling programs primarily in conjunction with other existing health programs, including programs assisted under title V of the Social Security Act [42 U.S.C. 701 et seq.].

[*See main edition for text of* (*2*)]

(b) For the purpose of making payments pursuant to grants and contracts under this section and section 300b-6 of this title, there are authorized to be appropriated $30,000,000 for fiscal year 1976, $30,000,000 for fiscal year 1977, $30,000,000 for fiscal year 1978, $17,500,000 for the fiscal year ending September 30, 1979, $21,500,000 for the fiscal year ending September 30, 1980, and $26,000,000 for the fiscal year ending September 30, 1981.

(As amended Nov. 10, 1978, Pub. L. 95-626, title II, § 205(b), (d)(2), (e), 92 Stat. 3583, 3584.)

Amendments

1978—Subsec. (a)(1). Pub. L. 95-626, § 205(b), substituted "projects to plan, establish and operate" for "projects to establish and operate".

Subsec. (b). Pub. L. 95-626, § 205(d)(2), (e), substituted "under this section and section 300b-6 of this title" for "under this section" and added provisions authorizing appropriations of $17,500,000 for the fiscal year ending Sept. 30, 1979, $21,500,000 for the fiscal year ending Sept. 30, 1980, and $26,000,000 for the fiscal year ending Sept. 30, 1981.

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

Congressional Declaration of Purpose

Section 402 of Pub. L. 94-278, as amended by Pub. L. 95-626, title II, § 205(a), Nov. 10, 1978, 92 Stat. 3583, provided that: "In order to preserve and protect the health and welfare of all citizens, it is the purpose of this title [see section 401 of Pub. L. 94-278, set out as a Short Title of 1976 Amendment note under section 201 of this title] to establish a national program to provide for basic and applied research, research training, testing, counseling, and information and education programs with respect to genetic diseases, and genetic conditions, such as Sickle Cell anemia, Cooley's Anemia, Tay-Sachs disease, cystic fibrosis, dysautonomia, hemophilia, retinitis pigmentosa, Huntington's chorea, muscular dystrophy, and genetic conditions leading to mental retardation or genetically caused mental disorders."

Section Referred to in Other Sections

This section is referred to in sections 300b-3, 300b-6 of this title.

§ 300b-3. Application for grants and contracts

(a) Manner of submission; contents

A grant or contract under this part may be made upon application submitted to the Secretary at such time, in such manner, and containing and accompanied by such information, as the Secretary may require, including assurances for an evaluation whether performed by the applicant or by the Secretary. Such grant or contract may be made available on less than a statewide or regional basis. Each applicant shall—

[*See main edition for text of* (*1*) *to* (*5*); (*b*) *and* (*c*)]

(d) Recommendations from general public and medical or scientific authorities

In making any grant or entering into any contract under section 300b of this title the Secretary shall have developed a procedure under which persons from among members of the general public and from among leading medical or scientific authorities (acting as an advisory group, task force, or other entities appointed by the Secretary) knowledgeable about genetic diseases or conditions will have the opportunity on a regular basis to make recommendations to the Secretary.

(As amended Nov. 10, 1978, Pub. L. 95-626, title II, § 205(c), 92 Stat. 3584.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-626, § 205(c)(1), added requirement that the application contain assurances for an evaluation whether performed by the applicant or by the Secretary and that the grant or contract be made available on less than a statewide or regional basis.

Subsec. (d). Pub. L. 95-626, § 205(c)(2), added subsec. (d).

§ 300b-6. Applied technology

The Secretary, acting through an identifiable administrative unit, shall—

(1) conduct epidemiological assessments and surveillance of genetic diseases to define the scope and extent of such diseases and the need for programs for the diagnosis, treatment, and control of such diseases, screening for such diseases, and the counseling of persons with such diseases;

(2) on the basis of the assessments and surveillance described in paragraph (1), develop for use by the States programs which combine in an effective manner diagnosis, treatment, and control of such diseases, screening for such diseases, and counseling of persons with such diseases; and

(3) on the basis of the assessments and surveillance described in paragraph (1), provide technical assistance to States to implement the programs developed under paragraph (2) and train appropriate personnel for such programs.

In carrying out this section, the Secretary may, from funds appropriated under section 300b(b) of this title, make grants to or contracts with public or nonprofit private entities (including grants and contracts for demonstration projects).

(July 1, 1944, ch. 373, title XI, § 1107, as added Nov. 10, 1978, Pub. L. 95-626, title II, § 205(d)(1), 92 Stat. 3584.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300b of this title.

PART B—SUDDEN INFANT DEATH SYNDROME

§ 300c-11. Sudden infant death syndrome counseling, information, educational, and statistical programs; plans and reports

(a) Administrative unit for information and education; reports to Department; contract authority

(1) The Secretary, through an identifiable administrative unit under the supervision of the Assistant Secretary for Health, shall carry out a program to develop public information and professional educational materials relating to sudden infant death syndrome, and to disseminate such information and materials to persons providing health care, to public safety officials, and to the general public. The Secretary shall administer, through such unit, the functions assigned in this section, and shall provide such unit with such full-time professional and clerical staff and with the services of such consultants and of such management and supporting staff as may be necessary for it to carry out such functions effectively.

(2) The Secretary shall—

(A) develop and implement a system for the periodic reporting to the Department, and dissemination by the Department, of information collected under grants and contracts made under subsection (b)(1) of this section; and

(B) carry out coordinated clearinghouse activities on sudden infant death syndrome, including the collection and dissemination to the public, health and educational institutions, professional organizations, voluntary groups with a demonstrated interest in sudden infant death syndrome, and other interested parties of information pertaining to sudden infant death syndrome and related issues such as death investigation systems, personnel training, biomedical research activities, and information on the utilization and availability of treatment or prevention procedures and techniques, such as home monitors.

The Secretary is authorized to enter into contracts with public or private entities to carry out the information and clearinghouse activities required under this subsection.

(b) Grants to and contracts with public or private entities for projects applications: approval by Secretary, form, contents

(1) The Secretary is authorized to make grants to public or nonprofit private entities, and enter into contracts with public or private entities, for projects which include both—

(A) the collection, analysis, and furnishing of information (derived from post mortem examinations and other means) relating to the causes and other appropriate aspects of sudden infant death syndrome; and

(B) the provision of information and counseling to families affected by sudden infant death syndrome.

(2) No grant may be made or contract entered into under this subsection unless an application therefor has been submitted to and approved by the Secretary. Such application shall be in such form, submitted in such manner, and contain such information as the Secretary shall, by regulation, prescribe. Each application shall—

(A) provide that the project for which assistance under this subsection is sought will be administered by or under the supervision of the applicant;

(B) provide for appropriate community representation (including appropriate involvement of voluntary groups with a demonstrated interest in sudden infant death syndrome) in the development and operation of such project;

(C) set forth such fiscal controls and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for Federal funds paid to the applicant under this subsection; and

(D) provide for making such reports in such form, at such times, and containing such information as the Secretary may reasonably require, including such reports as will assist in carrying out the provisions of subsection (a)(2) of this section.

(c) Reports to Congressional Committees; study of State death investigations; pilot project recommendations

(1) Not later than February 1 of each year after 1979, the Secretary shall submit to the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives a comprehensive report on the administration of this part (including funds and positions allocated for personnel) and the results obtained from activities thereunder, including the extent of allocations made to rural and urban areas. The report submitted on or before February 1, 1980, shall also set forth a plan to—

(A) extend counseling and information services to the fifty States and the District of Columbia by July 1, 1980; and

(B) extend counseling and information services to all possessions and territories of the United States by July 1, 1981.

(2) The Secretary shall conduct or provide for the conduct of a study on State laws, practices, and systems relating to death investigation and their impact on sudden and unexplained infant deaths, and any appropriate means (such as model State laws governing death investigations) for improving the quality, frequency, and uniformity of the post mortem examinations performed under such laws, practices, and systems in the case of sudden and unexplained infant deaths. Not later than December 31, 1980, the Secretary shall report to the Congress the results of such study, including recommendations as to any appropriate actions by the Department of Health, Education, and Welfare with respect to the conduct of post mortem investigations in all cases of sudden and unexplained infant death (including the desirability and feasibility of establishing pilot projects for centralized post mortem and specimen examination systems on a statewide or regional basis).

(d) Authorization of appropriations; method of payment; bidding and advance payment exception; equitable distributions

(1) For the purpose of making grants and contracts under and otherwise carrying out this section, there are authorized to be appropriated $2,000,000 for the fiscal year ending June 30, 1975; $3,000,000 for the fiscal year ending June 30, 1976; $4,000,000 for fiscal year 1977; $3,650,000 for fiscal year 1978; $3,500,000 for fiscal year 1979; $5,000,000 for fiscal year 1980; and $7,000,000 for fiscal year 1981.

(2) Payments under grants under this section may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary.

(3) Contracts under this section may be entered into without regard to section 529 of title 31 and section 5 of title 41.

(4) The Secretary shall seek to make equitable distribution of funds appropriated under this section among the various regions of the country and to ensure that the needs of rural and urban areas are appropriately addressed.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 306(a), 91 Stat. 389; Dec. 19, 1977, Pub. L. 95-215, § 8(a), 91 Stat. 1507; Nov. 8, 1978, Pub. L. 95-613, § 2, 92 Stat. 3094; Dec. 12, 1979, Pub. L. 96-142, title II, § 202, 93 Stat. 1070.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-142 incorporated existing text in provisions designated par. (1), required the Secretary to administer his functions through an identifiable administrative unit staffed as provided by the Secretary, and added par. (2) and provision for contractual authority of the Secretary to carry out his information and clearinghouse activities.

Subsec. (b). Pub. L. 96-142 required in par. (1)(A) that projects cover information relating to other appropriate aspects other than causes of the sudden infant death syndrome, inserted in par. (2)(B) and (D) requirements that the application provide for appropriate involvement of voluntary groups with demonstrated interest in the syndrome and for time of making reports and inclusion of reports for carrying out subsec. (a)(2), and struck out pars. (3) to (5), now covered in subsec. (d), pars. (2), (3), and (1), respectively.

Subsec. (c). Pub. L. 96-142 added subsec. (c) and repealed similar former subsec. (c) requirement that the Secretary submit, not later than Jan. 1, 1976, a comprehensive report to the Committee on Labor and Public Welfare of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives respecting administration and results obtained from the authorized programs.

Subsec. (d). Pub. L. 96-142 incorporated provisions of former subsec. (b)(5) in par. (1) and authorized appropriation of $3,650,000; $3,500,000; $5,000,000; and $7,000,000 for fiscal years 1978 through 1981, respectively, and incorporated provisions of former subsec. (b)(3) and (4) in pars. (2) and (3), and added par. (4).

1978—Subsec. (b)(5). Pub. L. 95-613 authorized appropriations of $3,500,000 for the fiscal year ending Sept. 30, 1979, $4,000,000 for the fiscal year ending Sept. 30, 1980, and $5,000,000 for the fiscal year ending Sept. 30, 1981.

1977—Subsec. (b)(5). Pub. L. 95-215 inserted "fiscal year" before "ending September 30, 1977".

Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $3,650,000 for fiscal year ending Sept. 30, 1978.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 300c-12. Sudden infant death syndrome research and research reports

(a) Adequate amounts for identification and prevention progress

From the sums appropriated to the National Institute of Child Health and Human Development under section 289d of this title, the Secretary shall assure that there are applied to research of the type described in subparagraphs (A) and (B) of subsection (b)(1) of this section such amounts each year as will be adequate, given the leads and findings then available from such research, in order to make maximum feasible progress toward identification of infants at risk of sudden infant death syndrome and prevention of sudden infant death syndrome.

(b) Reports to Congressional Committees; contents: data as to applications and funds for specific and general research, summary of findings and plan for taking advantage of research leads and findings

(1) Not later than ninety days after the close of the fiscal year ending September 30, 1979, and of each fiscal year thereafter, the Secretary shall report to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Committee on Interstate and Foreign Commerce of the House of Representatives specific information for such fiscal year on—

(A) the (i) number of applications approved by the Secretary in the fiscal year reported on for grants and contracts under this chapter for research which relates specifically to sudden infant death syndrome, (ii) total amount requested under such applications, (iii) number of such applications for which funds were provided in such fiscal year, and (iv) total amount of such funds; and

(B) the (i) number of applications approved by the Secretary in such fiscal year for grants and contracts under this chapter for research which relates generally to sudden infant death syndrome, including high-risk pregnancy and high-risk infancy research which directly relates to sudden infant death syndrome, (ii) relationship of the high-risk pregnancy and high-risk infancy research to sudden infant death syndrome, (iii) total amount requested under such applications, (iv) number of such applications for which funds were provided in such fiscal year, and (v) total amount of such funds.

(2) Each report submitted under paragraph (1) of this subsection shall—

(A) contain a summary of the findings of intramural and extramural research supported by the National Institute of Child Health and Human Development relating to sudden infant death syndrome as described in subparagraphs (A) and (B) of such paragraph (1), and the plan of such Institute for taking maximum advantage of such research leads and findings; and

(B) provide an estimate of the need for additional funds over each of the next five fiscal years for grants and contracts under this chapter for research activities described in such subparagraphs.

(c) Reports to Congressional Committees; current and past estimates for research

Within five days after the Budget is transmitted by the President to the Congress for each fiscal year after fiscal year 1980, the Secretary shall transmit to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on Labor and Human Resources of the Senate, and the Committee on Interstate and Foreign Commerce of the House of Representatives an estimate of the amounts requested for the National Institute of Child Health and Human Development and any other Institutes of the National Institutes of Health, respectively, for research relating to sudden infant death syndrome as described in subparagraphs (A) and (B) of subsection (b)(1) of this section, and a comparison of such amounts with the amounts requested for the preceding fiscal year.

(July 1, 1944, ch. 373, title XI, § 1122, as added Dec. 12, 1979, Pub. L. 96-142, title II, § 202, 93 Stat. 1072.)

PART C—HEMOPHILIA PROGRAMS

§ 300c-21. Comprehensive hemophilia diagnostic and treatment centers

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Authorization of appropriations

There are authorized to be appropriated to make payments under grants and contracts under subsection (a) of this section $3,000,000 for fiscal year 1976, $4,000,000 for the fiscal year ending September 30, 1977, $4,550,000 for the fiscal year ending September 30, 1978, $4,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, and $6,000,000 for the fiscal year ending September 30, 1981.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 306(b), 91 Stat. 389; Nov. 10, 1978, Pub. L. 95-626, title II, § 206(a), 92 Stat. 3584.)

AMENDMENTS

1978—Subsec. (f). Pub. L. 95-626 added provisions authorizing appropriations of $4,000,000 for the fiscal year ending Sept. 30, 1979, $5,000,000 for the fiscal year ending Sept. 30, 1980, and $6,000,000 for the fiscal year ending Sept. 30, 1981.

1977—Subsec. (f). Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $4,550,000 for fiscal year ending Sept. 30, 1978.

§ 300c-22. Blood-separation centers

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Authorization of appropriations

For the purpose of making payments under grants and contracts under subsections (a) and (b) of this section, there are authorized to be appropriated $4,000,000 for fiscal year 1976, $5,000,000 for the fiscal year ending September 30, 1977, $3,450,000 for the fiscal year ending September 30, 1978, $2,500,000 for the fiscal year ending September 30, 1979, $3,000,000 for the fiscal year ending September 30, 1980, and $3,500,000 for the fiscal year ending September 30, 1981.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 306(c), 91 Stat. 389; Nov. 10, 1978, Pub. L. 95-626, title II, § 206(b), 92 Stat. 3584.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-626 added provisions authorizing appropriations of $2,500,000 for the fiscal year ending Sept. 30, 1979, $3,000,000 for the fiscal year ending Sept. 30, 1980, and $3,500,000 for the fiscal year ending Sept. 30, 1981.

1977—Subsec. (e). Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $3,450,000 for fiscal year ending Sept. 30, 1978.

SUBCHAPTER X—EMERGENCY MEDICAL SERVICES SYSTEMS

PART A—ASSISTANCE FOR EMERGENCY MEDICAL SERVICES SYSTEMS

§ 300d-1. Grants and contracts for feasibility studies and planning

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Priorities of eligible entities

Priority for making grants or entering into contracts under this section shall be afforded to eligible entities applying for such grants or contracts under subsection (a) of this section.

(As amended Dec. 12, 1979, Pub. L. 96-142, title I, § 103, 93 Stat. 1067.)

AMENDMENTS

1979—Subsec. (f). Pub. L. 96-142 substituted provision respecting priorities of eligible entities for limitation on maximum yearly obligations and expenditures under subsec. (b)(1) of this section.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-142 effective with respect to appropriations made for fiscal years beginning after Sept. 30, 1979, see section 108 of Pub. L. 96-142, set out as an Effective Date of 1979 Amendment note under section 295g-9 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300d-5, 300d-6, 300d-7 of this title.

§ 300d-2. Grants and contracts for establishing and initial operation of emergency medical services system

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Modernization of emergency facilities; additional grant or contract; limitations; rural area system, financial assistance

(1) Grants and contracts under this section may be used for the modernization of facilities for emergency medical services systems and other costs of establishment and initial operation.

(2) If a grant or contract is made under this section for a system, the Secretary may make one additional grant or contract for that system if he determines, after a review of at least the first nine months' activities of the applicant carried out under the first grant or contract, that the applicant is satisfactorily progressing in the establishment and operation of the system in accordance with the plan contained in its application (pursuant to section 300d-5(b)(4) of this title) for the first grant or contract.

(3) Subject to section 300d-5(f) of this title—

(A) the amount of the first grant or contract under this section for an emergency medical services system may not exceed (i) 50 per centum of the establishment and operation costs (as determined pursuant to regulations of the Secretary) of the system for the year for which the grant or contract is made, or (ii) in the case of applications which demonstrate an exceptional need for financial assistance, 75 per centum of such costs for such year; and

(B) the amount of the second grant or contract under this section for a system may not exceed (i) 25 per centum of the establishment and operation costs (as determined pursuant to regulations of the Secretary) of the system for the year for which the grant or contract is made, or (ii) in the case of applications which demonstrate an exceptional need for financial assistance, 50 per centum of such costs for such year.

(4) In considering applications which demonstrate exceptional need for financial assistance, the Secretary shall give special consideration to applications submitted for emergency medical services systems for rural areas (as defined in regulations of the Secretary).

(5) Redesignated (4)

[*See main edition for text of* (*d*) *to* (*f*)]

(As amended Nov. 10, 1978, Pub. L. 95-626, title II, § 210(a), 92 Stat. 3588; July 10, 1979, Pub. L. 96-32, § 7(*l*), 93 Stat. 84.)

AMENDMENTS

1979—Subsec. (c)(2). Pub. L. 96-32 substituted "review of at least the first" for "review of the first at least".

1978—Subsec. (c). Pub. L. 95-626 struck out provisions in par. (2) which had required that each grant or contract be made for costs of establishment and operation in the year for which the grant or contract was made, struck out par. (3) which had provided that no grant or contract could be made for the fiscal year ending Sept. 30, 1979, to an entity which had not received a grant or contract for the preceding fiscal year, and redesignated pars. (4) and (5) as (3) and (4), respectively.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 210(a)(1) of Pub. L. 95-626 provided in part that the amendment of subsec. (c)(2) of this section by section 210(a)(1) of Pub. L. 95-626, deleting provision of subsec. (c)(2) of this section that each grant or contract under this section be made for costs of establishment and operation in the year for which the grant or contract is made, is effective June 30, 1975.

§ 300d-3. Grants and contracts for expansion and improvements

[*See main edition for text of* (*a*)]

(b) Eligible costs; award of additional grants or contracts; use restrictions; maximum amounts

(1) Except as provided in paragraph (2), if a grant or contract is made or entered into under this section for a system, the Secretary may make one additional grant or contract for that system if he determines, after a review of at least the first nine months' activities of the applicant carried out under the first grant or contract, that the applicant is satisfactorily progressing in the expansion and improvement of the system in accordance with the plan contained in its application (pursuant to section 300d-5(b)(4) of this title) for the first grant or contract.

(2) The Secretary may make a third grant or enter into a third contract under subsection (a) of this section for an emergency medical services system if—

(A) Federal financial assistance under this chapter for emergency medical services for the geographical area with respect to which such grant or contract would be made or entered into was first provided under a grant or contract under this section, or

(B) the Secretary determines that the applicant (i) demonstrates an exceptional need for such grant or contract, and (ii) is making substantial progress toward achieving financial support to implement the plan described in subsection (d)(1)(B)(ii) of this section.

A third grant or contract under subsection (a) of this section may not be used to replace equipment or facilities acquired with a previous grant or contract under such subsection.

(3) Subject to section 300d-5(f) of this title—

(A) the amount of the first grant or contract under this section for an emergency medical services system may not exceed (i) 50 per centum of the expansion and improvement costs (as determined pursuant to regulations of the Secretary) of the system for the year for which the grant or contract is made, or (ii) in the case of applications which demonstrate an exceptional need for financial assistance, 75 per centum of such costs for such year; and

(B) the amount of a grant or contract (other than the first grant or contract) under this section for a system may not exceed (i) 25 per centum of the expansion and improvement costs (as determined pursuant to regulations of the Secretary) of the system for the year for which the grant or contract is made, or (ii) in the case of applications which demonstrate an exceptional need for financial assistance, 50 per centum of such costs for such year.

[*See main edition for text of* (c)]

(d) Prerequisites for first and second grants or contracts

[*See main edition for text of* (*1*)]

(2) A grant or contract (other than the first grant or contract) may not be made to or entered into with an entity under this section with respect to an emergency medical services system unless—

[*See main edition for text of* (*A*) *and* (*B*)]

(e) Reports to Secretary and Interagency Committees

An eligible entity which has received a grant from or has entered into a contract with the Secretary under this section shall submit to the Secretary and the Interagency Committee on Emergency Medical Services (established under section 300d-8 of this title) a report on the results of such grant or contract at such intervals as the Secretary may prescribe, and shall submit to the Secretary and such Committee a final report on the results of grants made to or contracts entered into with the entity under this section not later than one year after the completion of the last such grant or contract under this section.

(As amended Nov. 10, 1978, Pub. L. 95-626, title II, § 210(b), 92 Stat. 3588; Dec. 12, 1979, Pub. L. 96-142, title I, § 104(a), (b), 93 Stat. 1067, 1068.)

AMENDMENTS

1979—Subsec. (b)(1). Pub. L. 96-142, § 104(b)(1), inserted introductory phrase "Except as provided in paragraph (2),".

Subsec. (b)(2). Pub. L. 96-142, § 104(a)(2), added par. (2). Former par. (2) redesignated (3).

Subsec. (b)(3). Pub. L. 96-142, § 104(a)(1), (b)(2), redesignated par. (2) as (3) and in subpar. (B) substituted "a grant or contract (other than the first grant or contract)" for "the second grant or contract".

Subsec. (d)(2). Pub. L. 96-142, § 104(b)(3), substituted "A grant or contract (other than the first grant or contract)" for "A second grant or contract".

Subsec. (e). Pub. L. 96-142, § 104(b)(4), substituted "last such grant" for "second such grant".

1978—Subsec. (b)(1). Pub. L. 95-626 struck out provision requiring that each grant or contract for a project be made for the project's costs of expansion and improvement in the year for which the grant or contract is made or entered into.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-142 effective with respect to appropriations made for fiscal years beginning after Sept. 30, 1979, see section 108 of Pub. L. 96-142, set out as an Effective Date of 1979 Amendment note under section 295g-9 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Section 210(b) of Pub. L. 95-626 provided in part that the amendment by Pub. L. 95-626 is effective June 30, 1975.

§ 300d-4. Grants and contracts for research

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300d-5, 300d-6, 300d-7 of this title.

§ 300d-5. General provisions respecting grants and contracts

[*See main edition for text of* (*a*)]

(b) Applications, submission and approval; maximum assistance period; approval requirements; grant or contract period; alternate plans, submission; emergency medical services system requirements; standards and criteria; technical assistance

(1)(A) No grant or contract may be made under this part unless an application therefor has been submitted to, and approved by, the Secretary.

(B) No applicant may receive more than a total of five grants, contracts, or grants and contracts under this part, except that in determining the number of grants and contracts which an applicant received under this part, the Secretary shall not include any grant or contract received under section 300d-1(b)(1) or 300d-4 of this title or a third grant or contract received under section 300d-3 of this title.

[*See main edition for text of* (2) *to* (5); (c) *to* (*f*)]

(As amended Nov. 10, 1978, Pub. L. 95-626, title II, § 210(c), 92 Stat. 3588; Dec. 12, 1979, Pub. L. 96-142, title I, § 104(c), 93 Stat. 1068.)

AMENDMENTS

1979—Subsec. (b)(1)(B). Pub. L. 96-142 excluded also from the numerical limitation a third grant or contract received under section 300d-3 of this title.

1978—Subsec. (b)(1)(B). Pub. L. 95-626 substituted "No applicant may receive more than a total of five grants, contracts, or grants and contracts under this part, except that in determining the number of grants and contracts which an applicant received under this part, the Secretary shall not include any grant or contract received under section 300d-1(b)(1) or 300d-4 of this title" for "No applicant may receive more than a total of five years of grant or contract assistance under this part, except that, in determining the number of years or grant or contract assistance which an applicant received under this part, the Secretary shall not include any period during which the applicant received grant or contract assistance under section 300d-1(b)(1) or 300d-4 of this title".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-142 effective with respect to appropriations made for fiscal years beginning after Sept. 30, 1979, see section 108 of Pub. L. 96-142, set out as an Effective Date of 1979 Amendment note under section 295g-9 of this title.

§ 300d-6. Authorization of appropriations

(a)(1)(A) Except as provided in subparagraph (B), for the purpose of making payments pursuant to grants and contracts under sections 300d-1, 300d-2, and 300d-3 of this title, there are authorized to be appropriated $30,000,000 for the fiscal year ending June 30, 1974, $60,000,000 for the fiscal year ending June 30, 1975, $35,000,000 for the fiscal year ending June 30, 1976, $5,083,000 for the period beginning July 1, 1976, and ending September 30, 1976, $45,000,000 for the fiscal year ending September 30, 1977, $55,000,000 for the fiscal year ending September 30, 1978, $70,000,000 for the fiscal year ending September 30, 1979, and $40,000,000 for the fiscal year ending September 30, 1980, and for each of the next two fiscal years.

(B) No funds appropriated under subparagraph (A) may be used to make payments under a third grant or contract made or entered into under section 300d-3 of this title. For the purpose of making payments under such a grant or contract, there are authorized to be appropriated $6,000,000 for the fiscal year ending September 30, 1981.

[*See main edition for text of* (2) *to* (4)]

(5)(A) Of the sums appropriated under paragraph (1) for the fiscal year ending September 30, 1977, and for each of the two succeeding fiscal years, at least 2½ per centum but not more than 5 per centum of such sums for each such fiscal year shall be used for grants and contracts under section 300d-1 of this title. Of the sums appropriated under paragraph (1)(A)—

(i) at least 1 per centum of the sums appropriated for the fiscal year ending September 30, 1980, at least three-fourths of 1 per centum of the sums appropriated for the fiscal year ending September 30, 1981, and at least one-half of 1 per centum of the sums appropriated for the fiscal year ending September 30, 1982, and

(ii) not more than 5 per centum of the sums appropriated for any such fiscal year,

shall be used for grants and contracts under section 300d-1 of this title.

(B) Of the sums appropriated under paragraph (1)(A) for the fiscal year ending September 30, 1977, and for each of the five succeeding fiscal years, (i) not less than 20 per centum of such sums for each such fiscal year shall be used for grants and contracts under section 300d-2 of this title, and (ii) not less than 20 per centum of such sums for each such fiscal year shall be used for grants and contracts under section 300d-3 of this title.

(b) For the purpose of making payments pursuant to grants and contracts under section 300d-4 of this title (relating to research), there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1974, and for each of the next five fiscal years, $3,000,000 for the fiscal year ending September 30, 1980, $3,500,000 for the fiscal year ending September 30, 1981, and $3,500,000 for the fiscal year ending September 30, 1982.

(As amended Nov. 10, 1978, Pub. L. 95-626, title II, § 210(d), 92 Stat. 3588; Dec. 12, 1979, Pub. L. 96-142, title I, § 105, 93 Stat. 1068.)

AMENDMENTS

1979—Subsec. (a)(1)(A). Pub. L. 96-142, § 105(a)(1)-(4), redesignated existing provisions as subpar. (A), and in subpar. (A) as so redesignated, inserted "Except as provided in subparagraph (B)," preceding "the purpose of", struck out "and for the purpose of making payments pursuant to grants and contracts under sections 300d-1, 300d-2, and 300d-3 of this title, there are authorized to be appropriated" following "September 30, 1978", and authorized appropriations of $40,000,000 for fiscal years ending Sept. 30, 1980, through 1982.

Subsec. (a)(1)(B). Pub. L. 96-142, § 105(a)(5), added subpar. (B).

Subsec. (a)(5)(A). Pub. L. 96-142, § 105(b)(1), prescribed limits on appropriations to be used for section 300d-1 grants and contracts for fiscal years ending Sept. 30, 1980, through 1982.

Subsec. (a)(5)(B). Pub. L. 96-142, § 105(b)(2), substituted in provision preceding cl. (i), "paragraph (1)(A)" for "paragraph (1)" and "five" for "two", and in cl. (i) "such fiscal year" for "such fiscal years".

Subsec. (b). Pub. L. 96-142, § 105(c), authorized appropriations of $3,000,000; $3,500,000; and $3,500,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

1978—Subsec. (a)(1). Pub. L. 95-626, § 210(d)(1), substituted "and for the purpose of making payments pursuant to grants and contracts under sections 300d-1, 300d-2, and 300d-3 of this title" for "and for the purpose of making payments pursuant to grants and contracts under sections 300d-2 and 300d-3 of this title".

Subsec. (a)(5)(A). Pub. L. 95-626, § 210(d)(2), substituted "for each of the two succeeding fiscal years" for "for the succeeding fiscal year".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-142 effective with respect to appropriations made for fiscal years beginning after Sept. 30, 1979, see section 108 of Pub. L. 96-142, set out as an Effective Date of 1979 Amendment note under section 295g-9 of this title.

§ 300d-7. Administration

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300d-4, 300d-8 of this title.

§ 300d-8. Interagency Committee on Emergency Medical Services

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Chairman of Committee; membership representative of Federal agencies and offices and general public; meetings

The Secretary or his designee shall serve as Chairman of the Committee, the membership of which shall include (1) appropriate scientific, medical, or technical representation from the Department of Transportation, the Department of Justice, the Department of Defense, the Veterans' Administration, the National Science Foundation, the Federal Communications Commission, the Federal Emergency Management Agency (established pursuant to Reorganization Plan Number 3 of June 19, 1978), and such other Federal agencies and offices (including appropriate agencies and offices of the Department of Health, Education, and Welfare) and from the National Academy of Sciences, as the Secretary determines administer programs directly affecting the functions or responsibilities of emergency medical services systems, and (2) five individuals from the general public appointed by the President from individuals who by virtue of their training or experience are particularly qualified to participate in the performance of the Committee's functions. The Committee shall meet at the call of the Chairman, but not less often than four times a year.

[*See main edition for text of* (*d*) *to* (*f*)]

(As amended Dec. 12, 1979, Pub. L. 96-142, title I, § 106, 93 Stat. 1069.)

REFERENCES IN TEXT

Reorganization Plan Number 3 of June 19, 1978, referred to in subsec. (c), is Reorg. Plan No. 3 of 1978, eff. Apr. 1, 1979, 43 F.R. 41943, 92 Stat. 3790, which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-142 extended Committee membership to include Federal Emergency Management Agency.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-142 effective with respect to appropriations made for fiscal years beginning after Sept. 30, 1979, see section 108 of Pub. L. 96-142, set out as an Effective Date of 1979 Amendment note under section 295g-9 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300d-1, 300d-2, 300d-3, 300d-7 of this title.

PART B—BURN, TRAUMA, AND POISON INJURIES

AMENDMENTS

1979—Pub. L. 96-142, title I, § 107(d)(1), Dec. 12, 1979, 93 Stat. 1069, substituted as part B heading "BURN, TRAUMA, AND POISON INJURIES" for "BURN INJURIES".

§ 300d-21. Programs relating to burn, trauma, and poison injuries

(a) Public or private nonprofit entities; individuals

(1) The Secretary may make grants to, and enter into contracts with, public or private nonprofit entities for the support of, and may conduct, programs for the establishment, operation, and improvement of activities to (A) demonstrate the effectiveness of different methods and organizational arrangements for the treatment and rehabilitation of individuals injured by burns, trauma, or poison, (B) conduct research in the treatment and rehabilitation of such individuals, and (C) provide training in such treatment and rehabilitation and in such research.

(2) The Secretary may enter into contracts with entities and individuals for the support of research in the treatment and rehabilitation of individuals injured by burns, trauma, or poison.

(b) Submission and approval of applications; priority applications; maximum amount for poison injuries

No grant or contract may be made or entered into under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be submitted in such form and manner and contain such information as the Secretary may require. In considering applications under this section, the Secretary shall give priority to applications for programs which (1) will provide services within a geographical area in which services are not currently being adequately provided, and (2) are in or accessible to the service area of an emergency medical services system (as defined in section 300d(1) of this title). No grant or contract under subsection (a) of this section for a program relating to poison injuries may be made for an amount in excess of 50 per centum of the costs of the program for which it is made.

(c) Authorization of appropriations; minimum amount for poison and trauma injuries

For purposes of carrying out subsection (a) of this section, there are authorized to be appropriated $5,000,000 for the fiscal year ending

September 30, 1977, $7,500,000 for the fiscal year ending September 30, 1978, $10,000,000 for the fiscal year ending September 30, 1979, $6,000,000 for the fiscal year ending September 30, 1980, $12,000,000 for the fiscal year ending September 30, 1981, and $10,000,000 for the fiscal year ending September 30, 1982. Not less than 50 per centum of the funds appropriated under this subsection for the fiscal year ending September 30, 1980, shall be obligated for grants and contracts under subsection (a) of this section for programs relating to poison injuries. Not less than 25 per centum of the funds appropriated under this subsection for each of the fiscal years ending September 30, 1981, and September 30, 1982, shall be obligated for grants and contracts under subsection (a) of this section for programs relating to poison injuries and not less than 25 per centum of such funds shall be obligated for grants and contracts under subsection (a) of this section for programs relating to trauma injuries.

(As amended Dec. 12, 1979, Pub. L. 96-142, title I, § 107(a)-(c), 93 Stat. 1069.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-142, § 107(a), inserted, in par. (1)(A), "and organizational arrangements" following "different methods" and ", trauma, or poison" following "injured by burns" and, in par. (2), "trauma, or poison" following "injured by burns".

Subsec. (b). Pub. L. 96-142, § 107(b), limited amount for a program relating to poison injuries to 50 per centum of the costs of the program for which made.

Subsec. (c). Pub. L. 96-142, § 107(c), authorized appropriation of $6,000,000; $12,000,000; and $10,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively, and prescribed minimum amounts for programs relating to poison injuries for fiscal years ending Sept. 30, 1980, through 1982, and minimum amounts for programs relating to trauma injuries for fiscal years ending Sept. 30, 1981, and 1982.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-142 effective with respect to appropriations made for fiscal years beginning after Sept. 30, 1979, see section 108 of Pub. L. 96-142, set out as an Effective Date of 1979 Amendment note under section 295g-9 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300d-5, 300d-7 of this title.

SUBCHAPTER XI—HEALTH MAINTENANCE ORGANIZATIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 12 section 1721.

§ 300e. Requirements of health maintenance organizations

[*See main edition for text of* (*a*)]

(b) Manner of supplying basic and supplemental health services to members

A health maintenance organization shall provide, without limitations as to time or cost other than those prescribed by or under this subchapter, basic and supplemental health services to its members in the following manner:

(1) Each member is to be provided basic health services for a basic health services payment which (A) is to be paid on a periodic basis without regard to the dates health services (within the basic health services) are provided; (B) is fixed without regard to the frequency, extent, or kind of health service (within the basic health services) actually furnished; (C) except in the case of basic health services provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education, is fixed under a community rating system; and (D) may be supplemented by additional nominal payments which may be required for the provision of specific services (within the basic health services), except that such payments may not be required where or in such a manner that they serve (as determined under regulations of the Secretary) as a barrier to the delivery of health services. Such additional nominal payments shall be fixed in accordance with the regulations of the Secretary. A health maintenance organization may include a health service, defined as a supplemental health service by section 300e-1(2) of this title, in the basic health services provided its members for a basic health services payment described in the first sentence. In the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e-9(d) of this title) provided comprehensive health services on a prepaid basis, the requirement of clause (C) shall not apply to such entity until the expiration of the forty-eight month period beginning with the month following the month in which the entity became such a qualified health organization. The requirements of this paragraph respecting the basic health services payment shall not apply to the provision of basic health services to a member for an illness or injury for which the member is entitled to benefits under a workmen's compensation law or an insurance policy but only to the extent such benefits apply to such services. For the provision of such services for an illness or injury for which a member is entitled to benefits under such a law, the health maintenance organization may, if authorized by such law, charge or authorize the provider of such services to charge, in accordance with the charges allowed under such law, the insurance carrier, employer, or other entity which under such law is to pay for the provision of such services or, to the extent that such member has been paid under such law for such services, such member. For the provision of such services for an illness or injury for which a member is entitled to benefits under an insurance policy, a health maintenance organization may charge or authorize the provider of such services to charge the insurance carrier under such policy or, to the extent that such member has been paid under such policy for such services, such member.

(2) For such payment or payments (hereinafter in this subchapter referred to as "supplemental health services payments") as the health maintenance organization may require

in addition to the basic health services payment, the organization may provide to each of its members any of the health services which are included in supplemental health services (as defined in section 300e-1(2) of this title). Supplemental health services payments which are fixed on a prepayment basis shall be fixed under a community rating system unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education, except that, in the case of an entity which before it became a qualified health maintenance organization (within the meaning of section 300e-9(d) of this title) provided comprehensive health services on a prepaid basis, the requirement of this sentence shall not apply to such entity during the forty-eight month period beginning with the month following the month in which the entity became such a qualified health maintenance organization.

(3)(A) Except as provided in subparagraph (B), the services of a physician which are provided as basic health services shall be provided through—

(i) members of the staff of the health maintenance organization,

(ii) a medical group (or groups),

(iii) an individual practice association (or associations),

(iv) subject to subparagraph (C), physicians or other health professionals who have contracted with the health maintenance organization for the provision of such services, or

(v) any combination of such staff, medical group (or groups), individual practice association (or associations) or physicians or other health professionals under contract with the organization.

(B)(i) Subparagraph (A) does not apply to the provision of the services of a physician—

(I) which the health maintenance organization determines, in conformity with regulations of the Secretary, are unusual or infrequently used, or

(II) which are provided a member of the organization in a manner other than that prescribed by subparagraph (A) because of an emergency which made it medically necessary that the service be provided to the member before it could be provided in a manner prescribed by subparagraph (A).

(ii) In a forty-eight-month period beginning after the month in which a health maintenance organization becomes a qualified health maintenance organization (within the meaning of section 300e-9(d) of this title, the organization may provide the services of physicians through an entity which but for the requirement of section 300e-1(4)(C)(i) of this title would be a medical group for the purposes of this subchapter. After the expiration of such period, the organization may provide physician services through such an entity only if authorized by the Secretary in accordance with regulations which take into consideration the unusual circumstances of such entity.

(C) After the expiration of the first four fiscal years of a health maintenance organization beginning after the month in which it became a qualified health maintenance organization (within the meaning of section 300e-9(d) of this title), the organization may not enter into contracts with physicians other than members of staff, medical groups, or individual practice associations if the amounts paid under such contracts for basic and supplemental health services provided by physicians exceed 15 per centum of the total estimated amount to be paid in such fiscal year by the health maintenance organization to physicians for the provision of basic and supplemental health services by physicians, or, if the health maintenance organization principally serves a rural area, 30 per centum of such amount, except that this subparagraph does not apply to the entering into contracts for the purchase of physician services through an entity which, but for the requirements of section 300e-1(4)(C)(i) of this title, would be a medical group for the purposes of this subchapter.

(D) Contracts between a health maintenance organization and health professionals for the provision of basic and supplemental health services shall include such provisions as the Secretary may require (including provisions requiring appropriate continuing education).

(E) For purposes of this paragraph the term "health professional" means physicians, dentists, nurses, podiatrists, optometrists, and such other individuals engaged in the delivery of health services as the Secretary may by regulation designate.

(4) Basic health services (and only such supplemental health services as members have contracted for) shall within the area served by the health maintenance organization be available and accessible to each of its members promptly as appropriate and in a manner which assures continuity, and when medically necessary be available and accessible twenty-four hours a day and seven days a week. A member of a health maintenance organization shall be reimbursed by the organization for his expenses in securing basic and supplemental health services other than through the organization if the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition.

(5) To the extent that a natural disaster, war, riot, civil insurrection, or any other similar event not within the control of a health maintenance organization (as determined under regulations of the Secretary) results in the facilities, personnel, or financial resources of a health maintenance organization not being available to provide or arrange for the provision of a basic or supplemental health service in accordance with the requirements of paragraphs (1) through (4) of this subsection, such requirements only require the organization to make a good-faith effort to provide or arrange for the provision of such serv-

ice within such limitation on its facilities, personnel, or resources.

(c) Organization, practices, and activities

Each health maintenance organization shall—

(1)(A) have a fiscally sound operation and adequate provision against the risk of insolvency which is satisfactory to the Secretary, and (B) have administrative and managerial arrangements satisfactory to the Secretary;

[*See main edition for text of* (2)]

(3)(A) enroll persons who are broadly representative of the various age, social, and income groups within the area it serves, except that in the case of a health maintenance organization which has a medically underserved population located (in whole or in part) in the area it serves, not more than 75 per centum of the members of that organization may be enrolled from the medically underserved population unless the area in which such population resides is also a rural area (as designated by the Secretary), and (B) carry out enrollment of members who are entitled to medical assistance under a State plan approved under title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] in accordance with procedures approved under regulations promulgated by the Secretary;

[*See main edition for text of* (4) *and* (5)]

(6)(A) in the case of a private health maintenance organization, be organized in such a manner that assures that (i) at least one-third of the membership of the policymaking body of the health maintenance organization will be members of the organization, and (ii) there will be equitable representation on such body of members from medically underserved populations served by the organization, and (B) in the case of a public health maintenance organization, have an advisory board to the policymaking body of the public entity operating the organization which board meets the requirements of clause (A) of this paragraph and to which may be delegated policymaking authority for the organization;

[*See main edition for text of* (7) *to* (11); (*d*)]

(As amended Nov. 1, 1978, Pub. L. 95-559, §§ 9(b), 10, 11(a)-(d), 92 Stat. 2137-2139; July 10, 1979, Pub. L. 96-32, § 2(b), 93 Stat. 82.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XIX of the Social Security Act is classified generally to subchapter XIX (§ 1396 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1979—Subsec. (b)(3). Pub. L. 96-32 amended directory language of section 11(a) of Pub. L. 95-559 by substituting reference to section "1301" for "1310" of the Public Health Service Act, as the section to be amended, and required no change in text because the amendment made by Pub. L. 95-559 had been executed to this section as the probable intent of Congress.

1978—Subsec. (b)(1). Pub. L. 95-559, §§ 10(a), 11(b), inserted "except in the case of basic health services provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education," following "the requirement of clause (C)" and added provisions permitting the health maintenance organization to seek reimbursement for the cost of services provided to a member who is entitled to benefits under a workmen's compensation law or insurance policy.

Subsec. (b)(2). Pub. L. 95-559, § 10(a), inserted "unless the supplemental health services payment is for a supplemental health service provided a member who is a full-time student (as defined by the Secretary) at an accredited institution of higher education," following "community rating system".

Subsec. (b)(3). Pub. L. 95-559, § 11(a), as amended by Pub. L. 96-32, added provisions limiting the health maintenance organization from entering into contracts for health services with physicians other than members of the staff of the health maintenance organization, medical groups, or individual practice associations. See codification note set out above.

Subsec. (b)(4). Pub. L. 95-559, § 11(c), substituted "basic and supplemental" for "basic or supplemental" and "if the services were medically necessary and immediately required because of an unforeseen illness, injury, or condition" for "if it was medically necessary that the services be provided before it could secure them through the organization".

Subsec. (b)(5). Pub. L. 95-559, § 11(d), added par. (5).

Subsec. (c)(1). Pub. L. 95-559, § 10(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(3). Pub. L. 95-559, § 9(b), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(6). Pub. L. 95-559, § 10(c), designated existing provisions as subpar. (A) and, in subpar. (A) as so designated, inserted "in the case of a private health maintenance organization," preceding "be organized in such" and substituted "(i)" for "(A)" and "(ii)" for "(B)", and added subpar. (B).

SHORT TITLE OF 1978 AMENDMENT

For short title of Pub. L. 95-559 as the "Health Maintenance Organization Amendments of 1978", see section 1 of Pub. L. 95-559, set out as a Short Title of 1978 Amendment note under section 201 of this title.

HEALTH CARE QUALITY ASSURANCE PROGRAMS STUDY

Section 4 of Pub. L. 93-222, which provided that the Secretary of Health, Education, and Welfare contract for the conduct of a study of health care quality assurance programs and submit a final report to specific committees of Congress by Jan. 31, 1976, was omitted from the Code as executed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e-5, 300e-6, 300e-9, 300e-10, 300e-11, 300e-14, 1301, 1320a-3, 1396b of this title.

§ 300e-1. Definitions

For purposes of this subchapter:

(1) The term "basic health services" means—

[*See main edition for text of* (A) *to* (H)]

Such term does not include a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for the protection of individual health. The Secretary shall publish in the Federal Register each determination made by him under the preceding sentence. If a service of a physician described in the preceding sentence may also be provided under applicable State law by a dentist, optometrist, podiatrist, or other health care personnel, a health maintenance organization may provide such service through a dentist, optometrist, podiatrist, or other health care personnel (as the case may be) licensed to provide such service. For purposes of this paragraph, the term "home health services" means health services provided at a member's home by health care personnel, as prescribed or directed by the responsible physician or other authority designated by the health maintenance organization. A health maintenance organization is authorized, in connection with the prescription of drugs, to maintain, review, and evaluate (in accordance with regulations of the Secretary) a drug use profile of its members receiving such service, evaluate patterns of drug utilization to assure optimum drug therapy, and provide for instruction of its members and of health professionals in the use of prescription and non-prescription drugs.

[*See main edition for text of* (*2*) *to* (*9*)]

(As amended Nov. 1, 1978, Pub. L. 95-559, § 11(e), 92 Stat. 2139.)

AMENDMENTS

1978—Par. (1). Pub. L. 95-559 added provisions that such term does not include a health service which the Secretary, upon application of a health maintenance organization, determines is unusual and infrequently provided and not necessary for the protection of individual health and that the Secretary publish in the Federal Register each determination made by him under the preceding sentence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 289*l*-1, 300e, 1395x, of this title; title 5 section 8902.

§ 300e-2. Grants and contracts for feasibility surveys

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e-5, 300e-6, 300e-8, 300e-16 of this title.

§ 300e-3. Grants, contracts, and loan guarantees for planning and for initial development costs

[*See main edition for text of* (*a*)]

(b) Initial development of health organizations; continuing development assistance

[*See main edition for text of* (*1*)]

(2) For purposes of this section, the term "initial development" when used to describe a project for which assistance is authorized by this subsection means the establishment of a health maintenance organization, the expansion of the services of a health maintenance organization, or the significant expansion of the membership of, or the area served by a health maintenance organization. Funds under grants and contracts under this subsection and under loans guaranteed under this subsection may only be utilized for such purposes as the Secretary may prescribe in regulations. Such purposes may include (A) the implementation of an enrollment campaign for such an organization, (B) the detailed design of and arrangements for the health services to be provided by such an organization, (C) the development of administrative and internal organizational arrangements, including fiscal control and fund accounting procedures, and the development of a capital financing program, (D) the recruitment of personnel who will engage in practice principally for the health maintenance organization and the conduct of training activities for such personnel, and (E) the payment of architects' and engineers' fees.

(3) A grant or contract under this subsection may only be made or entered into for initial development costs incurred in a period not to exceed three years from the first day of the first month in which such grant or contract is made or entered into. A loan guarantee under this subsection may only be made for a loan (or loans) for such costs incurred in a period not to exceed three years.

(4) A health maintenance organization which is a qualified health maintenance organization within the meaning of section 300e-9(d) of this title may receive, in accordance with paragraph (1), a grant, contract, or loan guarantee for the expansion of its services or the significant expansion of its membership or the area served by it.

[*See main edition for text of* (*c*) *to* (*e*)]

(f) Payments

[*See main edition for text of* (*1*)]

(2) Except as provided in paragraph (3), the amount to be paid by the United States under a grant made, or contract entered into, under subsection (b) of this section for an initial development project, and the amount of principal of a loan for an initial development project which may be guaranteed under such subsection, shall be determined by the Secretary; except that the amounts to be paid by the United States for any initial development project under grants or contracts, or both; under such subsection, and the aggregate amount of principal of loans guaranteed under such subsection for any project, may not exceed the lesser of—

(A) $1,000,000 through September 30, 1979, and $2,000,000 thereafter, or

[*See main edition for text of* (*B*)]

(3) The cumulative total of grants made to, contracts entered into with, and principal of loans guaranteed for, a health maintenance organization under subsection (b) of this section may not exceed $1,000,000 through September 30, 1979, or $2,000,000 thereafter. The cumulative total of the principal of the loans outstanding at any time with respect to which guarantees have been issued under this section may not exceed such limitations as may be specified in appropriation Acts.

[*See main edition for text of* (*g*) *to* (*i*)]

(j) Time limits on loan guarantees

Loan guarantees under subsection (a)(2) of this section for planning projects and loan guarantees under subsection (b)(1)(B) of this section for initial development projects may be made through the fiscal year ending September 30, 1981.

[*See main edition for text of* (*k*)]

(As amended Nov. 1, 1978, Pub. L. 95-559, §§ 2(a), 3(a)-(c), 6, 92 Stat. 2131, 2134; July 10, 1979, Pub. L. 96-32, § 2(a), 93 Stat. 82.)

AMENDMENTS

1979—Subsec. (f)(2). Pub. L. 96-32 amended directory language of section 3(c)(2)(B) of Pub. L. 95-559 by inserting "of this subsection" following "paragraph (3)", and required no change in text.

1978—Subsec. (b)(2). Pub. L. 95-559, § 3(a), substituted "means the establishment of a health maintenance organization, the exansion of the services of a health maintenance organization, or the" for "includes".

Subsec. (b)(3). Pub. L. 95-559, § 3(b)(1), substituted "incurred in a period not to exceed three years from" for "in the one-year period beginning on" and struck out provision that the number of grants made for any initial development project under this subsection when added to the number of contracts entered into for such project under this subsection may not exceed three.

Subsec. (b)(4). Pub. L. 95-559, § 6, added subsec. (b)(4).

Subsec. (f)(2). Pub. L. 95-559, § 3(c)(1), (2)(A), (B), as amended by Pub. L. 96-32, in provisions preceding subpar. (A) substituted "Except as provided in paragraph (3), the amount" for "The amount" and struck out "(except as provided in paragraph (3))" following "development project, and" and in subpar. (A) substituted "through September 30, 1979, and $2,000,000 thereafter" for "or, in the case of a project for a health maintenance organization which will provide services to an additional service area (as defined by the Secretary) or which will provide services in one or more areas which are not contiguous, $1,600,000".

Subsec. (f)(3). Pub. L. 95-559, § 3(c)(2)(C), added provision that the cumulative total of grants made to, contracts entered into with, and principal of loans guaranteed for, a health maintenance organization under subsection (b) of this section may not exceed $1,000,000 through September 30, 1979, or $2,000,000 thereafter.

Subsec. (j). Pub. L. 95-559, § 2(a), struck out "may be made through September 30, 1978;" following "planning projects" and substituted "ending September 30, 1981" for "ending September 30, 1979".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 3(d) of Pub. L. 95-559 provided that: "The amendments made by this section [amending subsecs. (b)(2), (3) and (c)(2), (3) of this section] shall only be effective for fiscal years beginning on or after October 1, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e-5, 300e-6, 300e-8, 300e-16 of this title.

§ 300e-4. Loans and loan guarantees for initial costs of operation

(a) Authority

The Secretary may—

(1) make loans to public or nonprofit private health maintenance organizations to assist them in meeting the amount by which their costs of operation during a period not to exceed the first sixty months of their operation exceed their revenues in that period;

(2) make loans to public or nonprofit private health maintenance organizations to assist them in meeting the amount by which their costs of operation, which the Secretary determines are attributable to significant expansion in their membership or area served and which are incurred during a period not to exceed the first sixty months of their operation after such expansion, exceed their revenues in that period which the Secretary determines are attributable to such expansion; and

[*See main edition for text of* (3)]

No loan or loan guarantee may be made under this subsection for the costs of operation of a health maintenance organization unless the Secretary determines that the organization has made all reasonable attempts to meet such costs.

(b) Limitations

(1) Except as provided in paragraph (2), the aggregate amount of principal of loans made or guaranteed, or both, under this section for a health maintenance organization may not exceed $2,500,000 (or $4,500,000 if the Secretary makes a written determination that such loans or loan guarantees are necessary to preserve the fiscally sound operation of the health maintenance organization and to protect against the risk of insolvency of the health maintenance organization and, within 30 days of the making of such loans or loan guarantees, furnishes the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives with written notification of the making of the loans or loan guarantees and a copy of the written determination made with respect to the loans or loan guarantees and the reasons for the determination) through September 30, 1979, and $4,500,000 thereafter. In any twelve-month period the amount disbursed to a health maintenance organization under this section (either directly by the Secretary or by an escrow agent under the terms of an escrow agreement or by a lender under a loan guaranteed under this section) may not exceed $1,000,000 (or $2,000,000 if the Secretary makes a written determination that such disbursements are necessary to preserve the fiscally sound operation of the health maintenance organization and protect against the risk of insolvency of the health maintenance organization and, within 30 days of such disbursement, furnishes the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives with written notification of the making of the disbursement and a copy of the written determination made with respect to it and the reasons for the determination) through September 30, 1979, and $2,000,000 thereafter.

[*See main edition for text of* (2); (c)]

(d) Time limit on loans and loan guarantees

No loan may be made or guaranteed under this section after September 30, 1981.

[*See main edition for text of* (e) *and* (f)]

(As amended Nov. 1, 1978, Pub. L. 95-559, §§ 2(b), 4(a), (b), 92 Stat. 2131, 2132; S. Res. 30, Mar. 7, 1979; July 10, 1979, Pub. L. 96-32, § 2(d), 93 Stat. 82.)

AMENDMENTS

1979—Subsec. (b)(1). Pub. L. 96-32 substituted "$4,500,000" for "$4,000,000" in two places.

1978—Subsec. (a). Pub. L. 95-559, § 4(b)(1), substituted "costs of operation" for "operating costs" wherever appearing.

Subsec. (b)(1). Pub. L. 95-559, § 4(a), (b)(2), inserted "(or $4,000,000 if the Secretary makes a written determination that such loans or loan guarantees are necessary to preserve the fiscally sound operation of the health maintenance organization and to protect against the risk of insolvency of the health maintenance organization and, within 30 days of the making of such loans or loan guarantees, furnishes the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives with written notification of the making of the loans or loan guarantees and a copy of the written determination made with respect to the loans or loan guarantees and the reasons for the determination) through September 30, 1979, and $4,000,000 thereafter" following "$2,500,000" and "(or $2,000,000 if the Secretary makes a written determination that such disbursements are necessary to preserve the fiscally sound operation of the health maintenance organization and protect against the risk of insolvency of the health maintenance organization and, within 30 days of such disbursement, furnishes the Committee on Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives with written notification of the making of the disbursement and a copy of the written determination made with respect to it and the reasons for the determination) through September 30, 1979, and $2,000,000 thereafter" following "$1,000,000" and substituted "any twelve-month period" for "any fiscal year".

Subsec. (d). Pub. L. 95-559, § 2(b), substituted "September 30, 1981" for "September 30, 1980".

Change of Name

The name of the Committee on Human Resources of the Senate was changed to the Committee on Labor and Human Resources effective Mar. 7, 1979, by Senate Resolution 30, 96th Congress. See, also, Rule XXV of the Standing Rules of the Senate adopted Nov. 14, 1979.

Effective Date of 1978 Amendment

Section 4(d) of Pub. L. 95-559 provided that: "The amendments made by this section [amending subsecs. (a) and (b)(1) of this section and section 300e-7 of this title] shall only be effective for fiscal years beginning on or after October 1, 1978."

Section Referred to in Other Sections

This section is referred to in section 300e-5 of this title.

§ 300e-4a. Loans and loan guarantees for acquisition and construction of ambulatory health care facilities

(a) Loan and loan guarantee authority

The Secretary may—

(1) make loans, from the fund established under section 300e-7(e) of this title, to public and nonprofit private health maintenance organizations for projects for the acquisition or construction of ambulatory health care facilities and for the acquisition of equipment for facilities acquired or constructed under a loan made under this paragraph; and

(2) guarantee to—

(A) non-Federal lenders for their loans to nonprofit private health maintenance organizations for projects described in paragraph (1) and to private health maintenance organizations for such projects which will serve medically underserved populations, and

(B) the Federal Financing Bank for its loans to nonprofit private health maintenance organizations for projects described in paragraph (1) and to private health maintenance organizations for such projects which will serve medically underserved populations,

the payment of principal and interest on such loans.

(b) Limit on principal of loans; cumulative total; amounts provided in advance in appropriation acts

(1) Except as provided in paragraph (2), the aggregate amount of principal of loans made or guaranteed, or both, under subsection (a) of this section for an ambulatory heath care facility may not exceed $2,500,000.

(2) The cumulative total of the principal of the loans outstanding at any time which have been directly made or with respect to which guarantees have been issued under subsection (a) of this section may not exceed such limitations as may be specified in appropriation Acts.

(3) The authority of the Secretary to make loans under subsection (a) of this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(c) Definitions

For purposes of this section—

(1) the term "ambulatory health care facility" means a health care facility for the provision of diagnostic, treatment, and prevention services to ambulatory patients; and

(2) the term "construction" means the (A) construction of new facilities, (B) alterations, expansion, remodeling, replacement, and renovation of existing facilities, (C) cost of offsite improvements in connection with an activity described in clause (A) or (B), and (D) cost of the acquisition of land in connection with an activity described in clause (A), (B), or (C).

(July 1, 1944, ch. 373, title XIII, § 1305A, as added Nov. 1, 1978, Pub. L. 95-559, § 5(a), 92 Stat. 2133, and amended July 10, 1979, Pub. L. 96-32, § 2(e), 93 Stat. 82.)

Amendments

1979—Subsec. (c)(1). Pub. L. 96-32 substituted "the" for "The" immediately following the designation "(1)".

Section Referred to in Other Sections

This section is referred to in section 300e-5 of this title.

§ 300e-5. Application requirements

[*See main edition for text of* (*a*)]

(b) Application contents

The Secretary may not approve an application for a grant, contract, loan, or loan guarantee under this subchapter unless—

[*See main edition for text of* (*1*)]

(2) in the case of an application for assistance under section 300e-3, 300e-4, or 300e-4a of this title, he determines that the applicant making the application would not be able to complete the project or undertaking for which the application is submitted without the assistance applied for;

[*See main edition for text of* (*3*) *to* (*8*)]

An organization making multiple applications for more than one grant, contract, loan, or loan guarantee under this subchapter, simultaneously or over the course of time, shall not be required to submit duplicate or redundant information but shall be required to update the specifications (required by paragraph (3)) respecting the existing or proposed health maintenance organization in such manner and with such frequency as the Secretary may by regulation prescribe. In determining, for purposes of paragraph (2), whether an applicant would be able to complete a project or undertaking without the assistance applied for, the Secretary shall not consider any asset of the applicant the obligation of which for such undertaking or project would jeopardize the fiscal soundness of the applicant.

[*See main edition for text of* (*c*)]

(As amended Nov. 1, 1978, Pub. L. 95-559, § 12(b), (c), 92 Stat. 2140.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-559 in par. (2) inserted "in the case of an application for assistance under section 300e-3, 300e-4, or 300e-4a of this title," preceding "he determines" and in material following par. (8) added provision that in determining, for purposes of par. (2), whether an applicant would be able to complete a project or undertaking without the assistance applied for, the Secretary not consider any asset of the applicant the obligation of which for such undertaking or project would jeopardize the fiscal soundness of the applicant.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e-6, 300e-16 of this title.

§ 300e-7. General provisions relating to loan guarantees and loans

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Loan guarantee fund

(1) There is established in the Treasury a loan guarantee fund (hereinafter in this subsection referred to as the "fund") which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, to enable him to discharge his responsibilities under loan guarantees issued by him under this subchapter and to take the action authorized by subsection (f) of this section. There are authorized to be appropriated from time to time such amounts as may be necessary to provide the sums required for the fund. To the extent authorized in appropriation Acts, there shall also be deposited in the fund amounts received by the Secretary in connection with loan guarantees under this subchapter and other property or assets derived by him from his operations respecting such loan guarantees, including any money derived from the sale of assets.

(2) If at any time the sums in the funds are insufficient to enable the Secretary to discharge his responsibilities under guarantees issued by him under this subchapter and to take the action authorized by subsection (f) of this section, he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued under this paragraph and for that purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, and the purposes for which the securities may be issued under that Act are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public transactions of the United States. Sums borrowed under this paragraph shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from the fund.

(e) Loan fund

There is established in the Treasury a loan fund (hereinafter in this subsection referred to as the "fund") which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriation Acts, to enable him to make loans under this subchapter and to take the action authorized by subsection (f) of this section. There shall also be deposited in the fund amounts received by the Secretary as interest payments and repayment of principal on loans made under this subchapter and other property or assets derived by him from his operations respecting such loans, from the sale of loans under subsection (c) of this section, or from the sale of assets.

(f) Actions to protect the interest of the United States in event of default

The Secretary may take such action as he deems appropriate to protect the interest of the United States in the event of a default on a loan made or guaranteed under this subchapter, including taking possession of, holding, and using real property pledged as security for such a loan or loan guarantee.

(As amended Nov. 1, 1978, Pub. L. 95-559, § 4(c), 92 Stat. 2132.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-559, § 4(c)(2)(A), in pars. (1) and (2) inserted "and to take the action authorized by subsection (f) of this section" following "by him under this subchapter".

Subsec. (e). Pub. L. 95-559, § 4(c)(2)(B), inserted "and to take the action authorized by subsection (f) of this section" following "loans under this subchapter".

Subsec. (f). Pub. L. 95-559, § 4(c)(1), added subsec. (f).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-559 effective only for fiscal years beginning on or after October 1, 1978, see section 4(d) of Pub. L. 95-559, set out as an Effective Date of 1978 Amendment note under section 300e-4 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e-4, 300e-4a, 300e-5, 300e-8 of this title.

§ 300e-8. Authorization of appropriations

(a) For the purpose of making payments under grants and contracts under sections 300e-2, 300e-3(a), 300e-3(b), and 300e-16 of this title, there are authorized to be appropriated $25,000,000 for the fiscal year ending June 30, 1974, $55,000,000 for the fiscal year ending June 30, 1975, $40,000,000 for the fiscal year ending June 30, 1976, $45,000,000 for the fiscal year ending September 30, 1977, $45,000,000 for the fiscal year ending September 30, 1978, $31,000,000 for the fiscal year ending September 30, 1979, $65,000,000 for the fiscal year ending September 30, 1980, and $68,000,000 for the fiscal year ending September 30, 1981.

[*See main edition for text of* (*b*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 105(b), 91 Stat. 384; Nov. 1, 1978, Pub. L. 95-559, §§ 2(c), 7(b), 92 Stat. 2131, 2135.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-559 substituted "300e-3(b) and 300e-16 of this title" for "and 300e-3(b) of this title" and ", $31,000,000 for the fiscal year ending September 30, 1979, $65,000,000 for the fiscal year ending September 30, 1980, and $68,000,000 for the fiscal year ending September 30, 1981" for "; and for the purpose of making payments under grants and contracts under section 300e-3(b) of this title for the fiscal year ending September 30, 1979, there is authorized to be appropriated $50,000,000".

1977—Subsec. (a). Pub. L. 95-83 substituted, where appearing the second time, "September 30, 1979" for "September 30, 1977".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of this section [adding reference to section 300e-16 of this title in subsec. (a) of this section] by section 7(b) of Pub. L. 95-559 effective only for fiscal years beginning on or after Oct. 1, 1978, see section 7(c) of Pub. L. 95-559, set out as an Effective Date note under section 300e-16 of this title.

§ 300e-9. Employees' health benefits plans

[*See main edition for text of* (*a*)]

(b) Basic health service requirement

If there is more than one qualified health maintenance organization which is engaged in the provision of basic and supplemental health services in the area in which the employees of an employer subject to subsection (a) of this section reside and if—

(1) one or more of such organizations provides basic health services through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups), and

(2) one or more of such organizations provides basic health services through (A) an individual practice association (or associations), or (B) a combination of such association (or associations), medical group (or groups), staff, and individual physicians and other health professionals under contract with the organization,

then of the qualified health maintenance organizations included in a health benefits plan of such employer pursuant to subsection (a) of this section at least one shall be an organization which provides basic health services as described in clause (1) and at least one shall be an organization which provides basic health services as described in clause (2).

(c) Effect on costs

No employer shall be required to pay more for health benefits as a result of the application of this section than would otherwise be required by any prevailing collective bargaining agreement or other legally enforceable contract for the provision of health benefits between the employer and its employees. Each employer which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required and which is required by subsection (a) of this section to offer his employees the option of membership in a qualified health maintenance organization shall, with the consent of an employee who exercises such option, arrange for the employee's contribution for such membership to be paid through payroll deductions.

[*See main edition for text of* (*d*)]

(e) Civil penalty; notice and presentation of views; review

(1) Any employer who knowingly does not comply with one or more of the requirements of subsection (a), (b), or (c) of this section shall be subject to a civil penalty of not more than $10,000. If such noncompliance continues, a civil penalty may be assessed and collected under this subsection for each thirty-day period such noncompliance continues. Such penalty may be assessed by the Secretary and collected in a civil action brought by the United States in a United States district court.

[*See main edition for text of* (*2*) *and* (*3*); (*f*) *and* (*g*)]

(h) Repealed. Pub. L. 95-559, § 12(a)(1), Nov. 1, 1978, 92 Stat. 2140

(As amended Nov. 1, 1978, Pub. L. 95-559, §§ 8, 12(a)(1), 92 Stat. 2135, 2140; July 10, 1979, Pub. L. 96-32, § 2(f), 93 Stat. 82.)

AMENDMENTS

1979—Subsec. (e)(1). Pub. L. 96-32 substituted "subsection (a), (b), or (c)" for "subsection (a)".

1978—Subsec. (b). Pub. L. 95-559, § 8(b), substituted in par. (1) "through physicians or other health professionals who are members of the staff of the organization or a medical group (or groups)" for "(A) without the use of an individual practice association and (B) without the use of contracts (except for contracts for unusual or infrequently used services) with health professionals" and in par. (2) "(B) a combination of such association (or associations), medical group (or groups), staff, and individual physicians and other health professionals under contract with the organization" for "(B) health professionals who have contracted with the health maintenance organization for the provision of such services, or (C) a combination of such association (or associations) or health professionals under contract with the organization".

Subsec. (c). Pub. L. 95-559, § 8(a), added provision that each employer which provides payroll deductions as a means of paying employees' contributions for health benefits or which provides a health benefits plan to which an employee contribution is not required and which is required by subsection (a) of this section to offer his employees the option of membership in a qualified health maintenance organization shall, with the consent of an employee who exercises such option, arrange for the employee's contribution for such membership to be paid through payroll deductions.

Subsec. (h). Pub. L. 95-559, § 12(a)(1), struck out subsec. (h), which provided that the duties and functions of the Secretary, insofar as they involve determinations as to whether an organization is a qualified health maintenance organization within the meaning of subsection (d) of this section, be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions be integrated with the administration of section 300e-11(a) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e, 300e-3, 300e-10, 300e-11, 300e-14, 300e-16, 300e-17, 300*l*-1, 300n of this title; title 5 section 8902.

§ 300e-11. Continued regulation of health maintenance organizations

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Repealed. Pub. L. 95-559, § 12(a)(2), Nov. 1, 1978, 92 Stat. 2140

(As amended Nov. 1, 1978, Pub. L. 95-559, § 12(a)(2), 92 Stat. 2140.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-559 struck out subsec. (c), which provided that the Secretary, acting through the Assistant Secretary for Health, administer subsections (a) and (b) of this section in the Office of the Assistant Secretary for Health.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e-17, 1396b of this title.

§ 300e-12. Limitation on source of funding for health maintenance organizations

No funds appropriated under any provision of this chapter (except as provided in sections 254b, 254c, and 256 of this title) other than this subchapter may be used—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) for loans, or for payments under loan guarantees, to assist in meeting the costs of the initial operation after establishment or expansion of such organizations or entities or in meeting the costs of such organizations in acquiring or constructing ambulatory health care facilities.

(As amended Nov. 1, 1978, Pub. L. 95-559, § 5(b), 92 Stat. 2133; Nov. 10, 1978, Pub. L. 95-626, title I, § 107, 92 Stat. 3562.)

AMENDMENTS

1978—Pub. L. 95-626 in provisions preceding par. (1) added "(except as provided in sections 254b, 254c, and 256 of this title)" following "under any provision of this chapter" in the provisions preceding par. (1).

Par. (4). Pub. L. 95-559 inserted "or in meeting the costs of such organizations in acquiring or constructing ambulatory health care facilities" following "or entities".

§ 300e-13. Omitted

CODIFICATION

Section, acts July 1, 1944, ch. 373, title XIII, § 1314, as added Dec. 29, 1973, Pub. L. 93-222, § 2, 87 Stat. 932, and amended Oct. 8, 1976, Pub. L. 94-460, title I, § 115, 90 Stat. 1954; Nov. 1, 1978, Pub. L. 95-559, § 13, 92 Stat. 2140, which required the Comptroller General to: (a) evaluate the operations, particularly, specified aspects of the operations, of at least ten or one-half, whichever is greater, of the health maintenance organizations for which assistance was provided under sections 300e-2, 300e-3, and 300e-4 of this title, and which, by Dec. 31, 1976, were designated by the Secretary under section 300e-9(d) of this title as qualified health maintenance organizations, to Congress by June 30, 1978; (b) conduct a study of the economic effects on employers resulting from their compliance with the requirements of section 300e-9 of this title and report to Congress not later than 36 months after Dec. 29, 1973; (c) evaluate the operations of health maintenance organizations in comparison with others in distinct categories, in comparison with alternative forms of health care delivery, and their impact on the health of the public and report to Congress not later than 36 months after Dec. 29, 1973; and (d) evaluate the adequacy and effectiveness of the policies and procedures of the Secretary for the management of the grant and loan programs established by this subchapter and the adequacy of the amounts of assistance available under these programs and report to Congress not later than May 1, 1979, was omitted from the Code as executed.

§ 300e-14a. Health services for Indians and domestic agricultural migratory and seasonal workers

The Secretary of Health, Education, and Welfare in connection with existing authority (except section 254b of this title) for the provisions of health services to domestic agricultural migratory workers to persons who perform seasonal agricultural services similar to the services performed by such workers and to the families of such workers and persons, is authorized to arrange for the provision of health services to such workers and persons and their families through health maintenance organizations. In carrying out this section the Secretary may only use sums appropriated after December 29, 1973.

(As amended Pub. L. 95-626, title I, § 102(b)(2), Nov. 10, 1978, 92 Stat. 3551.)

AMENDMENTS

1978—Pub. L. 95-626 substituted "section 254b" for "section 247d".

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 300e-16. Training and technical assistance

(a) National Health Maintenance Organization Intern Program

(1) The Secretary shall establish a National Health Maintenance Organization Intern Program (hereinafter in this subsection referred to as the "program") for the purpose of providing training to individuals to become administrators and medical directors of health maintenance organizations or to assume other managerial positions with health maintenance organizations. Under the Program the Secretary may directly provide internships for such training and may make grants to or enter into contracts with health maintenance organizations and other entities to provide such internships.

(2) No internship may be provided by the Secretary and no grant may be made or contract entered into by the Secretary for the provision of internships unless an application therefor has been submitted to and approved by the Secretary. Such an application shall be in such form and contain such information, and be submitted to the Secretary in such manner, as the Secretary shall prescribe. Section 300e-5 of this title does not apply to an application submitted under this section.

(3) Internships under the Program shall provide for such stipends and allowances (including travel and subsistence expenses and dependency allowances) for the recipients of the internships as the Secretary deems necessary. An internship provided an individual for training at a health maintenance organization or any other entity shall also provide for payments to be made to the organization or other entity for the cost of support services (including the cost of salaries, supplies, equipment, and related items) provided such individual by such organization or other entity. The amount of any such payments to any organization or other entity shall be determined by the Secretary and shall bear a direct relationship to the reasonable costs of the organization or other entity for establishing and maintaining its training programs.

(4) Payments under grants under the Program may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary.

(b) Technical assistance

The Secretary shall provide technical assistance (1) to entities in connection with projects for which assistance is being provided under section 300e-2 or 300e-3 of this title, (2) to entities intending to become a qualified health maintenance organization within the meaning of section 300e-9(d) of this title, and (3) to health maintenance organizations. The Secretary may provide such technical assistance through grants to public and nonprofit private entities and contracts with public and private entities.

(c) Amounts provided in advance in appropriations acts

The authority of the Secretary to enter into contracts under subsections (a) and (b) of this section shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(July 1, 1944, ch. 373, title XIII, § 1317, as added Nov. 1, 1978, Pub. L. 95-559, § 7(a), 92 Stat. 2134.)

EFFECTIVE DATE

Section 7(c) of Pub. L. 95-559 provided that: "The amendments made by this section [enacting this section and amending section 300e-8 of this title] shall only be effective for fiscal years beginning on or after October 1, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300e-8 of this title.

§ 300e-17. Financial disclosure

(a) Financial information reported to Secretary

Each health maintenance organization shall, in accordance with regulations of the Secretary, report to the Secretary financial information which shall include the following:

(1) Such information as the Secretary may require demonstrating that the health maintenance organization has a fiscally sound operation.

(2) The information required to be reported under section 1320a-3 of this title by disclosing entities and the information required to be supplied under section 1396a(a)(38) of this title.

(3) A description of transactions, as specified by the Secretary, between the health maintenance organization and a party in interest. Such transactions shall include—

(A) any sale or exchange, or leasing of any property between the health maintenance organization and a party in interest;

(B) any furnishing for consideration of goods, services (including management services, but excluding health services provided to members by staff, medical group (or groups), individual practice association (or associations), or any combination thereof), or facilities between the health maintenance organization and a party in interest; and

(C) any lending of money or other extension of credit between a health maintenance organization and a party in interest.

The Secretary may require that information reported respecting a health maintenance organization which controls, is controlled by, or is under common control with, another entity be in the form of a consolidated financial statement for the organization and such entity.

(b) "Party in interest" defined

For the purposes of this section the term "party in interest" means:

(1) any director, officer, partner, or employee of a health maintenance organization, any

person who is directly or indirectly the beneficial owner of more than 5 per centum of the equity of the organization, any person who is the beneficial owner of a mortgage, deed of trust, note, or other interest secured by, and valuing more than 5 per centum of the health maintenance organization, and, in the case of a health maintenance organization organized as a nonprofit corporation, an incorporator or member of such corporation under applicable State corporation law;

(2) any entity in which a person described in paragraph (1)—

(A) is an officer or director;

(B) is a partner (if such entity is organized as a partnership);

(C) has directly or indirectly a beneficial interest of more than 5 per centum of the equity; or

(D) has a mortgage, deed of trust, note, on other interest valuing more than 5 per centum of the assets of such entity;

(3) any person directly or indirectly controlling, controlled by, or under common control with a health maintenance organization; and

(4) any member of the immediate family of an individual described in paragraph (1).

(c) Information availability

Each health maintenance organization shall make the information reported pursuant to subsection (a) of this section available to its enrollees upon reasonable request.

(d) Evaluation of transactions

The Secretary shall, as he deems necessary, conduct an evaluation of transactions reported to the Secretary under subsection (a)(3) of this section for the purpose of determining their adverse impact, if any, on the fiscal soundness and reasonableness of charges to the health maintenance organization with respect to which they transpired. The Secretary shall evaluate the reported transactions of not less than five, or if there are more than twenty health maintenance organizations reporting such transactions, not less than one-fourth of the health maintenance organizations reporting any such transactions under subsection (a)(3) of this section.

(e) Report to Congress

The Secretary shall file an annual report with the Congress on the operation of this section. Such report shall include—

(1) an enumeration of standards and norms utilized to make the evaluations required under subsection (d) of this section;

(2) an assessment of the degree of conformity or nonconformity of each health maintenance organization evaluated by the Secretary under subsection (d) of this section with such standards and norms;

(3) what action, if any, the Secretary considers necessary under section 300e-11 of this title with respect to health maintenance organizations evaluated under subsection (d) of this section.

(f) Rates

Nothing in this section shall be construed to confer upon the Secretary any authority to approve or disapprove the rates charged by any health maintenance organization.

(g) Annual financial statement

Any health maintenance organization failing to file with the Secretary the annual financial statement required in subsection (a) of this section shall be ineligible for any Federal assistance under this subchapter until such time as such statement is received by the Secretary and shall not be a qualified health maintenance organization for purposes of section 300e-9 of this title.

(h) Penalties

Whoever knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any statement filed pursuant to this section shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(July 1, 1944, ch. 373, title XIII, § 1318, as added Nov. 1, 1978, Pub. L. 95-559, § 9(a), 92 Stat. 2135.)

SUBCHAPTER XII—SAFETY OF PUBLIC WATER SYSTEMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 300j-10, 4365, 6905, 7877 of this title; title 16 section 471i.

PART A—DEFINITIONS

§ 300f. Definitions

For purposes of this subchapter:

[*See main edition for text of (1) to (11)*]

(12) The term "person" means an individual, corporation, company, association, partnership, State, municipality, or Federal agency (and includes officers, employees, and agents of any corporation, company, association, State, municipality, or Federal agency).

[*See main edition for text of (13)*]

(As amended Nov. 16, 1977, Pub. L. 95-190, § 8(b), 91 Stat. 1397.)

AMENDMENTS

1977—Par. (12). Pub. L. 95-190 expanded definition of "person" to include Federal agency, and officers, employees, and agents of any corporation, company, etc.

SHORT TITLE OF 1977 AMENDMENTS

For short title of Pub. L. 95-190, which amended this subchapter, see Short Title of 1977 Amendments note set out under section 201 of this title.

SAFE DRINKING WATER AMENDMENTS OF 1977 RESTRICTIONS ON APPROPRIATIONS FOR RESEARCH

Section 2(e) of Pub. L. 95-190 provided that: "Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to authorize the appropriation of any amount for research under title XIV of the Public Health Service Act [this subchapter] (relating to safe drinking water)."

SAFE DRINKING WATER AMENDMENTS OF 1977 AS NOT AFFECTING AUTHORITY OF ADMINISTRATOR WITH RESPECT TO CONTAMINANTS

Section 3(e)(2) of Pub. L. 95-190 provided that: "Nothing in this Act [see Short Title of 1977 Amendment note set out under section 201 of this title] shall be construed to alter or affect the Administrator's authority or duty under title 14 of the Public Health Service Act [this subchapter] to promulgate regulations or take other action with respect to any contaminant."

RURAL WATER SURVEY; REPORT TO PRESIDENT AND CONGRESS; AUTHORIZATION OF APPROPRIATIONS

Section 3 of Pub. L. 93-523, as amended by Pub. L. 95-190, §§ 2(d), 3(d), Nov. 16, 1977, 91 Stat. 1393, 1394, provided that:

[*See main edition for text of* (a)]

"(b) Such survey shall be completed within eighteen months of the date of enactment of this Act [Dec. 16, 1974] and a final report thereon submitted, not later than six months after the completion of such survey, to the President and to the Congress. Such report shall include recommendations for improving rural water supplies.

"(c) There are authorized to be appropriated to carry out the provisions of this section $1,000,000 for the fiscal year ending June 30, 1975; $2,000,000 for the fiscal year ending June 30, 1976; $1,000,000 for the fiscal year ending June 30, 1977; and $1,000,000 for each of fiscal years 1978 and 1979."

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

PART B—PUBLIC WATER SYSTEMS

§ 300g-1. National drinking water regulations

[*See main edition for text of* (a) *to* (d)]

(e) Study; maximum contaminant level determination; adverse effect of contaminants of undetermined levels; report to Congress; funds

[*See main edition for text of* (1)]

(2) The result of the study shall be reported to Congress not later than 2 years after December 16, 1974, and revisions thereof reflecting new information which has become available since the most recent previous report shall be reported to the Congress each two years thereafter. The report shall contain (A) a summary and evaluation of relevant publications and unpublished studies; (B) a statement of methodologies and assumptions for estimating the levels at which adverse health effects may occur; (C) a statement of methodologies and assumptions for estimating the margin of safety which should be incorporated in the national primary drinking water regulations; (D) proposals for recommended maximum contaminant levels for national primary drinking water regulations, based on the methodologies, assumptions, and studies referred to in clauses (A), (B), and (C) and in paragraph (4); (E) a list of contaminants the level of which in drinking water cannot be determined but which may have an adverse effect on the health of persons; (F) recommended studies and test protocols for future research on the health effects of drinking water contaminants, including a list of the major research priorities and estimated costs necessary to conduct such priority research; and (G) periodic assessments and evaluations of unregulated contaminants which may require continuous monitoring or regulation.

[*See main edition for text of* (3) *to* (6)]

(As amended Nov. 16, 1977, Pub. L. 95-190, §§ 3(c), 12(a), 91 Stat. 1394, 1398.)

AMENDMENTS

1977—Subsec. (e)(2). Pub. L. 95-190 added provisions relating to revisions of the required report and cl. (G).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300f, 300g-2, 300g-3, 300g-4, 300g-5, 300j-1, 300j-2, 300j-3, 300j-3b, 300j-4, 300j-7 of this title; title 21 section 349.

§ 300g-3. Failure of State to assure enforcement of drinking water regulations

[*See main edition for text of* (a) *and* (b)]

(c) Notice of owner or operator of public water system to persons served; regulations for form, manner, and frequency of notice; penalties

Each owner or operator of a public water system shall give notice to the persons served by it—

[*See main edition for text of* (1) *and* (2)]

The Administrator shall by regulation prescribe the form, manner, and frequency for giving notice under this subsection. Notice under the first sentence of this subsection shall be given not less than once every 3 months, shall be given by publication in a newspaper of general circulation serving the area served by each such water system (as determined by the Administrator), shall be furnished to the other communications media serving such area, and shall be furnished to the communications media as soon as practicable after the discovery of the violation with respect to which the notice is required. If the water bills of a public water system are issued more often than once every 3 months, such notice shall be included in at least one water bill of the system every 3 months, and if a public water system issues its water bills less often than once every 3 months, such notice shall be included in each of the water bills issued by the system. The Administrator may also require the owner or operator of a public water system to give notice to the persons served by it of contaminant levels of any unregulated contaminant required to be monitored under section 300j-4(a) of this title. Any person who willfully violates this subsection or regulations thereunder shall be fined not more than $5,000.

[*See main edition for text of* (d) *to* (f)]

(As amended Nov. 16, 1977, Pub. L. 95-190, § 12(b), 91 Stat. 1398.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-190 added provisions relating to frequency of required notice, and notice respecting contaminant levels, and substituted "issued under this subsection" for "thereunder".

§ 300g-5. Exemptions

[See main edition for text of (a)]

(b) Compliance schedule and implementation of control measures; notice and hearing; dates for compliance with schedule; compliance, enforcement; approval or revision of schedules and revocation of exemptions

(1) If a State grants a public water system an exemption under subsection (a) of this section, the State shall prescribe, within one year of the date the exemption is granted, a schedule for—

(A) compliance (including increments of progress) by the public water system with each contaminant level requirement and treatment technique requirement with respect to which the exemption was granted, and

(B) implementation by the public water system of such control measures as the State may require for each contaminant, subject to such contaminant level requirement or treatment technique requirement, during the period ending on the date compliance with such requirement is required.

Before a schedule prescribed by a State pursuant to this subsection may take effect, the State shall provide notice and opportunity for a public hearing on the schedule. A notice given pursuant to the preceding sentence may cover the prescribing of more than one such schedule and a hearing held pursuant to such notice shall include each of the schedules covered by the notice.

[See main edition for text of (2) to (4); (c) to (g)]

(As amended Nov. 16, 1977, Pub. L. 95-190, § 10(a), 91 Stat. 1398.)

AMENDMENTS

1977—Subsec. (b)(1). Pub. L. 95-190 substituted "contaminant" for "containment" wherever appearing therein, which for purposes of codification had been substituted as the probable intent of Congress in the main edition, thereby requiring no further change in text.

PART C—PROTECTION OF UNDERGROUND SOURCES OF DRINKING WATER

§ 300h. Regulations for State programs

[See main edition for text of (a)]

(b) Minimum requirements; restrictions

[See main edition for text of (1) and (2)]

(3)(A) The regulations of the Administrator under this section shall permit or provide for consideration of varying geologic, hydrological, or historical conditions in different States and in different areas within a State.

(B)(i) In prescribing regulations under this section the Administrator shall, to the extent feasible, avoid promulgation of requirements which would unnecessarily disrupt State underground injection control programs which are in effect and being enforced in a substantial number or [1] States.

(ii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed to disrupt a State underground injection control program only if it would be infeasible to comply with both such regulation and the State underground injection control program.

(iii) For the purpose of this subparagraph, a regulation prescribed by the Administrator under this section shall be deemed unnecessary only if, without such regulation, underground sources of drinking water will not be endangered by an underground injection.

(C) Nothing in this section shall be construed to alter or affect the duty to assure that underground sources of drinking water will not be endangered by any underground injection.

[See main edition for text of (c) and (d)]

(As amended Nov. 16, 1977, Pub. L. 95-190, § 6(b), 91 Stat. 1396.)

AMENDMENTS

1977—Subsec. (b)(3). Pub. L. 95-190 added par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300h-1, 300j-2, 300j-6, 300j-7 of this title.

§ 300h-1. State primary enforcement responsibility

[See main edition for text of (a)]

(b) State applications; notice to Administrator of compliance with revised or added requirements, approval or disapproval by Administrator; duration of State primary enforcement responsibility; public hearing

(1)(A) Each State listed under subsection (a) of this section shall within 270 days after the date of promulgation of any regulation under section 300h of this title (or, if later, within 270 days after such State is first listed under subsection (a) of this section) submit to the Administrator an application which contains a showing satisfactory to the Administrator that the State—

(i) has adopted after reasonable notice and public hearings, and will implement, an underground injection control program which meets the requirements of regulations in effect under section 300h of this title; and

(ii) will keep such records and make such reports with respect to its activities under its underground injection control program as the Administrator may require by regulation.

The Administrator may, for good cause, extend the date for submission of an application by any State under this subparagraph for a period not to exceed an additional 270 days.

[See main edition for text of (B), (2) to (4); (c) and (d)]

(As amended Nov. 16, 1977, Pub. L. 95-190, § 6(a), 91 Stat. 1396.)

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[1] So in original. Probably should read "of".

AMENDMENTS

1977—Subsec. (b)(1)(A). Pub. L. 95-190 added provisions relating to extension of the date for submission of applications by any State.

PART E—GENERAL PROVISIONS

§ 300j. Assurances of availability of adequate supplies of chemicals necessary for treatment of water

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Termination dates

No certification of need or order issued under this section may remain in effect—

(1) for more than one year, or

(2) after September 30, 1982,

whichever occurs first.

(As amended Nov. 16, 1977, Pub. L. 95-190, § 7, 91 Stat. 1396; Sept. 6, 1979, Pub. L. 96-63, § 3, 93 Stat. 411.)

AMENDMENTS

1979—Subsec. (f)(2). Pub. L. 96-63 substituted "September 30, 1982" for "September 30, 1979".

1977—Subsec. (f). Pub. L. 95-190 substituted "September 30, 1979" for "June 30, 1977".

§ 300j-1. Research, technical assistance, information, training of personnel

(a) Specific powers and duties of Administrator

[*See main edition for text of* (*1*)]

(2)(A) The Administrator shall, to the maximum extent feasible, provide technical assistance to the States and municipalities in the establishment and administration of public water system supervision programs (as defined in section 300j-2(c)(1) of this title).

(B) The Administrator is authorized to provide technical assistance and to make grants to States, or publicly owned water systems to assist in responding to and alleviating any emergency situation affecting public water systems (including sources of water for such systems) which the Administrator determines to present substantial danger to the public health. Grants provided under this subparagraph shall be used only to support those actions which (i) are necessary for preventing, limiting or mitigating danger to the public health in such emergency situation and (ii) would not, in the judgment of the Administrator, be taken without such emergency assistance. The Administrator may carry out the program authorized under this subparagraph as part of, and in accordance with the terms and conditions of, any other program of assistance for environmental emergencies which the Administrator is authorized to carry out under any other provision of law. No limitation on appropriations for any such other program shall apply to amounts appropriated under this subparagraph.

(3)(A) The Administrator shall conduct studies, and make periodic reports to Congress, on the costs of carrying out regulations prescribed under section 300g-1 of this title.

(B) Omitted

(4) Omitted

[*See main edition for text of* (*5*) *to* (*9*)]

(10) The Administrator shall carry out a study of the reaction of chlorine and humic acids and the effects of the contaminants which result from such reaction on public health and on the safety of drinking water, including any carcinogenic effect.

(11) The Administrator shall carry out a study of polychlorinated biphenyl contamination of actual or potential sources of drinking water, contamination of such sources by other substances known or suspected to be harmful to public health, the effects of such contamination, and means of removing, treating, or otherwise controlling such contamination. To assist in carrying out this paragraph, the Administrator is authorized to make grants to public agencies and private nonprofit institutions.

(b) Other powers and duties of Administrator

In carrying out this subchapter, the Administrator is authorized to—

[*See main edition for text of* (*1*) *to* (*2*)]

(3) make grants to, and enter into contracts with, any public agency, educational institution, and any other organization, in accordance with procedures prescribed by the Administrator, under which he may pay all or part of the costs (as may be determined by the Administrator) of any project or activity which is designed—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) to develop and expand the capability of programs of States and municipalities to carry out the purposes of this subchapter (other than by carrying out State programs of public water system supervision or underground water source protection (as defined in section 300j-2(c) of this title)).

(c) Omitted

(d) Establishment of training programs and grants for training; training fees

The Administrator shall—

(1) provide training for, and make grants for training (including postgraduate training) of (A) personnel of State agencies which have primary enforcement responsibility and of agencies or units of local government to which enforcement responsibilities have been delegated by the State, and (B) personnel who manage or operate public water systems, and

(2) make grants for postgraduate training of individuals (including grants to educational institutions for traineeships) for purposes of qualifying such individuals to work as personnel referred to in paragraph (1).

Reasonable fees may be charged for training provided under paragraph (1)(B) to persons other than personnel of State or local agencies but such training shall be provided to personnel of State or local agencies without charge.

(e) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this section other than subsection (a)(2)(B) of this section and provisions relating to research $15,000,000 for the fiscal year ending June 30, 1975; $25,000,000 for the fiscal year ending June 30, 1976; $35,000,000 for the fiscal year ending June 30, 1977; $17,000,000 for each of the fiscal years 1978 and 1979; $21,405,000 for the fiscal year ending September 30, 1980; $30,000,000 for the fiscal year ending September 30, 1981; and $35,000,000 for the fiscal year ending September 30, 1982. There are authorized to be appropriated to carry out subsection (a)(2)(B) of this section $8,000,000 for each of the fiscal years 1978 through 1982.

(As amended Nov. 16, 1977, Pub. L. 95-190, §§ 2(a), 3(a), (b), (e)(1), 4, 9, 10(b), 13, 91 Stat. 1393-1395, 1397-1399; Sept. 6, 1979, Pub. L. 96-63, § 1, 93 Stat. 411.)

CODIFICATION

Subsec. (a)(3)(B), which required that not later than 18 months after Nov. 16, 1977, the Administrator submit a report with recommendations to Congress which identifies and analyzes the anticipated costs of compliance with implementation of interim and revised national primary drinking water regulations, alternative methods of compliance with such regulations, methods of paying the costs of compliance by public water systems with such regulations, the advantages and disadvantages of certain specified methods, the sources of revenue presently available, and projected to be available, to public water systems to meet current and future expenses, and the costs of drinking water paid by residential and industrial consumers in a sample of large, medium, and small public water systems and of individually owned wells, and the reasons for any differences in such costs, was omitted from the Code as executed.

Subsec. (a)(4), which required the Administrator to conduct a survey and study of disposal of waste, including residential waste, which may endanger underground water which does or may supply public water systems, and means of control of such waste disposal, and report to Congress not later than Dec. 16, 1975, was omitted from the Code as executed.

Subsec. (c), which provided that not later than 18 months after Nov. 16, 1977, the Administrator report to Congress on the present and future availability of an adequate and dependable supply of safe drinking water, including an analysis of the future demand for drinking water and other competing uses of water, the availability and use of methods to conserve water or reduce demand, the adequacy of present measures, and the financial, legal, and other problems which need to be resolved, was omitted from the Code as executed.

AMENDMENTS

1979—Subsec. (e). Pub. L. 96-63 authorized appropriations of $21,405,000 for the fiscal year ending Sept. 30, 1980, $30,000,000 for the fiscal year ending Sept. 30, 1981, and $35,000,000 for the fiscal year ending Sept. 30, 1982 for purposes other than those of subsec. (a)(2)(B) of this section and for purposes of subsec. (a)(2)(B) of this section, $8,000,000 for fiscal years 1980 through 1982.

1977—Subsec. (a)(2). Pub. L. 95-190, §§ 9, 13, designated existing provisions as subpar. (A), added subpar. (B) and, in subpar. (B) as added, substituted provisions authorizing the Administrator to make grants and provide technical assistance for any emergency situation affecting public water systems and criteria for such grants and assistance for provisions authorizing the Administrator to make grants and provide technical assistance for any emergency situation respecting drinking water and criteria for determination of such situations.

Subsec. (a)(3). Pub. L. 95-190, § 3(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (a)(10), (11). Pub. L. 95-190, § 3(e)(1), added pars. (10) and (11).

Subsec. (b)(3)(C). Pub. L. 95-190, § 10(b), substituted "300j-2(c)" for "300j-2(d)".

Subsec. (c). Pub. L. 95-190, § 3(b), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 95-190, § 4, added subsec. (d).

Subsec. (e). Pub. L. 95-190, §§ 2(a), 3(b), redesignated former subsec. (c) as (e) and, as so redesignated, added provisions authorizing appropriations for fiscal years 1978 and 1979, and provisions relating to appropriations for subsec. (a)(2)(B) of this section and for research.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300j-3b of this title.

§ 300j-2. Grants for State programs

(a) Public water systems supervision programs; applications for grants; allotment of sums; waiver of grant restrictions; notice of approval or disapproval of application; authorization of appropriations

[*See main edition for text of* (*1*) *to* (*4*)]

(5) The prohibition contained in the last sentence of paragraph (2) may be waived by the Administrator with respect to a grant to a State through fiscal year 1979 but such prohibition may only be waived if, in the judgment of the Administrator—

(A) the State is making a diligent effort to assume and maintain primary enforcement responsibility for public water systems within the State;

(B) the State has made significant progress toward assuming and maintaining such primary enforcement responsibility; and

(C) there is reason to believe the State will assume such primary enforcement responsibility by October 1, 1979.

The amount of any grant awarded for the fiscal years 1978 and 1979 pursuant to a waiver under this paragraph may not exceed 75 per centum of the allotment which the State would have received for such fiscal year if it had assumed and maintained such primary enforcement responsibility. The remaining 25 per centum of the amount allotted to such State for such fiscal year shall be retained by the Administrator, and the Administrator may award such amount to such State at such time as the State assumes such responsibility before the beginning of fiscal year 1980. At the beginning of each fiscal years 1979 and 1980 the amounts retained by the Administrator for any preceding fiscal year and not awarded by the beginning of fiscal year 1979 or 1980 to the States to which such amounts were originally allotted may be removed from the original allotment and reallotted for fiscal year 1979 or 1980 (as the case may be) to States which have assumed primary enforcement responsibility by the beginning of such fiscal year.

(6) The Administrator shall notify the State of the approval or disapproval of any application for a grant under this section—

(A) within ninety days after receipt of such application, or

(B) not later than the first day of the fiscal year for which the grant application is made,

whichever is later.

(7) For purposes of making grants under paragraph (1) there are authorized to be appropriated $15,000,000 for the fiscal year ending June 30, 1976, $25,000,000 for the fiscal year ending June 30, 1977, $35,000,000 for fiscal year 1978, $45,000,000 for fiscal year 1979, $29,450,000 for the fiscal year ending September 30, 1980, $32,000,000 for the fiscal year ending September 30, 1981, and $34,000,000 for the fiscal year ending September 30, 1982.

(b) Underground water source protection programs; applications for grants; allotment of sums; authorization of appropriations

[*See main edition for text of* (*1*) *to* (*4*)]

(5) For purposes of making grants under paragraph (1) there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1976, $7,500,000 for the fiscal year ending June 30, 1977, $10,000,000 for each of the fiscal years 1978 and 1979, $7,795,000 for the fiscal year ending September 30, 1980, $18,000,000 for the fiscal year ending September 30, 1981, and $21,000,000 for the fiscal year ending September 30, 1982.

[*See main edition for text of* (c)]

(As amended Nov. 16, 1977, Pub. L. 95-190, §§ 2(b), (c), 5(a), 91 Stat. 1393, 1395; Sept. 6, 1979, Pub. L. 96-63, § 2, 93 Stat. 411.)

AMENDMENTS

1979—Subsec. (a)(7). Pub. L. 96-63, § 2(a), authorized appropriation of $29,450,000, $32,000,000, and $34,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

Subsec. (b)(5). Pub. L. 96-63, § 2(b), authorized appropriation of $7,795,000, $18,000,000, and $21,000,000 for fiscal years ending Sept. 30, 1980, through 1982, respectively.

1977—Subsec. (a)(5). Pub. L. 95-190, § 5(a), added par. (5). Former par. (5) redesignated (7).

Subsec. (a)(6). Pub. L. 95-190, § 5(a), added par. (6).

Subsec. (a)(7). Pub. L. 95-190, §§ 2(b), 5(a), redesignated former par. (5) as (7) and, as so redesignated, authorized appropriations for fiscal years 1978 and 1979.

Subsec. (b)(5). Pub. L. 95-190, § 2(c), added provisions authorizing appropriations for fiscal years 1978 and 1979.

§ 300j-3. Special project grants and guaranteed loans

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300j-3b of this title.

§ 300j-3a. Grants to public sector agencies

(a) Assistance for development and demonstration projects

The Administrator of the Environmental Protection Agency shall offer grants to public sector agencies for the purposes of—

(1) assisting in the development and demonstration (including construction) of any project which will demonstrate a new or improved method, approach, or technology for providing a dependably safe supply of drinking water to the public; and

(2) assisting in the development and demonstration (including construction) of any project which will investigate and demonstrate health and conservation implications involved in the reclamation, recycling, and reuse of wastewaters for drinking and agricultural use or the processes and methods for the preparation of safe and acceptable drinking water.

(b) Limitations

Grants made by the Administrator under this section shall be subject to the following limitations:

(1) Grants under this section shall not exceed 66⅔ per centum of the total cost of construction of any facility and 75 per centum of any other costs, as determined by the Administrator.

(2) Grants under this section shall not be made for any project involving the construction or modification of any facilities for any public water system in a State unless such project has been approved by the State agency charged with the responsibility for safety of drinking water (or if there is no such agency in a State, by the State health authority).

(3) Grants under this section shall not be made for any project unless the Administrator determines, after consultation, that such project will serve a useful purpose relating to the development and demonstration of new or improved techniques, methods, or technologies for the provision of safe water to the public for drinking.

(c) Authorization of appropriations

There are authorized to be appropriated for the purposes of this section $25,000,000 for fiscal year 1978.

(Pub. L. 95-155, § 5, Nov. 8, 1977, 91 Stat. 1258, amended Pub. L. 95-477, § 7(a)(1), Oct. 18, 1978, 92 Stat. 1511.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the Public Health Service Act which comprises this chapter.

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-477 inserted "agricultural use or" following "drinking and".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 7(a)(2) of Pub. L. 95-477 provided that: "This subsection [amending this section] shall become effective October 1, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300j-3b of this title.

§ 300j-3b. Contaminant standards or treatment technique guidelines

(1) Not later than nine months after October 18, 1978, the Administrator shall promulgate guidelines establishing supplemental standards or treatment technique requirements for microbiological, viral, radiological, organic, and inorganic contaminants, which guidelines shall be conditions, as provided in paragraph (2), of any grant for a demonstration project for water reclamation, recycling, and reuse funded under section 300j-3a of this title or under section

300j-3(a)(2) of this title, where such project involves direct human consumption of treated wastewater. Such guidelines shall provide for sufficient control of each such contaminant, such that in the Administrator's judgement, no adverse effects on the health of persons may reasonably be anticipated to occur, allowing an adequate margin of safety.

(2) A grant referred to in paragraph (1) for a project which involves direct human consumption of treated wastewater may be awarded on or after the date of promulgation of guidelines under this section only if the applicant demonstrates to the satisfaction of the Administrator that the project—

(A) will comply with all national primary drinking water regulations under section 300g-1 of this title;

(B) will comply with all guidelines under this section; and

(C) will in other respects provide safe drinking water.

Any such grant awarded before the date of promulgation of such guidelines shall be conditioned on the applicant's agreement to comply to the maximum feasible extent with such guidelines as expeditiously as practicable following the date of promulgation thereof.

(3) Guidelines under this section may, in the discretion of the Administrator—

(A) be nationally and uniformly applicable to all projects funded under section 300j-3a of this title or section 300j-1(a)(2) of this title;

(B) vary for different classes or categories of such projects (as determined by the Administrator);

(C) be established and applicable on a project-by-project basis; or

(D) any combination of the above.

(4) Nothing in this section shall be construed to prohibit or delay the award of any grant referred to in paragraph (1) prior to the date of promulgation of such guidelines.

(Pub. L. 95-477, § 7(b), Oct. 18, 1978, 92 Stat. 1511.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the Public Health Service Act which comprises this chapter.

§ 300j-4. Records and inspections

(a) Persons subject to requirements

Every person who is a supplier of water, who is or may be otherwise subject to a primary drinking water regulation prescribed under section 300g-1 of this title or to an applicable underground injection control program (as defined in section 300h-1(c) of this title), who is or may be subject to the permit requirement of section 300h-3 of this title, or to an order issued under section 300j of this title, or who is a grantee, shall establish and maintain such records, make such reports, conduct such monitoring, and provide such information as the Administrator may reasonably require by regulation to assist him in establishing regulations under this subchapter, in determining whether such person has acted or is acting in compliance with this subchapter in administering any program of financial assistance under this subchapter, in evaluating the health risks of unregulated contaminants, or in advising the public of such risks.

(b) Entry of establishments, facilities, or other property; inspections; conduct of certain tests; audit and examination of records; entry restrictions; prohibition against informing of a proposed entry

(1) Except as provided in paragraph (2), the Administrator, or representatives of the Administrator duly designated by him, upon presenting appropriate credentials and a written notice to any supplier of water or other person subject to (A) a national primary drinking water regulation prescribed under section 300g-1 of this title, (B) an applicable underground injection control program, or (C) any requirement to monitor an unregulated contaminant pursuant to subsection (a) of this section, or person in charge of any of the property of such supplier or other person referred to in clause (A), (B), or (C), is authorized to enter any establishment, facility, or other property of such supplier or other person in order to determine whether such supplier or other person has acted or is acting in compliance with this subchapter, including for this purpose, inspection, at reasonable times, of records, files, papers, processes, controls, and facilities, or in order to test any feature of a public water system, including its raw water source. The Administrator or the Comptroller General (or any representative designated by either) shall have access for the purpose of audit and examination to any records, reports, or information of a grantee which are required to be maintained under subsection (a) of this section or which are pertinent to any financial assistance under this subchapter.

[*See main edition for text of* (2); (*c*) *to* (*e*)]

(As amended Nov. 16, 1977, Pub. L. 95-190, § 12(c), (d), 91 Stat. 1398.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-190, § 12(c), added provisions relating to evaluating and advising of health risks of unregulated contaminants.

Subsec. (b)(1). Pub. L. 95-190, § 12(d), designated existing provisions as cls. (A) and (B) and added cl. (C) and reference to such cls. (A) to (C).

§ 300j-6. Federal agencies

(a) Compliance with Federal, State, and local requirements, etc.; scope of applicability of compliance requirements, etc.; liability for civil penalties

Each Federal agency (1) having jurisdiction over any federally owned or maintained public water system or (2) engaged in any activity resulting, or which may result in, underground injection which endangers drinking water (within the meaning of section 300h(d)(2) of this title) shall be subject to, and comply with, all Federal, State, and local requirements, administrative authorities, and process and sanctions respecting the provision of safe drinking water and respecting any underground injection program in the same manner, and to the same extent, as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits, and any other requirement whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process or sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply, notwithstanding any immunity of such agencies, under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty under this subchapter with respect to any act or omission within the scope of his official duties.

[*See main edition for text of* (*b*)]

(c) Indian rights and sovereignty as unaffected

(1) Nothing in the Safe Drinking Water Amendments of 1977 shall be construed to alter or affect the status of American Indian lands or water rights nor to waive any sovereignty over Indian lands guaranteed by treaty or statute.

(2) For the purposes of this chapter, the term "Federal agency" shall not be construed to refer to or include any American Indian tribe, nor to the Secretary of the Interior in his capacity as trustee of Indian lands.

(As amended Nov. 16, 1977, Pub. L. 95-190, § 8(a), (d), 91 Stat. 1396, 1397.)

REFERENCES IN TEXT

The Safe Drinking Water Amendments of 1977, referred to in subsec. (c)(1), is Pub. L. 95-190, Nov. 16, 1977, 91 Stat. 1393. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 201 of this title and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-190, § 8(a), substituted provisions relating to compliance by Federal agencies having jurisdiction over federally owned or maintained public water systems, or engaged in underground injection activities with Federal, State, and local requirements, etc., for provisions relating to compliance by Federal agencies having jurisdiction over federally owned or maintained public water systems with national primary drinking water regulations.

Subsec. (c). Pub. L. 95-190, § 8(d), added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300h, 300j-8 of this title.

§ 300j-7. Judicial review

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300j-8 of this title.

§ 300j-8. Citizen's civil action

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Availability of other relief

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any requirement prescribed by or under this subchapter or to seek any other relief. Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State or local government from—

(1) bringing any action or obtaining any remedy or sanction in any State or local court, or

(2) bringing any administrative action or obtaining any administrative remedy or sanction,

against any agency of the United States under State or local law to enforce any requirement respecting the provision of safe drinking water or respecting any underground injection control program. Nothing in this section shall be construed to authorize judicial review of regulations or orders of the Administrator under this subchapter, except as provided in section 300j-7 of this title. For provisions providing for application of certain requirements to such agencies in the same manner as to nongovernmental entities, see section 300j-6 of this title.

(As amended Nov. 6, 1977, Pub. L. 95-190, § 8(c), 91 Stat. 1397.)

AMENDMENTS

1977—Subsec. (e). Pub. L. 95-190 added provisions relating to suits by State or local governments for enforcement of safe drinking water, etc., requirements.

§ 300j-10. Appointment of scientific, etc., personnel by Administrator of Environmental Protection Agency for implementation of responsibilities; compensation

To the extent that the Administrator of the Environmental Protection Agency deems such action necessary to the discharge of his functions under title XIV of the Public Health Service Act [42 U.S.C. 300f et seq.] (relating to safe drinking water) and under other provisions of law, he may appoint personnel to fill not more than thirty scientific, engineering, professional, legal, and administrative positions within the Environmental Protection Agency without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5.

(Pub. L. 95-190, § 11(b), Nov. 16, 1977, 91 Stat. 1398.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in text, is act July 1, 1944, ch. 373, 58 Stat. 682, as amended. Title XIV of the Public Health Service Act is classified generally to this subchapter (§ 300f et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

The civil service laws, referred to in text are set out in Title 5, Government Organization and Employees. See particularly section 3301 et seq. of that title.

CODIFICATION

Section was enacted as part of the Safe Drinking Water Amendments of 1977, and not as part of the Public Health Service Act which comprises this chapter.

SUBCHAPTER XIII—NATIONAL HEALTH PLANNING AND DEVELOPMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 246, 300s-3, 300u of this title.

PART A—NATIONAL GUIDELINES FOR HEALTH PLANNING

§ 300k-1. Guidelines for national health policy

(a) Issuance by Secretary

The Secretary shall, within eighteen months after January 4, 1975, by regulation issue guidelines concerning national health planning policy. Regulations under this subsection shall be promulgated in accordance with section 553 of title 5.

(b) Contents

The Secretary shall include in the guidelines issued under subsection (a) of this section the following:

(1) Standards respecting the appropriate supply, distribution, and organization of health resources. Such standards shall reflect the unique circumstances and needs of medically underserved populations in isolated rural communities.

[*See main edition for text of (2)*]

(c) Consultation with other agencies

At least 45 days before the initial publication of a regulation proposing a guideline under subsection (a) of this section or a revision under subsection (d) of this section of such a guideline, the Secretary shall, with respect to such proposed guideline or revision, consult with and solicit recommendations and comments from the health systems agencies designated under part B of this subchapter, the State health planning and development agencies designated under part C of this subchapter, the State wide Health Coordinating Councils established under part C of this subchapter, associations and specialty societies representing medical and other health care providers, and the National Council on Health Planning and Development established by section 300k-3 of this title.

(d) Statement of relationship between goals and resources

The Secretary shall, on an annual basis, review the standards and goals included in the guidelines issued under subsection (a) of this section. In conducting such a review, the Secretary shall review the health systems plans and annual implementation plans of health systems agencies and State health plans. If the Secretary proposes to revise a guideline issued under subsection (a) of this section, he shall make such revision by regulations promulgated in accordance with section 553 of title 5.

(e) Collection of data; statement of relationship between goals and resources; summary of changes in resources

(1) The Secretary may collect data to determine whether the health care delivery systems meet or are changing to meet the goals included in health systems plans under section 300*l*-2(b)(2) of this title and State health plans under section 300m-3 of this title and to determine the personnel, facilities, and other resources needed to meet such goals. The Secretary shall prescribe (A) the manner in which such data shall be assembled and reported to the Secretary by health systems agencies, State health planning and development agencies, and other entities, and (B) the definitions which shall be used by such agencies and entities in assembling and reporting such data.

(2) The Secretary shall from the data collected under paragraph (1) periodically make public a (A) statement of the relationship between the goals contained in the health systems plans and the State health plans and the status of the supply, distribution, and organization of health resources with respect to which such goals were established, and (B) summary of changes (either through additions or reductions) in resources needed to meet such goals.

(As amended Oct. 4, 1979, Pub. L. 96-79, title I, § 101(a)(1)(A), (2), (3), 93 Stat. 593.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-79, § 101(a)(1)(A), struck out "and shall, as he deems appropriate, by regulation revise such guidelines" following "health planning policy".

Subsec. (b)(1). Pub. L. 96-79, § 101(a)(2), inserted provision requiring standards to reflect the unique circumstances and needs of medically underserved populations in isolated rural communities.

Subsec. (c). Pub. L. 96-79, § 101(a)(3), inserted provision requiring the Secretary to consult with and solicit recommendations and comments from health systems agencies at least 45 days before the initial publication of a regulation proposing a guideline or of a revision of a guideline.

Subsecs. (d), (e). Pub. L. 96-79, § 101(a)(1)(A), added subsecs. (d) and (e).

AUTHORIZATION OF NEW BUDGET AUTHORITY BEFORE OCTOBER 1, 1979

Section 101(a)(1)(B) of Pub. L. 96-79 provided that: "The amendments made by subparagraph (A) [amending this section] do not authorize the enactment of new budget authority before October 1, 1979."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300k-3, 300*l*-2, 300m-1, 300n-2 of this title.

§ 300k-2. National health priorities

(a) The Congress finds that the following deserve priority consideration in the formulation of national health planning goals and in the development and operation of Federal, State, and area health planning and resources development programs:

[*See main edition for text of (1) to (8)*]

(9) The adoption of uniform cost accounting, simplified reimbursement, and utilization reporting systems and improved management procedures for health service institutions and the development and use of cost saving technology.

[*See main edition for text of (10)*]

(11) The promotion of an effective energy conservation and fuel efficiency program for

health service institutions to reduce the rate of growth of demand for energy.

(12) The identification and discontinuance of duplicative or unneeded services and facilities.

(13) The adoption of policies which will (A) contain the rapidly rising costs of health care delivery, (B) insure more appropriate use of health care services, and (C) promote greater efficiency in the health care delivery system.

(14) The elimination of inappropriate placement in institutions of persons with mental health problems and the improvement of the quality of care provided those with mental health problems for whom institutional care is appropriate.

(15) Assurance of access to community mental health centers and other mental health care providers for needed mental health services to emphasize the provision of outpatient as a preferable alternative to inpatient mental health services.

(16) The promotion of those health services which are provided in a manner cognizant of the emotional and psychological components of the prevention and treatment of illness and the maintenance of health.

(17) The strengthening of competitive forces in the health services industry wherever competition and consumer choice can constructively serve, in accordance with subsection (b) of this section, to advance the purposes of quality assurance, cost effectiveness, and access.

(b)(1) The Congress finds that the effect of competition on decisions of providers respecting the supply of health services and facilities is diminished. The primary source of the lessening of such effect is the prevailing methods of paying for health services by public and private health insurers, particularly for inpatient health services and other institutional health services. As a result, there is duplication and excess supply of certain health services and facilities, particularly in the case of inpatient health services.

(2) For health services, such as inpatient health services and other institutional health services, for which competition does not or will not appropriately allocate supply consistent with health systems plans and State health plans, health systems agencies and State health planning and development agencies should in the exercise of their functions under this subchapter take actions (where appropriate to advance the purposes of quality assurance, cost effectiveness, and access and the other purposes of this subchapter) to allocate the supply of such services.

(3) For the health services for which competition appropriately allocates supply consistent with health systems plans and State health plans, health systems agencies and State health planning and development agencies should in the performance of their functions under this subchapter give priority (where appropriate to advance the purposes of quality assurance, cost effectiveness, and access) to actions which would strengthen the effect of competition on the supply of such services.

(As amended Nov. 9, 1978, Pub. L. 95-619, title III, § 303(a), 92 Stat. 3248; Oct. 4, 1979, Pub. L. 96-79, title I, §§ 102(a), 103(a), (b), 93 Stat. 594, 595.)

AMENDMENTS

1979—Pub. L. 96-79, §§ 102(a), 103(a), (b), designated existing provision as subsec. (a), and in par. (9) of subsec. (a) as so designated, inserted "and the development and use of cost saving technology" following "health service institutions", added pars. (12) to (17) of subsec. (a) as so designated, and added subsec. (b).

1978—Par. (11). Pub. L. 95-619 added par. (11).

§ 300k-3. National Council on Health Planning and Development

[*See main edition for text of* (*a*)]

(b) Composition; terms of office of members

(1) The Council shall be composed of twenty members. The Chief Medical Director of the Veterans' Administration, the Assistant Secretary for Health and Environment of the Department of Defense, the Assistant Secretary for Rural Development of the Department of Agriculture, and the Assistant Secretary for Health of the Department of Health, Education, and Welfare shall be nonvoting ex officio members of the Council. The remaining members shall be appointed by the Secretary and shall be persons who, as a result of their training, experience, or attainments, are exceptionally well qualified to assist in carrying out the functions of the Council. Of the voting members, not less than eight members shall be persons who are not providers of health care and those members shall include individuals who represent urban and rural medically underserved populations, not more than three shall be officers or employees of the Federal Government, not less than one member shall represent hospitals, not less than three shall be members of governing bodies of health systems agencies designated under part B of this subchapter, and not less than three shall be members of Statewide Health Coordinating Councils established under section 300m-3 of this title. The two major political parties shall have equal representation among the voting members on the Council.

[*See main edition for text of* (*2*) *and* (*3*)]

(c) Compensation; travel expenses

[*See main edition for text of* (*1*) *and* (*2*)]

(3) While away from their homes or regular places of business in the performance of services for the Council, members of the Council shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 106(a), 91 Stat. 384; July 10, 1979, Pub. L. 96-32, § 7(g), 93 Stat. 84; Oct. 4, 1979, Pub. L. 96-79, title I, § 102(b), 93 Stat. 594.)

AMENDMENTS

1979—Subsec. (b)(1). Pub. L. 96-79 substituted "twenty members" for "fifteen members" and "eight members shall be persons who are not providers of health care and those members shall include individuals who represent urban and rural medically underserved populations" for "five shall be persons who are not providers of health services" and inserted "the Assistant Secretary for Rural Development of the Department of Agriculture," following "Department of Defense" and "not less than one member shall represent hospitals," following "Federal Government".

Subsec. (c)(3). Pub. L. 96-32 substituted "section 5703 of title 5" for "section 5703(b) of title 5".

1977—Subsec. (b)(1). Pub. L. 95-83 inserted "established" preceding "under section 300m-3 of this title".

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 242n, 254j, 300k-1 of this title.

PART B—HEALTH SYSTEMS AGENCIES

§ 300*l*. Health service areas

(a) Requirements; factors considered in establishing boundaries

Except as provided in section 300n-5 of this title, there shall be established, in accordance with this section, health service areas throughout the United States with respect to which health systems agencies shall be designated under section 300*l*-4 of this title. Each health service area shall meet the following requirements:

[*See main edition for text of* (*1*) *to* (*4*)]

The boundaries of a health service area shall be established so that, in the planning and development of health services to be offered within the health service area, any economic or geographic barrier to the receipt of such services in nonmetropolitan areas is taken into account. The boundaries of health service areas shall be established so as to recognize the differences in health planning and health services development needs between non-metropolitan and metropolitan areas. Each standard metropolitan statistical area shall be entirely within the boundaries of one health service area, except that if the Governor of each State in which a standard metropolitan statistical area is located determines, with the approval of the Secretary, that in order to meet the other requirements of this subsection a health service area should contain only part of the standard metropolitan statistical area, then such statistical area shall not be required to be entirely within the boundaries of such health service area.

(b) Notice to State governors; publication in Federal Register; boundary designations; revision; review by Secretary; consultations; hearing

[*See main edition for text of* (*1*) *to* (*3*)]

(4) The Secretary shall review on his own initiative or at the request of any Governor or designated health systems agency the appropriateness of the boundaries of the health service areas established under paragraph (3) and, if he determines that—

(A) the boundaries for a health service area no longer meet the requirements of subsection (a) of this section, or

(B) the boundaries for a proposed revised health service area meet the requirements of subsection (a) of this section in a significantly more appropriate manner in terms of the efficiency and effectiveness of health planning efforts,

he shall revise the boundaries in accordance with the procedures prescribed by paragraph (3)(B)(ii). If the Secretary acts on his own initiative to revise the boundaries of any health service area, he shall consult with the Governor of the State or States which would be affected by the revision, the chief executive officer or agency of the political subdivisions within such State or States, and the designated health systems agency or agencies and the established Statewide Health Coordinating Council or Councils that would be affected by the revision. A Governor may request a revision of the boundaries of a health service area only after consultation with the Governor of any other State or States that would be affected by the revision, the chief executive officer or agency of the political subdivisions within such State or States, and the designated health systems agencies and the established Statewide Health Coordinating Council or Councils that would be affected by the revision and shall include in such request the comments concerning the proposed revision made by such individuals and entities. A designated health systems agency may request a revision of the boundaries of its health service area only after consultation with the Governor of the State or States that would be affected by the revision, the chief executive officer or agency of the political subdivisions within such State or States, the Statewide Health Coordinating Council of such State or States, and the health systems agencies that would be affected by the revision and shall include in such request the comments concerning the proposed revision made by such individuals and entities. No proposed revision of the boundaries of a health service area shall comprise an entire State without the prior consent of the Governor of such State. In addition, for each proposed revision of the boundaries of a health service area, the Secretary shall give notice and an opportunity for a hearing to all interested persons and make a written determination of his findings and decision.

[*See main edition for text of* (*5*)]

(c) Repealed. Pub. L. 96-79, title I, § 104(b), Oct. 4, 1979, 93 Stat. 595

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 106(b), 91 Stat. 384; Oct. 4, 1979, Pub. L. 96-79, title I, § 104(a)(1), (b), 93 Stat. 595.)

AMENDMENTS

1979—Subsec. (b)(4). Pub. L. 96-79, § 104(a)(1), authorized the Secretary to review on his own or at the request of any governor the appropriateness of boundaries of health service areas and to revise those boundaries if the boundaries for a proposed revised health service area meet the requirements of subsec. (a) of this section in a significantly more appropriate manner in terms of the efficiency and effectiveness of health planning efforts and required the Secretary to give notice and an opportunity for a hearing to all interested parties and make a written determination of his findings and decision for each proposed revision of the boundaries of a health service area.

Subsec. (c). Pub. L. 96-79, § 104(b), struck out subsec. (c), which provided that an area for which a comprehensive regional, metropolitan area, or other local area plan had been developed and which otherwise met the requirements of subsec. (a) of this section was to be designated by the Secretary as a health service area unless the governor of any State in which the area was located, upon the finding that another area would be more appropriate region for the effective planning and development of health resources, waived such requirement.

1977—Subsec. (a). Pub. L. 95-83 inserted the introductory exception phrase.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 129(a) of title I of Pub. L. 96-79, provided that: "The amendments made by this title (other than by sections 101, 102, 103(a), 103(b), 103(c), 104(c), 105, 106, 107, 110(c), 110(d), 110(e), 110(f), 111, 115(f), 116(d), 116(e), 117, 120, 123, 126, 127, and 128) [title I, other than the above specified sections, amended sections 246, 300l, 300l-1(b) (2)(A), (3) (A), (B) (ii), (vi), (C) to (F), 300l-2(b) (2)(A), (3), (c)(2), (d) (1)(C), (2), (e)(1) (A), (B), (2) to (4), (g), (h), 300m-1(b) (5), (7), 300m-2(a) (1), (2), (6), 300m-3 (b), (c), (e), 300n(3), 300n-1 (a), (b) (3), (4), (10), (c), 300n-3 (b), (c), 2689t, and 4573 of this title and section 1176 of Title 21, Food and Drugs, and enacted a provision set out as a note under this section] shall take effect one year after the date of the enactment of this Act [Oct. 4, 1979], except that on and after the date of the enactment of this Act—

"(1) the changes in the membership of the health systems agencies and the Statewide Health Coordinating Councils required by amendments to sections 1512, 1524, and 1531 [sections 300l-1, 300m-3, and 300n of this title] shall be implemented through selections of members to fill vacancies occurring after such date,

"(2) a health systems agency, a State health planning and development agency, and a Statewide Health Coordinating Council may make the organizational and related changes required by the amendments to sections 1512, 1522, 1523, 1524, and 1531 of the Public Health Service Act [sections 300l-1, 300m-1, 300m-2, 300m-3, and 300n of this title], and

"(3) health systems agencies, State health planning and development agencies, and Statewide Health Coordinating Councils may act in accordance with the changes in their functions made by the amendments to sections 1513, 1522, 1523, 1524, and 1532 of the Public Health Service Act [sections 300l-2, 300m-1, 300m-2, 300m-3, and 300n-1 of this title]."

CRITERIA FOR REVISION OF HEALTH SERVICE AREA BOUNDARIES; REGULATIONS BY SECRETARY

Section 104(a)(2) of Pub. L. 96-79 provided that: "Not later than one year after the date of the enactment of this Act [Oct. 4, 1979] the Secretary shall by regulation prescribe criteria for the revision of health service area boundaries under section 1511(b)(4) of the Public Health Service Act (as amended by paragraph (1)) [subsec. (b)(4) of this section]."

§ 300l-1. Health systems agency

[*See main edition for text of* (*a*)]

(b) Legal structure; staff; governing body; responsibilities; composition; limitation of liability; acceptance of contributions; reports

[*See main edition for text of* (*1*) *and* (*2*)]

(3)(A) A health systems agency which is a public regional planning body or unit of general local government shall, in addition to any other governing body, have a governing body for health planning, which is established in accordance with subparagraph (C), which shall have the responsibilities prescribed by subparagraph (B), and which has exclusive authority to perform the functions described in section 300l-2 of this title. Any other health systems agency shall have a governing body composed, in accordance with subparagraph (C), of not less than ten members and of not more than thirty members, except that the number of members may exceed thirty if the governing body has established another unit (referred to in this paragraph as an "executive committee") composed, in accordance with subparagraph (C), of not more than twenty-five members of the governing body and has delegated to that unit the authority to take such action (other than the establishment and revision of the plans referred to in subparagraph (B)(ii)) as the governing body is authorized to take.

(B) The governing body—

(i) shall be responsible for the internal affairs of the health systems agency, including matters relating to the staff of the agency, the agency's budget, and procedures and criteria (developed and published pursuant to section 300n-1 of this title) applicable to its functions under subsections (e), (f), (g), and (h) of section 300l-2 of this title;

(ii) shall be responsible for the establishment of the health systems plan and annual implementation plan required by section 300l-2(b) of this title and in the case of a health systems agency which is a public regional planning body or unit of general local government, the planning body or unit of government shall be given, in accordance with sections 300l-2(b)(2) and 300l-2(b)(3) of this title, a reasonable opportunity to comment on the health systems plan and annual implementation plan proposed by the governing body and to propose additions to and other revisions in it;

(iii) shall be responsible for the approval or disapproval of grants and contracts made and entered into under section 300l-2(c)(3) of this title;

(iv) shall be responsible for the approval or disapproval of all actions taken pursuant to subsections (e), (f), and (g), of section 300l-2 of this title;

[*See main edition for text of* (*v*) *to* (*vii*)]

(viii) shall (I) hold in public meetings to conduct the business of the agency (other than any part of a meeting in which it is likely, as determined by the governing body, that information respecting the performance or remuneration of an employee of the agency will be disclosed and such a disclosure would constitute a clearly unwarranted invasion of the personal privacy of the employee or that information relating to the agency's participation in a judicial proceeding will be disclosed), (II) give adequate notice to the public of such meetings, and (III) make records and data of the agency (other than records or data respecting the performance or remuneration of an employee the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of the employee and records or data of the agency relating to its participation in a judicial proceeding) available, upon request, to the public.

The governing body (and executive committee (if any)) of a health systems agency shall act only by vote of a majority of its members present and voting at a meeting called upon adequate notice to all of its members and at which a quorum is in attendance. A quorum for a governing body and executive committee shall be not less than one-half of its members.

[*See main edition for text of* (*C*)]

(4)(A) Except as provided in subparagraph (B)—

(i) a health systems agency shall not, by reason of the performance of any duty, function, or activity, required of, or authorized to be undertaken by, the agency, be liable for the payment of damages under any law of the United States or any State (or political subdivision thereof) if the member of the governing body of the agency or employee of the agency who acted on behalf of the agency in the performance of such duty, function, or activity acted within the scope of his duty, function, or activity as such a member or employee, exercised due care, and acted without malice toward any person affected by it; and

(ii) no individual member of the governing body of a health systems agency or employee of a health systems agency shall, by reason of his performance on behalf of the agency of any duty, function, or activity required of, or authorized to be undertaken by, the agency, be liable for the payment of damages under any law of the United States or any State (or political subdivision of a State) if he believed he was acting within the scope of his duty, function, or activity as such a member or employee, and, with respect to such performance, acted without gross negligence or malice toward any person affected by it.

(B) Subparagraph (A) does not apply with respect to civil actions for bodily injury to individuals or physical damages to property brought against a health systems agency or any member of the governing body of or employee of such an agency.

[*See main edition for text of* (5)]

(6) Each health system agency shall—

(A) provide that any executive committee of the agency and any entity appointed by the governing body or executive committee of the agency shall (i) hold in public meetings to conduct the business of the committee or entity (other than any part of a meeting in which it is likely, as determined by the executive committee or entity, that information respecting the performance or remuneration of an employee of the agency will be disclosed and such disclosure would constitute a clearly unwarranted invasion of the personal privacy of the employee or that information relating the agency's participation in a judicial proceeding will be disclosed), and (ii) give adequate notice of its meetings to those persons who have requested such notice;

(B) make such reports, in such form and containing such information (other than information respecting the performance or remuneration of an employee of the agency the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of the employee or information relating the agency's participation in a judicial proceeding), concerning its structure, operations, performance of functions, and other matters as the Secretary may from time to time require, and keep such records and afford such access thereto as the Secretary may find necessary to verify such reports;

(C) provide for such fiscal control and fund accounting procedures as the Secretary may require to assure proper disbursement of, and accounting for, amounts received from the Secretary under this subchapter and section 300t of this title; and

(D) permit the Secretary and the Comptroller General of the United States, or their representatives, to have access for the purpose of audit and examination to any books, documents, papers, and records pertinent to the disposition of amounts received from the Secretary under this subchapter and section 300t of this title.

(c) Subarea councils

A health systems agency may establish subarea advisory councils representing parts of the agency's health service area to advise the governing body of the agency on the performance of its functions. The composition of a subarea advisory council shall conform to the requirements of subsection (b)(3)(C) of this section.

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, 106(c), (d), 91 Stat. 384; Oct. 4, 1979, Pub. L. 96-79, title I, §§ 110(c), (d)(1), (e)(1), (2)(A), (3), 111(a), (b), 93 Stat. 603-605.)

Amendment of Subsec. (b)(2)(A) and (3)

Pub. L. 96-79, title I, §§ 112(c), 114, 129(a), Oct. 4, 1979, 93 Stat. 606, 607, 629, provided that, effective one year after Oct. 4, 1979, subsec. (b)(2)(A) will read as follows:

(2)(A) A health systems agency shall have a staff which provides the agency with expertise in at least the following: (i) Administration, (ii) the gathering and analysis of data, (iii) health planning, (iv) development and use of health (including mental health) resources, (v) financial and economic analysis, and (vi) prevention of disease and other public health matters. The functions of planning and of development of health (including mental health) resources shall be conducted by staff with skills appropriate to each function. At least one member of the staff shall be designated to have the responsibility of providing the members of the governing body of an agency (particularly the consumer members) with such information and technical assistance as they may require to effectively perform their functions.

Pub. L. 96-79, title I, §§ 108(a)-(c), (d)(1), (e), 109, 110(a), (b), 112(a), (b), 113(a), *129(a), Oct. 4, 1979, 93 Stat. 601-603, 605, 606, 629, provided that, effective one year after Oct. 4, 1979, subsec. (b)(3) will read as follows:*

(3)(A) A health systems agency which is a public regional planning body or unit of general local government shall, in addition to any other governing body, appoint a governing body for health planning in accordance with subparagraph (C) which shall have the responsibilities prescribed by subparagraph (B), and which shall have exclusive authority to perform the functions described in section 300l-2 of this title. Any other health systems agency shall have a governing body composed, in accordance with subparagraph (C), of not less than ten members and of not more than thirty members, except that the number of members may exceed thirty if the governing body has established another unit (referred to in this paragraph as an "executive committee") composed, in accordance with subparagraph (C), of not less than ten members and not more than thirty members of the governing body and has delegated to that unit the authority to take such action (other than the establishment and revision of the plans referred to in subparagraph (B)(ii)) as the governing body is authorized to take.

(B) The governing body—

(i) shall be responsible for—

(I) the internal affairs of the health systems agency, including matters relating to the staff of the agency and the agency's budget, except that the governing body for health planning of an agency which is a public regional planning body or unit of general local government shall not be responsible for the establishment of personnel rules and practices for the staff of the agency or for the agency's budget unless authorized by the planning body or unit of government, and

(II) procedures and criteria developed and published pursuant to section 300n-1 of this title and applicable to its functions under subsections (e), (f), and (g) of section 300l-2 of this title;

(ii) shall be responsible for the establishment of the health systems plan and annual implementation plan required by section 300l-2(b) of this title and in the case of a health systems agency which is a public regional planning body or unit of general local government, the planning body or unit of government shall be given, in accordance with sections 300l-2(b)(2) and 300l-2(b)(3) of this title, a reasonable opportunity to comment on the health systems plan and annual implementation plan proposed by the governing body and to propose additions to and other revisions in it;

(iii) shall be responsible for the approval or disapproval of grants and contracts made and entered into under section 300l-2(c)(3) of this title;

(iv) shall be responsible for the approval or disapproval of all actions taken pursuant to subsections (e), (f), and (g), of section 300l-2 of this title;

(v) shall (I) issue an annual report concerning the activities of the agency, (II) include in that report the health systems plan and annual implementation plan developed by the agency, and a listing of the agency's income, expenditures, assets, and liabilities, and (III) make the report readily available to the residents of the health service area and the various communications media serving such area;

(vi) shall reimburse (or when appropriate make advances to) its members for their reasonable costs incurred in attending meetings of the governing body and performing any other duties and functions of the health systems agency;

(vii) shall meet at least once in each calendar quarter of a year and shall meet at least two additional times in a year unless its executive committee meets at least twice in that year; and

(viii) shall (I) hold in public meetings to conduct the business of the agency (other than any part of a meeting in which it is likely, as determined by the governing body, that information respecting the performance or remuneration of an employee of the agency will be disclosed and such a disclosure would constitute a clearly unwarranted invasion of the personal privacy of the employee or that information relating to the agency's participation in a judicial proceeding will be disclosed), (II) give adequate notice to the public of such meetings, and (III) make records and data of the agency (other than records or data respecting the performance or remuneration of an employee the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of the employee and records or data of the agency relating to its participation in a judicial proceeding) available, upon request, to the public.

The governing body (and executive committee (if any)) of a health systems agency shall act only by vote of a majority of its members present and voting at a meeting called upon adequate notice to all of its members and at which a quorum is in attendance. A quorum for a governing body and executive committee shall be not less than one-half of its members.

(C) The membership of the governing body and the executive committee (if any) of an agency shall meet the following requirements:

(i) A majority (but not more than 60 per centum of the members) shall be (I) residents of the health service area served by the entity who are consumers of health care and who are not providers of health care, and (II) broadly representative of the health service area and shall include individuals representing the principal social, economic, linguistic, handicapped, and racial populations and geographic areas of the health service area and major purchasers of health care (including labor organizations and business corporations) in the area.

(ii) The remainder of the members shall be residents of, or have their principal place of business in, the health service area served by the agency who are providers of health care and who represent (I) physicians (particularly practicing physicians) dentists, nurses, optometrists, podiatrists, physician assistants,

and other health professionals, (II) health care institutions (particularly hospitals, long-term care facilities, rehabilitation facilities, alcohol and drug abuse treatment facilities, and health maintenance organizations), (III) health care insurers, (IV) health professional schools, (V) the allied health professions, and (VI) other providers of health care. Not less than one-half of the providers of health care who are members of the governing body or executive committee of a health systems agency shall be direct providers of health care (as described in section 300n(3) of this title) and of such direct providers of health care, at least one shall be a person engaged in the administration of a hospital.

(iii) The membership shall—

(I) include (either through consumer or provider members) public elected officials and other representatives of units of general purpose local government in the agency's health service area and representatives of public and private agencies in the area concerned with health,

(II) include a percentage of individuals who reside in nonmetropolitan areas within the health service area which percentage is at least equal to the percentage of residents of the area who reside in nonmetropolitan areas,

(III) include (through consumer and provider members) individuals who are knowledgeable about mental health services,

(IV) if the health systems agency serves an area in which there is located one or more hospitals or other health care facilities of the Veterans' Administration, include, as a nonvoting, ex officio member, an individual whom the Chief Medical Director of the Veterans' Administration shall have designated for such purpose, and

(V) if the agency serves an area in which there is located one or more health maintenance organizations, include at least one member who is representative of such organizations.

(iv) If, in the exercise of its functions, a governing body or executive committee appoints a subcommittee or an advisory group, it shall, to the extent practicable, make its appointments to any such subcommittee or group in such a manner as to provide the representation on such subcommittee or group described in this subparagraph, except that appointments shall be made to such subcommittees and groups in such a manner that a majority of their members shall be consumers of health care.

For purposes of clause (iii)(I), to be considered a representative of a unit of general purpose local government, an individual must be appointed by such unit or a combination thereof, and the State government of a State which is comprised of a single health service area shall be deemed to be a unit of general purpose local government. A member of a governing body appointed pursuant to clause (iii)(IV) shall not be considered in determining the number of members of the governing body for purposes of the numerical limit prescribed by subparagraph (A).

(D) Each health systems agency shall establish a process for the selection of the members of its governing body which process is designed to assure that (i) such members are selected in accordance with the requirements of subparagraph (C), (ii) there is the opportunity for broad participation in such process by the residents of the health service area of the agency, and (iii) the participation of such residents will be encouraged and facilitated. Such process shall prohibit the selection of more than one-half of the members of such body by members of such body. Each agency shall make public such process and report it to the Secretary. The requirements of this subparagraph shall apply with respect to the selection of members of a subarea advisory council if the council is authorized to select or selects one or more members of the governing body of a health systems agency.

(E) Each health systems agency shall have an identifiable program of providing assistance to the members of its governing body, executive committee (if any), and any entity appointed by the governing body or executive committee in making decisions for the agency, and shall include in such program means to determine the support needs of the members and to provide for meeting those needs (including the provision of training and continuing education).

(F) No member of a governing body, executive committee, or any entity appointed by a governing body, or executive committee may, in the exercise of any function of the agency described in subsection (e), (f), or (g) of section 300l-2 of this title, vote on any matter before the governing body, executive committee, or any such entity respecting any individual or entity with which such member has (or, within the twelve months preceding the vote, had) any substantial ownership, employment, medical staff, fiduciary, contractual, creditor, or consultative relationship. A governing body, executive committee, and any entity appointed by a governing body or executive committee shall require each of its members who has or has had such a relationship with an individual or entity involved in any matter before the governing body, committee, or entity to make a written disclosure of such relationship before any action is taken by the body, committee, or entity with respect to such matter in the exercise of any function of the agency described in section 300l-2 of this title and to make such relationship public in any meeting in which such action is to be taken.

AMENDMENTS

1979—Subsec. (b)(3)(A). Pub. L. 96-79, § 110(e)(1), struck out "for the agency" following "to perform".

Subsec. (b)(3)(B)(ii). Pub. L. 96-79, § 110(e)(2)(A), inserted provision requiring that in the case of a health systems agency which is a public regional planning body or unit of general local government, the planning body or unit of government be given a reasonable opportunity to comment on the health systems plan and annual implementation plan proposed by the governing body and to propose additions or revisions in it.

Subsec. (b)(3)(B)(iii). Pub. L. 96-79, § 110(e)(3), substituted "approval or disapproval" for "approval".

Subsec. (b)(3)(B)(iv). Pub. L. 96-79, § 110(c), (e)(3), substituted "approval or disapproval" for "approval" and "and (g)" for "(g), and (h)".

Subsec. (b)(3)(B)(viii). Pub. L. 96-79, § 111(a), excluded from the requirements of a public meeting and public access to records and data any part of a meeting or any records and data in which information respecting the performance or remuneration of an employee of the agency will be disclosed and such disclosure would constitute a clearly unwarranted invasion of privacy or in which information relating to the agency's participation in a judicial proceeding will be disclosed.

Subsec. (b)(4). Pub. L. 96-79, § 110(d)(1), extended exemption from liability to health systems agencies, provided that the individual act without gross negligence or malice to be exempt, and excluded from the exemption civil actions for bodily injury or physical damage to property.

Subsec. (b)(6)(A). Pub. L. 96-79, § 111(b)(2), added subpar. (A) and redesignated former subpar. (A) as (B).

Subsec. (b)(6)(B). Pub. L. 96-79, § 111(b) (1), (2), redesignated former subpar. (A) as (B), and in subpar. (B) as so redesignated, inserted provision excluding from reports information respecting the performance or remuneration of an employee the disclosure of which would constitute a clearly unwarranted invasion of personal privacy of the employee or information relating to agency participation in a judicial proceeding as information required to be given in reports. Former subpar. (B) redesignated as (C).

Subsec. (6)(b) (C), (D). Pub. L. 96-79, § 111(b)(2), redesignated former subpars. (B) and (C) as (C) and (D), respectively.

1977—Subsec. (b)(3)(B)(i). Pub. L. 95-83, § 106(c), included reference to subsec. (h).

Subsec. (c). Pub. L. 95-83, § 106(d), substituted "agency's health" for "agencies' health".

Comment on Health Systems Plan and Annual Implementation Plan Not Required for Planning Body Which Is Unit of Local Government for Which Designation in Effect on January 1, 1979

Section 110(e)(2)(B) of Pub. L. 96-79 provided that: "The amendment made by subparagraph (A) [amending subsec. (b)(3)(B)(ii) of this section] shall not apply with respect to a health systems agency for which a designation under section 1515 of the Public Health Service Act [section 300*l*-4 of this title] was in effect on January 1, 1979, and which is a unit of general local government."

Health Systems Agencies and Statewide Health Coordinating Councils; Changes in Membership; Vacancies Occurring After October 4, 1979

Effective on or after Oct. 4, 1979, changes in membership of health systems agencies and the Statewide Health Coordinating Councils required by amendments to this section by Pub. L. 96-79 implemented through selection of members to fill vacancies occurring after Oct. 4, 1979, see section 129(a)(1) of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300*l* of this title.

Health System Agency, State Health Planning and Development Agency, and Statewide Health Coordinating Council; Organizational and Related Changes

Effective on or after Oct. 4, 1979, a health systems agency, a State health planning and development agency, and a Statewide Health Coordinating Council may make the organizational and related changes required by amendments to this section by Pub. L. 96-79, see section 129(a)(2) of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300*l* of this title.

§ 300*l*-2. Functions of health systems agencies

(a) Health planning as primary responsibility; influence on government action

For the purpose of—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) restraining increases in the cost of providing them health services,

(4) preventing unnecessary duplication of health resources, and

(5) preserving and improving, in accordance with section 300k-2(b) of this title, competition in the health service area,

each health systems agency shall have as its primary responsibility the provision of effective health planning for its health service area and the promotion of the development within the area of health services, manpower, and facilities which meet identified needs, reduce documented inefficiencies, and implement the health plans of the agency. None of the funds authorized to be appropriated under this subchapter may be used by a health systems agency directly to pay any individual to influence the issuance, amendment, or revocation of any Executive order or regulation by any Federal, State, or local chief executive officer or agency or to influence the passage, amendment or defeat of any legislation by the Congress or by any State or local legislative body. The preceding sentence does not apply with respect to compensation paid by a health systems agency to an employee of the agency unless the primary responsibility of the employee for the agency is to influence such governmental action. To meet its primary responsibility, a health systems agency shall carry out the functions described in subsections (b) through (g) of this section.

(b) Health Systems and Annual Implementation Plans; establishment; review

In providing health planning and resources development for its health service area, a health systems agency shall perform the following functions:

(1) The agency shall assemble and analyze data concerning—

[*See main edition for text of* (*A*) *to* (*F*)]

The agency shall also assemble and report to the Secretary such data (including data on the personnel, facilities, and other resources needed to meet the goals set forth in the agency's health system plan) as the Secretary may require to carry out his responsibilities under section 300k-1(e) of this title. The Secretary may not require the assembling and reporting of data under this paragraph which is regularly collected by any entity of the Department of Health, Education, and Welfare under a provision of law other than this subchapter. In carrying out this paragraph, the agency shall to the maximum extent practicable use existing data (including data developed under Federal health programs) and coordinate its activities with the cooperative system provided for under section 242k(e) of this title.

(2) The agency shall, after appropriate consideration of the recommended national guidelines for health planning policy issued by the Secretary under section 300k-1 of this title, the priorities set forth in section 300k-2 of this title, and the data developed pursuant to paragraph (1), establish, annually review, and amend as necessary a health systems plan (hereinafter in this subchapter referred to as the "HSP") which shall be a detailed statement of goals (A) describing a healthful environment and health systems in the area which, when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care, at reasonable cost, for all residents of the area; (B) which are responsive to the unique needs and resources of the area; and (C) which take into account the national guidelines for health planning policy issued by the Secretary under section 300k-1 of this title respecting supply, distribution, and organization of health resources and services. Before establishing an HSP a health systems agency shall conduct a public hearing on the proposed HSP and shall give interested persons an opportunity to submit their views orally and in writing. Not less than thirty days prior to such hearing, the agency shall publish in at least two newspapers of general circulation throughout its health service area a notice of its consideration of the proposed HSP, the time and place of the hearing, the place at which interested persons may consult the HSP in advance of the hearing, and the place and period during which to submit written comments to the agency on the HSP. If the health systems agency is a public regional planning body or unit of general local government, the planning body or unit of government shall be given a reasonable opportunity to comment on the proposed HSP and to proposed additions to and other revisions in it. Any such proposed additions or other revisions not included in the HSP established by the agency shall be appended to the HSP. If the goals contained in the HSP are not consistent with guidelines issued by the Secretary under section 300k-1 of this title, it shall provide the State health planning and development agency and the Secretary with a detailed statement of the reasons for the inconsistency between such goals and guidelines. When making such HSP available to a Statewide Health Coordinating Council under section 300m-3(c)(2)(A) of this title, the agency shall also report such statement to such Council.

[*See main edition for text of* (*3*) *and* (*4*)]

(c) Implementation of Plans; grants and contracts; restrictions

A health systems agency shall implement its HSP and AIP, and in implementing the plans it shall perform at least the following functions:

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The agency shall, in accordance with the priorities established in the AIP, make grants to public and nonprofit private entities and enter into contracts with individuals and public and nonprofit private entities to assist them in planning and developing projects and programs which the agency determines are necessary for the achievement of the health systems described in the HSP. Such grants and contracts shall be made from the Area Health Services Development Fund of the agency established with funds provided under grants made under section 300t of this title. No grants or contract under this subsection may be used (A) to pay the costs incurred by an entity or individual in the delivery of health services (as defined in regulations of the Secretary), or (B) for the cost of construction or modernization of medical facilities. No single grant or contract made or entered into under this paragraph shall be available for obligation beyond the one year period beginning on the date the grant or contract was made or entered into unless another grant or contract is made or entered into, in which case the funds under the first grant or contract shall remain available for the period of the second grant or contract. Funds from a first grant or contract which remain available for obligation in the period of a second grant or contract shall not be considered in determining the amount of the second grant or contract. If an individual or entity receives a grant or contract under this paragraph for a project or program, such individual or entity may receive only one more such grant or contract for such project or program.

(d) Coordination of activities with other agencies

Each health systems agency shall coordinate its activities with—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) other appropriate general or special purpose regional planning or administrative agencies,

(4) any entity of the State in which the agency is located which reviews the rates or budgets of health care facilities located in the agency's health service area, and

(5) any other appropriate entity,

in the health systems agency's health service area. The agency shall, as appropriate, secure data from them for use in the agency's planning and development activities, enter into agreements with them which will assure that actions taken by such entities which alter the area's health systems will be taken in a manner which is consistent with the HSP and the AIP in effect for the area, and, to the extent practicable, provide technical assistance to such entities.

(e) Approval of use of federal funds

(1)(A) Except as provided in subparagraph (B), each health systems agency shall review and approve or disapprove each proposed use within its health service area of Federal funds—

(i) appropriated under this chapter, the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], sections 409 and 410 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act [21 U.S.C. 1176, 1177], or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [42 U.S.C. 4541 et seq.] for grants, contracts, loans, or loan guarantees for the development, expansion, or support of health resources; or

[*See main edition for text of* (*ii*), (*B*), (*2*) *and* (*3*); (*f*) *to* (*h*)]

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 106(e)-(i), 91 Stat. 384, 385; July 10, 1979, Pub. L. 96-32, § 7(m), 93 Stat. 84; Oct. 4, 1979, Pub. L. 96-79, title I, §§ 101(b)(1), 103(c), 107(a), 110(e)(4), (f), 115(f), 120(a), 123(c)(1)(B), 93 Stat. 593, 595, 600, 604, 609, 622, 625; Jan. 2, 1980, Pub. L. 96-181, § 15(b), 93 Stat. 1316.)

AMENDMENT OF SUBSECS. (b)(2), (3), (c)(2), (d), (e), (g), AND (h)

Pub. L. 96-79, title I, §§ 115 (b)(1), (2), (c)(2), (d)(1), (2), (e), (i)(1), 129(a), Oct. 4, 1979, 93 Stat. 607-610, 629, provided that, effective one year after Oct. 4, 1979, subsec. (b)(2) and *(3) of this section will read as follows:*

(2) The agency shall, after appropriate consideration of the recommended national guidelines for health planning policy issued by the Secretary under section 300k-1 of this title, the priorities set forth in section 300k-2 of this title, and the data developed pursuant to paragraph (1), establish (in accordance with the format established pursuant to section 300m-3(c)(1) of this title), at least triennially review, and amend as necessary a health systems plan (hereinafter in this subchapter referred to as the "HSP") which shall be a detailed statement of goals (A) describing a healthful environment (primarily with regard to health care equipment and to health services provided by health care institutions, health care facilities, and other providers of health care and to other health resources) and health systems in the area which, when developed, will assure that quality health services will be available and accessible in a manner which assures continuity of care, at reasonable cost, for all residents of the area; (B) which are responsive to the unique needs and resources (including entities described in section 300n-1(c)(7) of this title) of the area; (C) which take into account the national guidelines for health planning policy issued by the Secretary under section 300k-1 of this title respecting supply, distribution, and organization of health resources and services; (D) which are responsive to statewide health needs as determined by the State health planning and development agency; (E) which describe the institutional health services (as defined in section 300n(5) of this title) needed to provide for the well-being of persons receiving care within the health service area, including, at a minimum, acute inpatient (including psychiatric, inpatient, obstetrical inpatient, and neonatal inpatient), rehabilitation, and long-term care services; and (F) which describe other health services needed to provide for the well-being of persons receiving care within the health service area, including, at a minimum, preventive, ambulatory, and home health services and treatment for alcohol and drug abuse. The HSP of the agency shall include goals for the delivery of mental health services in its health service area which goals shall be developed under a procedure under which persons (acting as an advisory group or subcommittee appointed by the agency or, if the agency requests and is authorized by the Secretary to use an existing group, acting as part of such a group) knowledgeable about such services (including services for alcohol and drug abuse) will be consulted with respect to such goals. The HSP shall describe the number and type of resources, including facilities, personnel, major medical equipment, and other resources required to meet the goals of the HSP and shall state the extent to which existing health care facilities are in need of modernization, conversion to other uses, or closure and the extent to which new health care facilities need to be constructed or acquired. Before establishing or amending an HSP and in its review of an HSP, a health systems agency shall conduct a public hearing on the proposed HSP and shall give interested persons an opportunity to submit their views orally and in writing. Not less than thirty days prior to such hearing, the agency shall publish in at least two newspapers of general circulation throughout its health service area a notice of its consideration of the proposed HSP, the time and place of the hearing, the place at which interested persons may consult the HSP in advance of the hearing, and the place and period during which to submit written comments to the agency on the HSP. If the health systems agency is a public regional planning body or unit of general local government, the planning body or unit of government shall be given a reasonable opportunity to comment on the proposed HSP and to propose additions to and other revisions in it. Any such proposed additions or other revisions not included in the HSP established by the agency shall be appended to the HSP. If the goals contained in the HSP are not consistent with guidelines issued by the Secretary under section 300k-1 of this title, it shall provide the State health planning and development agency and the Secretary with a detailed statement of the reasons for the inconsistency between such goals and guidelines. When making such HSP available to a Statewide Health Coordinating Council under section 300m-3(c)(2)(A) of this title, the agency shall also report such statement to such Council.

(3) The agency shall establish, annually review, and amend as necessary an annual implementation plan (hereinafter in this subchapter referred to as the "AIP") which describes objectives which will achieve the goals of the HSP (as stated in the HSP of the agency or, if revised under section 300m-3(c)(2)(A) of this title when included in the State health plan, as so revised) and priorities among the objectives. In establishing the AIP, the agency shall give priority to those objectives which will maximally improve the health of the residents of the area, as determined on the basis

of the relation of the costs of attaining such objectives to their benefits, and which are fitted to the special needs of the area. The AIP shall include a statement of the personnel, facilities, and other resources which the agency determines are required to meet the objectives described pursuant to the first sentence. The AIP shall be established, annually reviewed, and amended in accordance with the procedures set forth in the last two sentences of paragraph (2). If the health systems agency is a public regional planning body or unit of general local government, the planning body or unit of government shall be given a reasonable opportunity to comment on the proposed AIP and to propose additions to and other revisions in it. Any such proposed additions or other revisions not included in the AIP approved by the agency shall be appended to the AIP.

Pub. L. 96-79, title I, §§ 115(h), 129(a), Oct. 4, 1979, 93 Stat. 610, 629, provided that, effective one year after Oct. 4, 1979, subsec. (c)(2) of this section will read as follows:

(2) The agency shall provide, in accordance with the priorities established in the AIP, technical assistance in obtaining and filling out the necessary forms and may provide other technical assistance to individuals and public and private entities for the development of projects and programs which the agency determines are necessary to achieve the health systems described in the HSP, including assistance in meeting the requirements of the agency prescribed under section 300n-1(b) of this title.

Pub. L. 96-79, title I, §§ 121 (a), (b), 129(a), Oct. 4, 1979, 93 Stat. 623, 629, provided that, effective one year after Oct. 4, 1979, subsec. (d) of this section will read as follows:

(d)(1) Each health systems agency shall coordinate its activities with—

(A) each Professional Standards Review Organization (designated under section 1320c-1 of this title),

(B) entities referred to in paragraphs (1) and (2) of section 3334(a) of this title and regional and local entities the views of which are required to be considered under regulations prescribed under section 4233 of this title to carry out section 4231(b) of this title,

(C) other appropriate general or special purpose regional planning or administrative agencies (including area agencies on aging and local and regional alcohol abuse, drug abuse, and mental health planning agencies),

(D) any entity of the State in which the agency is located which reviews the rates or budgets of health care facilities located in the agency's health service area, and

(E) any other appropriate entity,

in the health systems agency's health service area. The agency shall, as appropriate, secure data from them for use in the agency's planning and development activities, enter into agreements with them which will assure that actions taken by such entities which alter the area's health systems will be taken in a manner which is consistent with the HSP and the AIP in effect for the area, and, to the extent practicable, provide technical assistance to such entities.

(2) Each health systems agency which has all or part of its health service area within a part of a standard metropolitan statistical area (as determined by the Office of Management and Budget) shall coordinate its activities with the activities of any other health systems agency which has any part of its health service area within such standard metropolitan statistical area. Such coordination shall at least provide that each health systems agency designated for a health service area within any part of a single standard metropolitan statistical area shall review (A) each HSP and AIP for each such health service area, (B) the criteria used in accordance with section 300n-1 of this title for reviews affecting any such area, and (C) each decision under certificate of need programs which affect any such area.

(3) The Secretary shall by regulation provide for the sharing by health systems agencies of health planning data with Indian tribes and Alaska Native Villages.

(4) Health systems agencies that have an Indian tribe or intertribal Indian organization (referred to in subsection (e)(1)(B) of this section) located within such agencies' health service areas shall carry out their functions under this section in a manner that recognizes tribal self-determination. Such agencies shall seek to enter into agreements with the Indian tribes and intertribal organizations located within their health service areas on matters of mutual concern as defined in regulations of the Secretary.

Pub. L. 96-79, title I, §§ 119(b), 121(c), 129(a), Oct. 4, 1980, 93 Stat. 621, 624, 629, provided that, effective one year after Oct. 4, 1979, subsec. (e) of this section will read as follows:

(e)(1)(A) Except as provided in subparagraph (B), each health systems agency shall review and approve or disapprove each proposed use within its health service area of Federal funds—

(i) appropriated under this chapter, the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], sections 409 and 410 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act [21 U.S.C. 1176, 1177], or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [42 U.S.C. 4541 et seq.] for grants, contracts, loans, or loan guarantees for the development, expansion, or support of health resources by any entity other than the government of a State unless such resources are solely within the health service area of such agency; or

(ii) made available by the State in which the health service area is located (from an allotment, contract, or grant to the State under an Act referred to in clause (i)) for grants or contracts for the development, expansion, or support of health resources.

(B) A health systems agency shall not review and approve or disapprove the proposed use within its health service area of Federal funds appropriated for grants or contracts for research or training unless the grants or con-

tracts are to be made, entered into, or used for the development, expansion, or support of health resources which, in the case of grants or contracts for training, would make a significant change in the health services available in the health service area or which, in the case of grants or contracts for research, would significantly change the delivery of health services, or the distribution or extent of health resources, available to persons in the health service area other than those who are participants in such research. In the case of a proposed use within the health service area of a health systems agency of Federal funds described in subparagraph (A) by an Indian tribe [1] as defined in section 450b(b) of title 25) or inter-tribal Indian organization for any program or project which will be located within or will specifically serve—

(i) a federally-recognized Indian reservation.

(ii) any land area in Oklahoma which is held in trust by the United States for Indians or which is a restricted Indian-owned land area, or

(iii) a Native Village in Alaska (as defined in section 1602(c) of title 43),

a health systems agency shall only review and comment on such proposed use.

(2) Notwithstanding any other provision of this chapter or any other Act referred to in paragraph (1), the Secretary shall allow a health systems agency sixty days to make the review required by paragraph (1)(A)(i). If under paragraph (1)(A)(i) an agency disapproves a proposed use in its health service area of Federal funds described in paragraph (1), the Secretary may not make such Federal funds available for such use until he has made, upon request of the entity making such proposal, a review of the agency decision. In making any such review of any agency decision, the Secretary shall give the appropriate State health planning and development agency an opportunity to consider the decision of the health systems agency and to submit to the Secretary its comments on the decision. The Secretary, after taking into consideration such State agency's comments (if any), may make such Federal funds available for such use, notwithstanding the disapproval of the health systems agency. Each such decision by the Secretary to make funds available shall be submitted to the appropriate health systems agency and State health planning and development agency and shall contain a detailed statement of the reasons for the decision.

(3) The Governor of a State shall allow health systems agencies sixty days to make the review required by paragraph (1)(A)(ii). If under such paragraph an agency disapproves a proposed use of Federal funds in its health service area, the Governor may not make such Federal funds available for such use until he has made, upon request of the entity making such proposal, a review of the agency decision. In making any such review of any agency decision, the Governor shall give the State health planning and development agency an opportunity to consider the decision of the health systems agency and to submit to the Governor its comments on the decision. The Governor, after taking into consideration such State Agency's comments (if any), may make such Federal funds available for such use, notwithstanding the disapproval of the health systems agency. Each such decision by the Governor to make funds available shall be submitted to the appropriate health systems agency and State health planning and development agency and shall contain a detailed statement of the reasons for the decision.

(4) Each health systems agency shall provide each Indian tribe or inter-tribal Indian organization which is located within the agency's health service area information respecting the availability of the Federal funds described in the first sentence of this subsection.

Pub. L. 96–79, title I, §§ 118(a)(1), (b)(1), (c), 122(a), 129(a), Oct. 4, 1979, 93 Stat. 620, 621, 624, 629, provided that, effective one year after Oct. 4, 1979, subsecs. (g) and (h) of this section will read as follows:

(g)(1) Except as provided in paragraph (2), each health systems agency shall review on a periodic basis (but at least every five years) at least those institutional and home health services which are offered in the health service area of the agency and with respect to which goals have been established in the State health plan and shall make recommendations to the State health planning and development agency designated under section 300m of this title for each State in which the health systems agency's health service area is located respecting the appropriateness in the area of such services.

(2) A health systems agency shall complete its initial review of health services within three years after the date of the agency's designation under section 300l–4(c) of this title.

(3) In making the appropriateness review required by paragraph (1) of a health service, each health systems agency shall at least consider the need for the service, its accessibility and availability, financial viability, cost effectiveness, and the quality of service provided.

(h)(1) Each health systems agency shall collect annually on a form developed in consultation with the State health planning and development agency (or agencies) the rates charged for each of the twenty-five most frequently used hospital services in the State (or States) including the average semiprivate and private room rates.

(2) Each health systems agency shall make available to the public for inspection and copying (at a reasonable expense to the public) the information supplied to the health systems agency pursuant to this subsection in readily understandable language and in a manner designed to facilitate comparisons among the hospitals in the health systems agency's health service area.

AMENDMENTS

1980—Subsec. (e)(1)(A)(i). Pub. L. 96–181 substituted "Drug Abuse Prevention, Treatment, and Rehabilitation Act" for "Drug Abuse Office and Treatment Act of 1972".

1979—Subsec. (a). Pub. L. 96–79, §§ 103(c), 110(f), 123(c)(1)(B), added par. (5), and in provision following par. (5), inserted provision prohibiting a health systems agency from using appropriated funds to influence the passage of legislation and substituted "through (g)" for "through (h)".

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[1] So in original. Probably should be followed by an opening parenthesis.

Subsec. (b)(1). Pub. L. 96–79, § 101(b)(1), inserted, following subpar. (F), provision requiring the agency to assemble and report to the Secretary such data as the Secretary requires to carry out his responsibilities provided that the data required is not regularly collected by any entity of the Department of Health, Education, and Welfare.

Subsec. (b)(2). Pub. L. 96–79, §§ 110(e)(4), inserted provision requiring that a health planning systems agency which is a public regional planning body or unit of general local government be given a reasonable opportunity to comment on the proposed HSP and that if the goals contained in the HSP are not consistent with those established by the Secretary, a detailed statement of the reasons for the inconsistency be provided to the Secretary and the State health planning and development agency.

Subsec. (b)(2)(C). Pub. L. 96–79, § 115(f), which directed that "and is consistent with" be struck out, was executed by striking out "and are consistent with" following "take into account" in view of the prior substitution of "are consistent" for "is consistent" by section 106(h) of Pub. L. 95–83.

Subsec. (c)(3). Pub. L. 96–79, § 107(a), inserted provision permitting funds under a first contract or grant to remain available for the period of a second contract or grant and that such funds from the first contract or grant not be considered in determining the amount of the second contract or grant.

Subsec. (d). Pub. L. 96–79, § 120(a), added par. (4) and redesignated former par. (4) as (5).

Subsec. (e)(1)(A)(i). Pub. L. 96–32 substituted "Drug Abuse Office and Treatment Act of 1972" for "Drug Abuse Office and Treatment Act".

1977—Subsec. (a). Pub. L. 95–83, § 106(e), (f), deleted a superfluous "the" preceding "provision" and substituted reference to subsec. "(h)" for "(g)".

Subsec. (b)(1). Pub. L. 95–83, § 106(g), corrected margin indent of last sentence of par. (1) to be part of par. (1) rather than to appear to be part of the introductory subsec. (b) text, which has been so executed in the main edition, thus requiring no change in this supplement.

Subsec. (b)(2)(C). Pub. L. 95–83, § 106(h), substituted "are" for "is" preceding "consistent".

Subsec. (d). Pub. L. 95–83, § 106(i), substituted "systems" for "system" in text following par. (4) in two places.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

HEALTH SYSTEMS AGENCIES, STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES, AND STATEWIDE HEALTH COORDINATING COUNCIL; CHANGES IN FUNCTIONS

Effective on or after Oct. 4, 1979, health systems agencies, health planning and development agencies, and Statewide Health Coordinating Councils may act in accordance with the changes in their functions made by amendments to this section by Pub. L. 96–79, see section 129(a)(3) of Pub. L. 96–79, set out as an Effective Date of 1979 Amendment note under section 300*l* of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300a–29, 300k–1, 300*l*–1, 300*l*–3, 300*l*–4, 300m–1, 300m–2, 300m–6, 300n–1, 300n–2, 300n–3, 300n–4, 300n–5, 300t, 300t–12 of this title.

§ 300*l*–3. Assistance to entities desiring to be designated as health systems agencies

The Secretary shall provide all necessary technical and other nonfinancial assistance (including the preparation of prototype plans of organization and operation) to public or nonprofit private entities which—

(1) express a desire to be designated as health systems agencies, and

(2) the Secretary determines have a potential to meet the requirements of a health systems agency specified in sections 300*l*–1 and 300*l*–2 of this title,

to assist such entities in developing applications to be submitted to the Secretary under section 300*l*–4 of this title and otherwise in preparing to meet the requirements of this part for designation as a health systems agency.

(As amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(j), 91 Stat. 385; Oct. 4, 1979, Pub. L. 96–79, title I, § 105(f), 93 Stat. 598.)

AMENDMENTS

1979—Pub. L. 96–79 substituted "Secretary shall provide" for "Secretary may provide" and struck out "(including entities presently receiving financial assistance under section 246(b) of this title or subchapter VII of this chapter or as experimental health service delivery systems under section 242b of this title)" following "nonprofit private entities".

1977—Pub. L. 95–83 authorized assistance for public entities.

§ 300*l*–4. Designation of health systems agencies

[*See main edition for text of* (*a*)]

(b) Conditional designation

[*See main edition for text of* (*1*)]

(2) During any period of conditional designation (which, except as otherwise provided in this paragraph, may not exceed 24 months), the Secretary may require that the entity conditionally designated meet only such of the requirements of section 300*l*–1(b) of this title and perform only such of the functions prescribed by section 300*l*–2 of this title as he determines such entity to be capable of meeting and performing. The Secretary may, upon application of a conditionally designated entity, extend for an additional period of not to exceed 12 months the period of such entity's conditional designation if the Secretary determines that (A) unusual circumstances exist or existed which prevent such entity from qualifying for designation under subsection (c) of this section within 24 months of such entity's conditional designation under this subsection, (B) such extension should enable such entity to qualify for designation under subsection (c) of this section, and (C) such extension is necessary to carry out the purposes of this subchapter. Each such determination shall be in writing and shall include a summary of the reasons for it. The number and type of such requirements and functions shall, during the period of conditional designation, be progressively increased as the entity conditionally designated becomes capable of added responsibility so that, by the end of such period, the agency may be considered for designation under subsection (c) of this section.

[*See main edition for text of* (*3*)]

(4) The Secretary may not enter into an agreement with any entity under paragraph (1)

for conditional designation as a health systems agency for a health service area until—

[*See main edition for text of* (*A*) *to* (*C*)]

In considering such applications, the Secretary shall give priority to any application which has been recommended by a Governor or a Statewide Health Coordinating Council for approval. When the Secretary enters into an agreement with an entity under paragraph (1), the Secretary shall notify the Governor of the State in which such entity is located of such agreement.

(c) Agreement for designation; termination of agreement; return to conditional designation status; renewals

(1)(A) The Secretary shall enter into an agreement with an entity for its designation as a health systems agency if, on the basis of an application under paragraph (2) (and, in the case of an entity conditionally designated, on the basis of its performance during a period of conditional designation under subsection (b) of this section as a health systems agency for a health service area), the Secretary determines that such entity is capable of fulfilling, in a satisfactory manner, the requirements and functions of a health systems agency. Any such agreement under this subsection with an entity may be renewed in accordance with paragraph (3), shall contain such provisions respecting the requirements of sections 300*l*-1(b) and 300*l*-2 of this title and such conditions designed to carry out the purpose of this subchapter, as the Secretary may prescribe, and shall be for a term of not to exceed thirty-six months; except that, prior to the expiration of such term, such agreement may be terminated—

(i) by the entity at such time and upon such notice to the Secretary as he may by regulation prescribe, or

(ii) by the Secretary if the Secretary determines, in accordance with subparagraph (B), that the entity is not complying with the provisions of such agreement.

A designation agreement under this subsection may be terminated by the Secretary before the expiration of its term if the health service area with respect to which the agreement was entered into is revised under section 300*l*(b)(4) of this title and the Secretary determines, after consultation with the Governor and Statewide Health Coordinating Council of each State in which the health service area (as revised) is located, that the health systems agency designated under such agreement cannot effectively carry out the agreement for the area (as revised). In terminating an agreement under the preceding sentence, the Secretary may provide that the termination not take effect before an agreement for the designation of a new agency takes effect and shall provide the agency designated under the agreement to be terminated an opportunity to terminate its affairs in a satisfactory manner.

(B) Before the Secretary may terminate, under subparagraph (A)(ii), an agreement with an entity for designation as the health systems agency for a health service area, the Secretary shall—

(i) consult with the Governor and the Statewide Health Coordinating Council of each State in which is located the health service area respecting the proposed termination,

(ii) give the entity notice of the intention to terminate the agreement and in the notice specify with particularity (I) the basis for the determination of the Secretary that the entity is not in compliance with the agreement, and (II) the actions that the entity should take to come into compliance with the agreement, and

(iii) provide the entity with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the matter specified in the notice.

The Secretary may not terminate such an agreement before consulting with the National Council on Health Planning and Development respecting the proposed termination. Before the Secretary may permit the term of an agreement to expire without renewing the agreement, the Secretary shall make the consultations prescribed by clause (i) and the preceding sentence, give the entity with which the agreement was made notice of the intention not to renew the agreement and the reasons for not renewing the agreement, and provide, as prescribed by clause (iii), the entity an opportunity for a hearing on the matter specified in the notice.

(2) The Secretary may not enter into an agreement with any entity under paragraph (1) for designation as a health systems agency for a health service area unless the entity has submitted an application to the Secretary for designation as a health systems agency, and the Governor of each State in which the area is located has been consulted respecting such designation of such entity. Such an application shall contain assurances satisfactory to the Secretary that the applicant meets the requirements of section 300*l*-1(b) of this title and is qualified to perform or is performing the functions prescribed by section 300*l*-2 of this title. In considering such applications, the Secretary shall give priority to any application which has been recommended by a Governor or a Statewide Health Coordinating Council for approval.

(3)(A) An agreement under this subsection for the designation of a health systems agency may be renewed by the Secretary for a period not to exceed thirty-six months if upon review (as provided in section 300n-4 of this title) of the agency's operation and performance of its functions, he determines that it has fulfilled, in a satisfactory manner, the functions of a health systems agency prescribed by section 300*l*-2 of this title during the period of the agreement to be renewed and continues to meet the requirements of section 300*l*-1(b) of this title.

(B) If upon a review under section 300n-4 of this title of the agency's operation and performance of its functions, the Secretary determines that it has not fulfilled, in a satisfactory manner, the functions of a health systems agency prescribed by section 300*l*-2 of this title during the period of the agreement to be renewed or does not continue to meet the requirements of section 300l-1(b) of this title, he may terminate such agreement or return such agency to a conditionally designated status under subsection (b) of this section for a period not to exceed twelve months. At the end of such period, the Secretary shall either terminate the agreement with such agency or enter into an agreement with such agency under paragraph (1). The Secretary may not terminate an agreement or return an agency to a conditionally designated status unless the Secretary has—

(i) provided the agency with notice of his intent to return it to a conditional status or terminate the agreement with the agency and included in that notice specification of any functions which the Secretary has determined the agency did not satisfactorily fulfill and of any requirements which the Secretary has determined the agency has not met;

(ii) provided the agency with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the action proposed to be taken by the Secretary; and

(iii) in the case of a proposed termination of an agreement, consulted with the National Council on Health Planning and Development respecting the termination.

(4) Before renewing an agreement with a health systems agency under this subsection, the Secretary shall provide the State health planning and development agency of the State in which the health systems agency is located an opportunity to comment on the performance of such agency and to provide a recommendation on whether such agreement should be renewed and whether the agency should be returned to a conditional status as authorized by paragraph (3).

(5) If the Secretary enters into an agreement under this subsection with an entity or renews such an agreement, the Secretary shall notify the Governor of the State in which such entity is located of the agreement, and any renewal of the agreement.

(d) Substitution on termination of agreements

If a designation agreement under subsection (b) or (c) of this section of a health systems agency for a health service area is terminated before the date prescribed for its expiration or is not renewed, the Secretary shall, upon application and in accordance with subsection (b) or (c) of this section (as the Secretary determines appropriate), enter into a designation agreement with another entity to be the health system agency for such area.

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 106(k), 91 Stat. 385; Dec. 19, 1977, Pub. L. 95-215, § 6(a)(1), 91 Stat. 1507; Oct. 4, 1979, Pub. L. 96-79, title I, § 105(a)-(c), (d)(1)(A), (2), (e), (g), (h), 93 Stat. 596-598.)

AMENDMENTS

1979—Subsec. (b)(4). Pub. L. 96-79, § 105(a), substituted in provision following par. (C), provision directing the Secretary to give priority to any application recommended for approval by a Governor or a Statewide Health Coordinating Council and to notify the State Governor in which the entity is located upon entering into an agreement with a health systems agency for provision directing the Secretary to give priority to applications recommended by comprehensive health planning agencies or regional medical programs.

Subsec. (c)(1). Pub. L. 96-79, § 105(d)(1)(A), (2), (e), redesignated existing provision as subpar. (A), and in subpar. (A) as so redesignated, redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, in provision preceding cl. (i), substituted "thirty-six months" for "twelve months" and in cl. (ii), provision permitting the Secretary to terminate the designation agreement if he determines, in accordance with subpar. (B), that the entity is not complying with the agreement for provision permitting the Secretary to terminate the designation agreement, at such time and upon such notice as the Secretary by regulation prescribe, if he determines that the entity is not complying with the terms of the agreement, inserted provision that when a health service area is redesignated, the health service agency serving the area continue to do so, unless the Secretary determines that the agency cannot effectively carry out health planning and development activities for the area, and added subpar. (B).

Subsec. (c)(2). Pub. L. 96-79, § 105(b), inserted provision directing the Secretary to give priority to any application recommended for approval by a Governor or a Statewide Health Coordinating Council.

Subsec. (c)(3). Pub. L. 96-79, § 105(d)(1)(A), (h), redesignated existing provision as subpar. (A), and in subpar. (A) as so redesignated, substituted "thirty-six months" for "twelve months" and inserted "during the period of the agreement to be renewed" following "section 300l-2 of this title", and added subpar. (B).

Subsec. (c)(4), (5). Pub. L. 96-79, § 105(c), added pars. (4) and (5).

Subsec. (d). Pub. L. 96-79, § 105(g), inserted "agreement" following "If a designation" and "or is not renewed" following "prescribed for its expiration".

1977—Subsec. (b)(2). Pub. L. 95-215 authorized the Secretary, upon application of a conditionally designated entity, to extend for an additional period of not to exceed 12 months the period of such entity's conditional designation if the Secretary determines that (A) unusual circumstances exist or existed which prevent such entity from qualifying for designation under subsec. (c) of this section within 24 months of such entity's conditional designation under subsec. (b), (B) such extension should enable such entity to qualify for designation under subsec. (c) of this section, and (C) such extension is necessary to carry out the purposes of this subchapter, with each such determination to be in writing and to include a summary of the reasons for it.

Subsec. (d). Pub. L. 95-83 substituted "health service area" for "health services area".

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 105(d)(1)(B) of Pub. L. 96-79 provided that: "The amendments made by subparagraph (A) [amending subsec. (c)(1)(A) and (3) of this section] shall take effect with respect to designation agreements entered into under section 1515(c) of the Public Health Service Act [subsec. (c) of this section] after the date of the enactment of this Act [Oct. 4, 1979]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254e, 254f, 254j, 300d, 300d-5, 300l, 300l-2, 300l-3, 300l-5, 300t, 1320a, 3012 of this title.

§ 300l-5. Planning grants

(a) Conditions; availability of funds for succeeding fiscal year; restriction on use of funds

The Secretary shall make in each fiscal year a grant to each health systems agency with which there is in effect a designation agreement under subsection (b) or (c) of section 300l-4 of this title. A grant under this subsection shall be made on such conditions (including submission of the health systems agency's budget) as the Secretary determines is appropriate, shall be used by a health systems agency for compensation of agency personnel, collection of data, planning and the performance of the functions of the agency. Funds under a grant which remain available for obligation at the end of the fiscal year in which the grant has been made shall remain available for obligation in the succeeding fiscal year, except that (1) no funds under any grant to an agency may be obligated in any period in which a designation agreement is not in effect for such agency, and (2) notwithstanding clause (1), a grant made to a conditionally designated entity with which the Secretary will not enter into a designation agreement under section 300l-4(c) of this title shall be available for obligation for such additional period as the Secretary determines such entity will require to satisfactorily terminate its activities under the agreement for its conditional designation. A health systems agency may use funds under a grant under this subsection to make payments under contracts with other entities to assist the health systems agency in the performance of its functions; but it shall not use funds under such a grant to make payments under a grant or contract with another entity for the development or delivery of health services or resources.

(b) Amount to be determined by Secretary

The amount of any grant under subsection (a) of this section to a health systems agency designated under section 300l-4(b) of this title shall be determined by the Secretary.

(c) Maximum and minimum grants; reduction by Secretary

(1) Except as provided in paragraph (2), the amount of a grant under subsection (a) of this section to a health systems agency designated under section 300l-4(c) of this title shall be the greater of the amount determined under subparagraph (A), (B), or (C) as follows:

(A) The amount of a grant to a health systems agency shall be the lesser of—

(i) the product of $0.60 and the population of the health service area for which the agency is designated, or

(ii) $3,750,000.

(B)(i) If the application of the health systems agency for such grant states that the agency, in its latest fiscal year ending before the period in which such grant will be available for obligation, collected non-Federal funds meeting the requirements of clause (ii) for the purposes for which such grant may be made, the amount of such grant shall be the sum of—

(I) the amount determined under subparagraph (A) or (C), whichever is applicable, and

(II) the lesser of the amount of such non-Federal funds or $200,000 or the product of $0.25 and the population of the health service area for which the agency is designated, whichever is greater.

(ii) The non-Federal funds which an agency may use for the purpose of obtaining a grant under subsection (a) of this section which is computed on the basis of the formula prescribed by clause (i) shall be funds which are not paid to the agency for the performance of particular services by it and which are otherwise contributed to the agency without conditions as to their use other than the condition that the funds shall be used for the purposes for which a grant made under this section may be used.

(C) The amount of a grant to a health systems agency may not be less than—

(i) in the case of a grant made in the fiscal year ending September 30, 1979, $175,000 and, to the extent appropriations are specifically made after October 1, 1979, to provide the additional amount authorized by this clause, an amount which bears the same ratio to $50,000 as the number of days beginning in the period beginning on October 1, 1979, and ending on the date of the period for which the grant was made bears to 365,

(ii) $225,000 in the case of a grant made in the fiscal year ending September 30, 1980,

(iii) $245,000 in the case of a grant made in the fiscal year ending September 30, 1981, and

(iv) $260,000 in the case of a grant made in any succeeding fiscal year.

(2) If the Secretary determines, after review of the budget of a health systems agency and after consultation with the State health planning and development agency of the State in which such agency is located, that the amount of a grant which is to be made to the agency in accordance with paragraph (1) is in excess of the amount needed by the agency to adequately perform its functions under its designation agreement, the amount of the grant to the agency shall be such amount as the Secretary determines the agency needs for the performance of such functions.

(d) Authorization of appropriations; extraordinary expenses; pro rata reduction in amount of grant

(1) For the purpose of making payments pursuant to grants made under subsection (a) of this section, there are authorized to be appropriated $60,000,000 for the fiscal year ending June 30, 1975, $90,000,000 for the fiscal year ending June 30, 1976, $125,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, $150,000,000 for the fiscal year ending September 30, 1980, $165,000,000 for the fiscal year ending September 30, 1981, and $185,000,000 for the fiscal year ending September 30, 1982.

(2) Of the amount appropriated under paragraph (1) for any fiscal year, the Secretary may

use not more than 5 per centum of such amount to increase the amount of grants in such fiscal year to health systems agencies under subsection (a) of this section to assist the agencies in meeting extraordinary expenses (including extraordinary expenses resulting from an agency's health service area being located in more than one State or from an agency serving a large rural or urban medically underserved population or a geographically large health service area) which would not be covered under the amount of a grant that would be available to an agency under subsection (c) of this section and in improving their performance as a result of the development and implementation of innovative health planning techniques.

(3) Notwithstanding subsection (c)(1) of this section, if the total of the amounts appropriated under paragraph (1) for any fiscal year (reduced by the amount to be retained by the Secretary for use under paragraph (2)) is less than the amount required to make grants to each health system agency designated under section 300*l*-4(c) of this title in the amount prescribed for such agency by subparagraph (A), (B), or (C) of subsection (c)(1) of this section, the Secretary shall make a pro rata reduction in the amount of the grant to each such agency, but, to the extent of available appropriations, no such agency shall receive a grant in an amount less than the amount prescribed by such subparagraph (C) for such fiscal year.

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 102(a), 91 Stat. 383; Dec. 19, 1977, Pub. L. 95-215, § 6(a)(2), 91 Stat. 1507; Oct. 4, 1979, Pub. L. 96-79, title I, §§ 106, 107(b), 127(a), 93 Stat. 598, 600, 629.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-79, §§ 106(c), 107(b), inserted "(including submission of the health systems agency's budget)" following "such conditions" and substituted provision that if health systems agencies have unobligated funds at the end of the fiscal year, they may use those funds in the following fiscal year as long as the designation agreement remains in effect for provision that funds remain available for obligation for a period not to exceed the period for which the designation agreement is entered into or renewed.

Subsec. (b). Pub. L. 96-79, § 106(a), substituted provision authorizing the Secretary to determine the amount of the grant for provision specifying criteria for determining maximum and minimum grants.

Subsec. (c). Pub. L. 96-79, § 106(a), added subsec. (c) and redesignated former subsec. (c) as (d).

Subsec. (d). Pub. L. 96-79, §§ 106(a), (b), 127(a), redesignated former subsec. (c) as (d), and in subsec. (d) as so redesignated, inserted in par. (1), "$150,000,000 for the fiscal year ending September 30, 1980, $165,000,000 for the fiscal year ending September 30, 1981, and $185,000,000 for the fiscal year ending September 30, 1982" following "September 30, 1978", substituted in par. (2), provision authorizing the Secretary to use not more than 5 per centum of the amount appropriated for any fiscal year to increase the amount of grants in such fiscal year to assist agencies in meeting extraordinary expenses for provision specifying a ratio formula for reduction in the amount of grants when the total amount of grants in any fiscal year exceeds the amount appropriated, and added par. (3).

1977—Subsec. (a). Pub. L. 95-215 added ", except that in the case of a grant made to a conditionally designated entity with which the Secretary will not enter into a designation agreement under section 300*l*-4(c) of this title, such grant shall be available for obligation for such additional period as the Secretary determines such entity will require to satisfactorily terminate its activities under the agreement for its conditional designation".

Subsec. (c)(1). Pub. L. 95-83 substituted "each for the fiscal years ending September 30, 1977, and September 30, 1978" for "for the fiscal year ending June 30, 1977".

EFFECTIVE DATE OF 1979 AMENDMENT

Section 129(b)(1) of Pub. L. 96-79 provided that: "Except as provided in section 1516(c)(1)(C)(i) of the Public Health Service Act as amended by section 106 [subsec. (c)(1)(C)(i) of this section], the amendments made by section 106 [amending this section] shall apply with respect to grants made under section 1516 of the Public Health Service Act [this section] after the date of the enactment of this Act [Oct. 4, 1979] from appropriations under an appropriation Act enacted for the fiscal year ending September 30, 1980."

PART C—STATE HEALTH PLANNING AND DEVELOPMENT

§ 300m. Designation of State health planning and development agencies

(a) Authority of Secretary to enter into agreements

For the purpose of the performance within each State of the health planning and development functions prescribed by section 300m-2 of this title, the Secretary shall enter into and renew agreements (described in subsection (b) of this section) for the designation of a State health planning and development agency for each State.

(b) Agreement for designation; conditional designation; extension, termination, and expiration of agreement; renewals; return to conditional designation status

(1) A designation agreement under subsection (a) of this section is an agreement with the Governor of a State for the designation of an agency (selected by the Governor) of the government of that State as the State health planning and development agency (hereinafter in this subchapter referred to as the "State Agency") to administer the State administrative program prescribed by section 300m-1 of this title and to carry out the State's health planning and development functions prescribed by section 300m-2 of this title. The Secretary may not enter into such an agreement with the Governor of a State unless—

[*See main edition for text of* (A) *to* (C)]

(2) [*See main edition for text of* (A)]

(B) The period of an agreement described in subparagraph (A) shall not extend beyond July 31, 1979, or thirty-six months after such agreement has been entered into, whichever comes later, except that the Secretary may extend the period for such additional time as he finds appropriate if he finds that the designated State Agency is making a good faith effort to comply with the requirements of section 300m-2 of this title. During such period the Secretary may require that the designated State Agency perform only such of the functions of a State Agency prescribed by section 300m-2 of this title as he determines it is capable of performing. The number and type of such functions shall, during such period, be progressively increased as the designated State Agency becomes capable of added responsibility, so that by the end of such period the designated State Agency may be considered for designation under paragraph (3).

[*See main edition for text of* (*C*)]

(3)(A) If, on the basis of an application for designation as a State Agency (and, in the case of an agency conditionally designated under paragraph (2), on the basis of its performance under an agreement with a Governor of a State entered into under such paragraph), the Secretary determines that the agency is capable of fulfilling, in a satisfactory manner, the responsibilities of a State Agency, he shall enter into an agreement with the Governor of the State designating the agency as the State Agency for the State. No such agreement may be made unless an application therefor is submitted to, and approved by, the Secretary. Any such agreement shall be for a term of not to exceed thirty-six months, except that, prior to the expiration of such term, such agreement may be terminated—

(i) by the Governor at such time and upon such notice to the Secretary as he may by regulation prescribe, or

(ii) by the Secretary if the Secretary determines, in accordance with subparagraph (B), that the designated State Agency is not complying with the provisions of such agreement.

An agreement under this paragraph shall contain such provisions as the Secretary may require to assure that the requirements of this part respecting State Agencies are complied with.

(B) Before the Secretary may terminate an agreement with a designated State Agency under subparagraph (A)(ii), the Secretary shall—

(i) consult with the Statewide Health Coordinating Council of the State for which the State Agency is designated respecting the proposed termination,

(ii) give the State Agency notice of the intention to terminate the agreement and in the notice specify with particularity (I) the basis for the determination of the Secretary that the State Agency is not in compliance with the agreement, and (II) the actions that the State Agency should take to come into compliance with the agreement, and

(iii) provide the State Agency with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the matter specified in the notice.

The Secretary may not terminate such an agreement before consulting with the National Council on Health Planning and Development respecting the proposed termination. Before the Secretary may permit the term of an agreement to expire without renewing the agreement, the Secretary shall make the consultations prescribed by clause (i) and the preceding sentence, give the State Agency with which the agreement was made notice of the intention not to renew the agreement and the reasons for not renewing the agreement, and provide, as prescribed by clause (iii), the State Agency an opportunity for a hearing on the matter specified in the notice.

(4)(A) An agreement entered into under paragraph (3) for the designation of a State Agency may be renewed by the Secretary for a period not to exceed thirty-six months if upon a review under section 300n-4 of this title of the State Agency's operation and performance of its function he determines that it has fulfilled, in a satisfactory manner, the responsibilities of a State Agency during the period of the agreement to be renewed and if the applicable State administrative program continues to meet the requirements of section 300m-1 of this title. Before renewing an agreement under this paragraph with a State Agency for a State, the Secretary shall provide each health systems agency designated for a health service area located (in whole or in part) in such State and the Statewide Health Coordinating Council of such State an opportunity to comment on the performance of the State Agency and to provide a recommendation on whether such agreement should be renewed.

(B) If upon a review under section 300n-4 of this title of the State Agency's operation and performance of its functions, the Secretary determines that it has not fulfilled, in a satisfactory manner, the responsibilities of a State Agency during the period of the agreement to be renewed or if the applicable State administrative program does not continue to meet the requirements of section 300m-1 of this title, he may terminate such agreement or return the State Agency to a conditionally designated status under paragraph (2) of subsection (b) of this section for a period not to exceed twelve months. At the end of such period, the Secretary shall either terminate its agreement with such State Agency or enter into an agreement with such State Agency under paragraph (3) of subsection (b) of this section. The Secretary may not terminate an agreement or return a State Agency to a conditionally designated status unless the Secretary has—

(i) provided the State Agency with notice of his intent to return it to a conditional status or terminate the agreement with it and included in that notice specification of any functions which the Secretary has determined the State Agency did not satisfactorily fulfill and of any requirements which the Secretary has determined it has not met;

(ii) provided the State Agency with a reasonable opportunity for a hearing, before an officer or employee of the Department of Health, Education, and Welfare designated for such purpose, on the action proposed to be taken by the Secretary; and

(iii) in the case of a proposed termination, consulted with the National Council on Health Planning and Development respecting the termination.

[*See main edition for text of* (c)]

(d) Failure to designate State Agency within specified period; reduction in allotment, grant, loan, loan guarantee, or contract

(1) If an agreement under subsection (b)(3) of this section for the designation of a State Agency for a State is not in effect upon the expiration of—

(A) the fourth fiscal year which begins after calendar year 1975; or

(B)(i) if the legislature of the State is in a regular session on October 4, 1979, and the legislature will be in session for at least twelve months from such date, twelve months from such date, or

(ii) if the legislature of the State is in session on October 4, 1979, but twelve months do not remain in such session after such date or if the legislature of the State is not in session on such date, twelve months after the beginning of the first regular session of the legislature beginning after such date,

whichever occurs later, the Secretary shall take the action prescribed by paragraph (2).

(2) If upon the expiration of the period applicable under paragraph (1) an agreement is not in effect for the designation of a State Agency for a State, the Secretary shall until such an agreement is in effect take the following action:

(A) During the first twelve months after the date of the expiration of the applicable period, the Secretary shall reduce by 25 percent the amount of each allotment, grant, loan, and loan guarantee made to and each contract entered into with an individual or entity in such State during such period under this chapter, the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [42 U.S.C. 4541 et seq.], and the Drug Abuse Prevention, Treatment, and Rehabilitation Act [21 U.S.C. 1101 et seq.].

(B) During the second twelve months after such expiration date, the Secretary shall reduce by 50 percent the amount of each such allotment, grant, loan, loan guarantee, and contract.

(C) During the third twelve months after such expiration date, the Secretary shall reduce by 75 percent the amount of each such allotment, grant, loan, loan guarantee, and contract.

(D) After the expiration of thirty-six months after such expiration date, the Secretary may not make or enter into any such allotment, grant, loan, loan guarantee, or contract.

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 106(*l*), (m), 91 Stat. 385; Dec. 19, 1977, Pub. L. 95-215, § 6(b), 91 Stat. 1507; July 16, 1979, Pub. L. 96-33, 93 Stat. 86; Oct. 4, 1979, Pub. L. 96-79, title I, § 123(a), (b)(1)(A), (2), (d), (f), (g)(2), 93 Stat. 624-627; Jan. 2, 1980, Pub. L. 96-181, § 15(b), 93 Stat. 1316.)

REFERENCES IN TEXT

The Community Mental Health Centers Act, referred to in subsec. (d) (2)(A), is title II of Pub. L. 88-164, as added by Pub. L. 94-63, title III, § 303, July 29, 1975, 89 Stat. 309 and amended, which is classified principally to subchapter III (§ 2689 et seq.) of chapter 33 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2689 of this title and Tables.

The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970, referred to in subsec. (d)(2)(A), is Pub. L. 91-616, Dec. 31, 1970, 84 Stat. 1848, as amended, which is classified principally to chapter 60 (§ 4541 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4541 of this title and Tables.

The Drug Abuse Prevention, Treatment, and Rehabilitation Act, referred to in subsec. (d)(2)(A), is Pub. L. 92-255, Mar. 21, 1972, 86 Stat. 65, as amended, which is classified principally to chapter 16 (§ 1101 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 21 and Tables.

AMENDMENTS

1980—Subsec. (d)(2)(A). Pub. L. 96-181 substituted "Drug Abuse Prevention, Treatment, and Rehabilitation Act" for "Drug Abuse Office and Treatment Act of 1972".

1979—Subsec. (b)(1). Pub. L. 96-79, § 123(g)(2), substituted in provision preceding subpar. (A), "this subchapter" for "this part".

Subsec. (b)(2)(B). Pub. L. 96-79, § 123(f), inserted provision permitting the Secretary to extend the period of the agreement for an additional period if he determines that the designated State Agency is making a good faith effort to comply with the requirements of section 300m-2 of this title.

Pub. L. 96-33 substituted "The period of an agreement described in subparagraph (A) shall not extend beyond July 31, 1979, or thirty-six months after such agreement has been entered into, whichever comes later" for "The period of an agreement described in subparagraph (A) may not exceed thirty-six months".

Subsec. (b)(3). Pub. L. 96-79, § 123(b)(1)(A), (2), redesignated existing provision as subpar. (A), and in subpar. (A) as so redesignated, redesignated subpars. (A) and (B) as cls. (i) and (ii), respectively, in provision preceding cl. (i), substituted "thirty-six months" for "twelve months" and in cl. (ii), provision permitting the Secretary to terminate the designation agreement if he determines, in accordance with subpar. (B), that the entity is not complying with the agreement for provision permitting the Secretary to terminate the designation agreement, at such time and upon such notice as the Secretary by regulation prescribe, if he determines that the entity is not complying with the agreement, and added subpar. (B).

Subsec. (b)(4). Pub. L. 96-79, § 123(a), (b)(1)(A), redesignated existing provision as subpar. (A), and in subpar. (A) as so redesignated, substituted "thirty-six months if upon a review under section 300n-4 of this title of the State Agency's operation and performance of its function he determines" for "twelve months if he determines" and inserted provision requiring the Secretary, before renewing an agreement with a State Agency, to provide each health systems agency and the Statewide Health Coordinating Council an opportunity to comment on the performance of the State Agency and to provide recommendations on whether the agreement should be renewed, and added subpar. (B).

Subsec. (d). Pub. L. 96-79, § 123(d), substituted provision requiring that if an agreement designating a State Agency is not made within a specified period, the Secretary reduced by increasing percentages during specified periods the amount of allotments, grants, loans, loan guarantees, or contracts for provision that if an agreement for designation of a State Agency is not in effect upon the expiration of the fourth fiscal year which begins after 1975, the Secretary not make any allotments, grants, loans, loan guarantees, or contracts until such time as such an agreement is in effect.

1977—Subsec. (a). Pub. L. 95-83, § 106(*l*), deleted end text following "for each State" reading "other than a State for which the Secretary may not under subsection (d) of this section enter into, continue in effect, or renew such an agreement".

Subsec. (b)(2)(B). Pub. L. 95-215 substituted "thirty-six months" for "twenty-four months".

Subsec. (d). Pub. L. 95-83, § 106(m), substituted "the calendar year in which the National Health Planning and Research Development Act of 1974 is enacted" for "the calendar year in which the National Health Policy, Planning, and Resources Development Act of 1974 is enacted". However, due to the translation of the latter provision to read "1975" for codification purposes, no change in text is required.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1979 AMENDMENT

Section 123(b)(1)(B) of Pub. L. 96-79 provided that: "The amendments made by subparagraph (A) [amending subsec. (b)(3)(A) and (4)(A) of this section by substituting "thirty-six months" for "twelve months"] shall apply with respect to designation agreements entered into under section 1521(b)(3) of the Public Health Service Act [subsec. (b)(3) of this section] after the date of the enactment of this Act [Oct. 4, 1979]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 254e, 254f, 254j, 300d, 300*l*-2, 300m-2, 300m-3, 300m-4, 300m-5, 300n-5, 300t-13, 1320a, 2689u of this title; title 12 sections 1715m, 1715w, 1715z-7.

§ 300m-1. State administrative program

[*See main edition for text of* (*a*)]

(b) Requisite features of program

The State Program of a State must—

[*See main edition for text of* (*1*) *to* (*5*)]

(6) require the State Agency to (A) hold in public meetings to conduct the business of the State Agency (other than any part of a meeting in which it is likely, as determined by the State Agency, that information respecting the performance or remuneration of an employee of the agency will be disclosed and such a disclosure would constitute a clearly unwarranted invasion of the personal privacy of the employee or that information relating to the agency's participation in a judicial proceeding will be disclosed), (B) give adequate notice to the public of such meetings, and (C) make records and data of the agency (other than records or data respecting the performance or remuneration of an employee the disclosure of which would constitute a clearly unwarranted invasion of the personal privacy of the employee and records or data of the agency relating to its participation in a judicial proceeding) available, upon request, to the public;

(7)(A) provide for the coordination (in accordance with regulations of the Secretary) with the cooperative system provided for under section 242k(e) of this title of the activities of the State Agency for the collection, retrieval, analysis, reporting, and publication of statistical and other information related to health and health care and for the coordination by the State Agency in the conduct of its activities with any entity of the State which reviews the rates or budgets of health care facilities in the State, and (B) require providers of health care doing business in the State to make statistical and other reports of such information to the State Agency;

[*See main edition for text of* (*8*) *and* (*9*)]

(10) require the State Agency to (A) assemble and report to the Secretary data (other than data which is regularly collected by any entity of the Department of Health, Education, and Welfare under a provision of law other than this subchapter) which the Secretary may require to carry out his responsibilities under section 300k-1(e) of this title, including data on the personnel, facilities, and other resources needed to meet the goals set forth in the State health plan, and (B) make such reports, in such form and containing such information, concerning its structure, operations, performance of functions, and other matters as the Secretary may from time to time require, and keep such records and afford such access thereto as the Secretary may find necessary to verify such reports;

[*See main edition for text of* (*11*) *and* (*12*)]

(13) provide that if the State Agency makes a decision in the performance of a function under paragraph (4), (5), or (6) of section 300m-2(a) of this title or under subchapter XIV of this chapter which is inconsistent with a recommendation made under subsection (f) or (g) of section 300*l*-2 of this title by a health systems agency within the State—

(A) such decision (and the record upon which it was made) shall, upon request of the health systems agency, be reviewed in a timely manner, under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies, or, if there is no such State law, by an agency of the State (other than the State health planning and development agency) designated by the Governor, and

(B) the decision of the reviewing agency under subparagraph (A) shall for purposes of this subchapter and subchapter XIV of this chapter be considered the decision of the State health planning and development agency.

(c) Review by Secretary

The Secretary shall approve any State Program and any modification thereof which complies with subsections (a) and (b) of this section. The Secretary shall review for compliance with the requirements of this part the specifications of and operations under each State Program approved by him. Such review shall be conducted not less often than once every three years.

(As amended Oct. 4, 1979, Pub. L. 96-79, title I, §§ 101(b)(2), 111(c), 117(b)(4), 120(b), 123(c)(1)(A), (e)(1), 93 Stat. 594, 605, 620, 622, 625, 626.)

AMENDMENT OF SUBSEC. (b)(5) AND (7)

Pub. L. 96-79, title I, §§ 115(b)(3), 122(b), 129(a), Oct. 4, 1979, 93 Stat. 607, 624, 629, provided that, effective one year after Oct. 4, 1979, subsec. (b)(5) and (7) of this section will read as follows:

(5) require the State Agency to perform its functions in accordance with procedures and criteria established and published by it, which procedures and criteria shall conform to the requirements of section 300n-1 of this title and contain provisions to assure compliance with requests for information made by health systems agencies in accordance with section 300l-2(h) of this title;

(7)(A) provide for the coordination (in accordance with regulations of the Secretary) with the cooperative system provided for under section 242k(e) of this title of the activities of the State Agency for the collection, retrieval, analysis, reporting, and publication of statistical and other information related to health and health care and for the coordination by the State Agency in the conduct of its activities with any entity of the State which reviews the rates or budgets of health care facilities in the State, (B) require providers of health care doing business in the State to make statistical and other reports of such information to the State Agency, and (C) provide for consultation and coordination (in accordance with regulations of the Secretary) between the State Agency, the Statewide Health Coordinating Council, the State mental health authority, and other agencies of the State government designated by the Governor;

AMENDMENTS

1979—Subsec. (b)(6). Pub. L. 96-79, § 111(c), inserted in cl. (A), provision exempting from the public meeting requirement any part of a meeting in which it is likely that information respecting the performance or remuneration of an agency employee will be disclosed and such disclosure would constitute a clearly unwarranted invasion of privacy or that information relating to the agency's participation in a judicial proceeding will be disclosed, and in cl. (C), provision exempting from the public records requirement any records or data respecting the performance or remuneration of an employee the disclosure of which would constitute a clearly unwarranted invasion of privacy or records or data of the agency relating to its participation in a judicial proceeding.

Subsec. (b)(7)(A). Pub. L. 96-79, § 120(b), inserted "and for the coordination by the State Agency in the conduct of its activities with any entity of the State which reviews the rates or budgets of health care facilities in the State" following "health and health care".

Subsec. (b)(10). Pub. L. 96-79, § 101(b)(2), inserted provision requiring the State Agency to assemble and report to the Secretary data, other than data regularly collected by any entity of the Department of Health, Education, and Welfare, required by the Secretary to carry out his responsibilities under section 300k-1(e) of this title, including data on personnel, facilities, and other resources needed to meet State health plan goals.

Subsec. (b)(13). Pub. L. 96-79, §§ 117(b)(4), 123(c)(1)(A), substituted in provision preceding subpar. (A), "paragraph (4), (5), or (6)" for "paragraph (3), (4), (5), or (6)" and "or (g)" for "(g), or (h)", inserted in subpar. (A), "in a timely manner" following "be reviewed" and ", or, if there is no such State law" following "administrative agencies", and in cl. (B), "under subparagraph (A)" following "reviewing agency".

Subsec. (c). Pub. L. 96-79, § 123(e)(1), substituted "once every three years" for "once every year".

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment of subsec. (b)(13) by section 117(b)(4) of Pub. L. 96-79 effective on Oct. 4, 1979, except that if the Secretary of Health, Education, and Welfare determines that any amendment made by such section will require a State to change its laws before the State health planning and development agency designated for such State may perform its functions under section 300m-2(a)(4)(B) of this title, such amendment shall take effect in such State, if the State legislature is in a regular session on Oct. 4, 1979 and the legislature will be in session for at least 12 months from Oct. 4, 1979, 12 months from Oct. 4, 1979, or if the State legislature is in session on Oct. 4, 1979 but 12 months do not remain in such session after Oct. 4, 1979, or if the State legislature is not in session on Oct. 4, 1979, 12 months after the beginning of the first regular session of the legislature beginning after Oct. 4, 1979, see section 129(b)(2) of Pub. L. 96-79, set out as an Effective Date note under section 300m-6 of this title.

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

HEALTH SYSTEMS AGENCIES, STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES, AND STATEWIDE HEALTH COORDINATING COUNCILS; ORGANIZATIONAL AND RELATED CHANGES; CHANGES IN FUNCTIONS

Effective on or after Oct. 4, 1979, health systems agencies, State health planning and development agencies, and Statewide Health Coordinating Councils may make the organizational and related changes required by the amendments to this section by Pub. L. 96-79 and may act in accordance with the changes in their functions made by the amendments to this section by Pub. L. 96-79, see section 129(a)(2) and (3) of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300*l* of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300m, 300m-5, 300n-2, 300n-4 of this title.

§ 300m-2. State health planning and development functions

(a) Performance by State agency of a State designated under section 300m(b)(3) of this title

Each State Agency of a State designated under section 300m(b)(3) of this title shall, except as authorized under subsection (b) of this section, perform within the State the following functions:

[*See main edition for text of (1) and (2)*]

(3) Assist the Statewide Health Coordinating Council of the State in the performance of its functions generally.

(4)(A) Serve as the designated planning agency of the State for the purposes of section 1320a–1 of this title if the State has made an agreement pursuant to such section, and (B) administer a State certificate of need program which applies to the obligation of capital expenditures within the State and the offering within the State of new institutional health services and the acquisition of major medical equipment and which is consistent with standards established by the Secretary by regulation. A certificate of need program shall provide for procedures and penalties to enforce the requirements of the program. In performing its functions under this paragraph the State Agency shall consider recommendations made by health systems agencies under section 300*l*–2(f) of this title.

[*See main edition for text of* (5) *and* (6)]

(7) Prepare an inventory of the health care facilities (other than Federal health care facilities) located in the State and evaluate on an ongoing basis the physical condition of such facilities. Such inventory and evaluations shall be reported to the health systems agencies designated for health service areas located (in whole or in part) in the State for purposes of the functions of the agency under section 300*l*–2(b) of this title.

(8) Provide technical assistance to individuals and public and private entities in obtaining and filling out the necessary forms for the development of projects and programs.

[*See main edition for text of* (b)]

(c) Statement

If a State Agency makes a decision in carrying out a function described in paragraph (4), (5), or (6) of subsection (a) of this section which is not consistent with the goals of the applicable HSP or the priorities of the applicable AIP, the State Agency shall submit to the appropriate health systems agency a detailed statement of the reasons for the inconsistency.

(As amended Aug. 1, 1977, Pub. L. 95–83, title I, § 106(n), 91 Stat. 385; Oct. 4, 1979, Pub. L. 96–79, title I, §§ 117(b)(1), (2), 123(c)(2), (3), (e)(2), (g)(1), 93 Stat. 618, 619, 625–627.)

AMENDMENT OF SUBSEC. (a)

Pub. L. 96–79, title I, §§ 115(c)(1)(A)–(C), (i)(2), 118(a)(2), (b)(2), 129(a), Oct. 4, 1979, 93 Stat. 607, 608, 610, 621, 629, provided that, effective one year after Oct. 4, 1979, subsec. (a) of this section will read as follows:

(a) Each State Agency of a State designated under section 300m(b)(3) of this title shall, except as authorized under subsection (b) of this section, perform within the State the following functions:

(1)(A) Conduct the health planning activities of the State and implement those parts of the State health plan (except as provided under section 300m–3(c)(2)(E) of this title) and the plans of the health systems agencies within the State which relate to the government of the State, and (B) determine the statewide health needs of the State after providing reasonable opportunity for the submission of written recommendations respecting such needs by the State health authority, the State mental health authority, and other agencies of the State government, designated by the Governor for the purpose of making such recommendations, and after consulting with the Statewide Health Coordinating Council.

(2) Prepare and, review at least triennially, and revise as necessary a preliminary State health plan which shall be made up of the HSP's of the health systems agencies within the State. In carrying out its functions under this paragraph, the State Agency shall refer the HSP's to the State health authority, the State mental health authority, and other agencies of the State government (designated by the Governor to make the review prescribed by this sentence) to review the goals and related resource requirements of the HSP's and to make written recommendations to the State Agency respecting such goals and requirements. Such preliminary plan may, as found necessary by the State Agency, contain such revisions of such HSP's to achieve their appropriate coordination or to deal more effectively with state-wide health needs determined under paragraph (1)(B). Such preliminary plan shall be submitted to the Statewide Health Coordinating Council of the State for approval or disapproval and for use in developing the State health plan referred to in section 300m–3(c) of this title.

(3) Assist the Statewide Health Coordinating Council of the State in the performance of its functions generally.

(4)(A) Serve as the designated planning agency of the State for the purposes of section 1320a–1 of this title if the State has made an agreement pursuant to such section, and (B) administer a State certificate of need program which applies to the obligation of capital expenditures within the State and the offering within the State of new institutional health services and the acquisition of major medical equipment and which is consistent with standards established by the Secretary by regulation. A certificate of need program shall provide for procedures and penalties to enforce the requirements of the program. In performing its functions under this paragraph the State Agency shall consider recommendations made by health systems agencies under section 300l–2(f) of this title.

(5) After consideration of recommendations submitted by health systems agencies under section 300l–2(f) of this title respecting new institutional health services proposed to be offered within the State, make findings as to the need for such services.

(6) Review on a periodic basis (but not less often than every five years) at least those institutional and home health services which are offered in the State and with respect to which goals have been established in the State health plan and, after consideration of recommendations submitted by health systems agencies under section 300l–2 (g) of this title respecting the appropriateness of such serv-

ices, make public its findings. In making the appropriateness review required by this paragraph of a health service, the State Agency shall at least consider the need for the service, its accessibility and availability, financial viability, cost effectiveness, and the quality of service provided.

(7) Prepare an inventory of the health care facilities (other than Federal health care facilities) located in the State and evaluate on an ongoing basis the physical condition of such facilities. Such inventory and evaluations shall be reported to the health systems agencies designated for health service areas located (in whole or in part) in the State for purposes of the functions of the agency under section 300l-2(b) of this title.

(8) Provide technical assistance to individuals and public and private entities in obtaining and filling out the necessary forms for the development of projects and programs.

If in determining the statewide health needs under paragraph (1)(B) or in preparing or revising a preliminary State health plan under paragraph (2) the State Agency does not take an action proposed in a recommendation submitted under the applicable paragraph, the State Agency shall when publishing such needs or health plan make available to the public a written statement of its reasons for not taking such action.

AMENDMENTS

1979—Subsec. (a)(3). Pub. L. 96-79, § 123(c)(2), struck out "review of the State medical facilities plan required under section 300o-2 of this title, and in the" following "State in the".

Subsec. (a)(4). Pub. L. 96-79, § 117(b)(1), (2), substituted "the obligation of capital expenditures within the State and the offering within the State of new institutional health services and the acquisition of major medical equipment and which is consistent with standards established by the Secretary by regulation" for "new institutional health services proposed to be offered or developed within the State and which is satisfactory to the Secretary" and provision requiring the certificate of need program to provide procedures and penalties to enforce the requirements of the program for provision requiring review and determination of need prior to the time services, facilities, and organizations are offered or developed or substantial expenditures undertaken in preparation of such offering or development and providing that only those services, etc., as found needed are offered or developed.

Subsec. (a)(5). Pub. L. 96-79, § 123(g)(1), substituted reference to section 1513(f) of this Act for reference to section 1413(f) of this Act, which, since section 1413(f) had been previously translated as section 300l-2(f) of this title to reflect the probable intent of Congress, required no change in text.

Subsec. (a)(7). Pub. L. 96-79, § 123(c)(3), added par. (7).

Subsec. (a)(8). Pub. L. 96-79, § 123(e)(2), added par. (8).

1977—Subsec. (c). Pub. L. 95-83 deleted reference to par. (7) of subsec. (a) of this section.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment of subsec. (a)(4) by section 117(b) (1) and (2) of Pub. L. 96-79 effective on Oct. 4, 1979, except that if the Secretary of Health, Education, and Welfare determines that any amendment made by such section will require a State to change its laws before the State health planning and development agency designated for such State may perform its functions under section 300m-2(a)(4)(B) of this title, such amendment shall take effect in such State, if the State legislature is in a regular session on Oct. 4, 1979 and the legislature will be in session for at least 12 months from Oct. 4, 1979, 12 months from Oct. 4, 1979, or if the State legislature is in session on Oct. 4, 1979 but 12 months do not remain in such session after Oct. 4, 1979, or if the State legislature is not in session on Oct. 4, 1979, 12 months after the beginning of the first regular session of the legislature beginning after Oct. 4, 1979, see section 129(b)(2) of Pub. L. 96-79, set out as an Effective Date note under section 300m-6 of this title.

HEALTH SYSTEMS AGENCIES, STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES, AND STATEWIDE HEALTH COORDINATING COUNCILS; ORGANIZATIONAL AND RELATED CHANGES; CHANGES IN FUNCTIONS

Effective on or after Oct. 4, 1979, health systems agencies, State health planning and development agencies, and Statewide Health Coordinating Councils may make the organizational and related changes required by the amendments to this section by Pub. L. 96-79 and may act in accordance with the changes in their functions made by the amendments to this section by Pub. L. 96-79, see section 129(a)(2) and (3) of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300l of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300l-2, 300m, 300m-1, 300m-3, 300m-4, 300m-6, 300n, 300n-1 to 300n-5, 6371d of this title; title 12 section 1715n.

§ 300m-3. Statewide Health Coordinating Council

[*See main edition for text of* (a)]

(b) Membership; chairman; conduct of meetings

(1) A SHCC of a State shall be composed in the following manner:

(A)(i) A SHCC shall have no fewer than sixteen representatives (or if the number of representatives on the SHCC to which health systems agencies are entitled under the second sentence of clause (iii) is less than sixteen, no fewer than the number to which they are entitled) appointed by the Governor of the State from lists of nominees submitted to the Governor by each of the health systems agencies designated for health service areas which fall, in whole or in part, within the State. Each agency shall submit a number of nominees to the Governor which is at least twice the number of representatives on the SHCC to which the agency is entitled.

(ii) Each such health systems agency shall be entitled to the same number of representatives on the SHCC, except that the number of representatives on the SHCC to which a health systems agency designated for a health service area which is not entirely within the State shall be a number which is based on the relationship of the population of the portion of such health service area within the State to the population of the largest health service area located entirely within the State, except that each such agency shall be entitled to at least one representative on the SHCC.

(iii) Except as otherwise provided in clause (ii) and this clause, each such health systems agency shall be entitled to at least two representatives on the SHCC. If there are more than ten health systems agencies within a

State, each health systems agency within such State shall be entitled to at least one representative on the SHCC. Of the representatives of health systems agencies on the SHCC, not less than one-half shall be individuals who are consumers of health care and who are not providers of health care.

[*See main edition for text of* (*B*)]

(C) Not less than one-half of the providers of health care who are members of a SHCC shall be direct providers of health care (as described in section 300n(3) of this title).

(D) Where one or more hospitals or other health care facilities of the Veterans' Administration are located in a State, the SHCC shall, in addition to the appointed members, include, as a nonvoting, ex officio member, an individual whom the Chief Medical Director of the Veterans' Administration shall have designated as a representative of such facilities.

(E) Members of the SHCC who are consumers of health care and who are not providers of health care shall include individuals who represent rural and urban medically underserved populations if such populations exist in the State.

(2) The Governor may select, by and with the advice and consent of the State senate, or, in the case of a State with a unicameral legislature, of the State legislature, the chairman of the SHCC from among the members of the SHCC. If the Governor does not select the chairman, the SHCC shall select the chairman from among its members.

[*See main edition for text of* (*3*)]

(c) Other functions

A SHCC shall perform the following functions:

(1) Establish (in consultation with the health systems agencies in the State and the State Agency) a uniform format for HSP's and review and coordinate at least triennially the HSP and review at least annually the AIP of each health systems agency within the State and report to the Secretary, for purposes of his review under section 300n-4(c) of this title, its comments on such HSP and AIP.

(2)(A) Prepare, review at least triennially, and revise as necessary a State health plan which shall be made up of the HSP's of the health systems agencies within the State. Such plan may, as found necessary by the SHCC, contain revisions of such HSP's to achieve their appropriate coordination or to deal more effectively with statewide health needs as determined by the State Agency of the State. The plan shall also describe the institutional health services (as defined in section 300n(5) of this title) needed to provide for the well-being of persons receiving care within the State, including, at a minimum, acute inpatient (including psychiatric inpatient, obstetrical inpatient, and neonatal inpatient), rehabilitation, and long-term care services; and also describe other health services needed to provide for the well-being of persons receiving care within the State, including, at a minimum, preventive, ambulatory, and home health services and treatment for alcohol and drug abuse. The plan shall also describe the number and type of resources, including facilities, personnel, major medical equipment, and other resources required to meet the goals of the plan and shall state the extent to which existing health care facilities are in need of modernization, conversion to other uses, or closure and the extent to which new health care facilities need to be constructed or acquired. Each health systems agency which participates in the SHCC shall make available to the SHCC its HSP for integration into the State health plan and shall, as required by the SHCC, revise its HSP to achieve appropriate coordination with the HSP's of the other agencies which participate in the SHCC or to deal more effectively with statewide health needs as determined by the State Agency of the State.

(B) In the preparation and revision of the State health plan, the SHCC shall review and consider the preliminary State health plan submitted by the State Agency under section 300m-2(a)(2) of this title, and shall conduct a public hearing on the plan as proposed and shall give interested persons an opportunity to submit their views orally and in writing. Not less than thirty days prior to any such hearing, the SHCC shall publish in at least two newspapers of general circulation in the State a notice of its consideration of the proposed plan, the time and place of the hearing, the place at which interested persons may consult the plan in advance of the hearing, and the place and period during which to direct written comment to the SHCC on the plan. If in preparing or revising the State health plan the SHCC does not take an action proposed in a recommendation submitted under section 300m-2(a)(1)(B) of this title, the SHCC shall when publishing such plan make available to the public a written statement of its reasons for not taking such action.

(C) The State health plan or any revised State health plan approved by the SHCC shall be the State health plan for the State for purposes of this subchapter after it is approved by the Governor of the State. The State health plan for a State may be disapproved by the Governor of the State only if the Governor determines that the plan does not effectively meet the statewide health needs of the State as determined by the State Agency for the State. In disapproving a State health plan, a Governor shall make public a detailed statement of the basis for the determination that the plan does not meet such needs and shall specify the changes in the plan which the Governor determines are needed to meet such needs. Subparagraph (B) does not apply to the preparation of revisions of a State health plan disapproved by a Governor.

(D) In carrying out its functions with respect to the goals and resource requirements for mental health services of the State health plan, the SHCC may establish a procedure under which persons (acting as or as part of an advisory group or subcommittee appointed by the SHCC) knowledgeable about mental health services (including services for alcohol and drug abuse) will have the opportunity to make recommendations to the SHCC respecting such services.

(E) The State health authority, the State mental health authority, and other agencies of the State government, designated by the Governor, shall carry out those parts of the State health plan which relate to the government of the State.

(F) If a State health plan as required by this subsection is not in effect for a State, the Secretary may not make any grant under section 300m-4 of this title to the State Agency designated for such State under section 300m(b)(3) of this title.

[*See main edition for text of* (*3*) *to* (*5*)]

(6) Review annually and recommend approval or disapproval of (A) any State plan and any application (and any revision of a State plan or application) submitted to the Secretary as a condition to the receipt of any funds under allotments made to States under this chapter, the Community Mental Health Centers Act [42 U.S.C. 2689 et seq.], section 409 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act [21 U.S.C. 1176], or the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970 [42 U.S.C. 4541 et seq.], and (B) any application (and any revision of an application) submitted to the Secretary by a State for a grant or contract under any provision of law referred to in clause (A) for projects in more than one health service area of the State. Notwithstanding any other provision of this chapter or any other Act referred to in the preceding sentence, the Secretary shall allow a SHCC sixty days to make the review required by such sentence. If a SHCC recommends disapproval of such a plan or application, the Secretary, after making a finding that such plan or application is not in conformity with the State health plan, may not make Federal funds available under such State plan or application. If the Secretary makes such a finding, he shall notify the Governor of his finding and the reasons therefor and advise him that he has thirty days in which to submit a revised State plan or application that conforms with the State health plan. If after reviewing a recommendation of a SHCC to disapprove such State plan or application, the Secretary decides to make such funds available, the decision by the Secretary to make such funds available shall be submitted to the SHCC and shall contain a detailed statement of the reasons for the decision.

(d) Limitation of individual liability

No individual who as a member or employee of a SHCC shall, by reason of his performance of any duty, function, or activity required of, or authorized to be undertaken by, the SHCC, be liable for payment of damages under any law of the United States or any State (or political subdivision of a State) if he believed he was acting within the scope of his duty, function, or activity as such a member or employee, and acted, with respect to that performance, without gross negligence or malice toward any person affected by it.

(e) Conflicts of interest

No member of any SHCC may, in the exercise of any function of the SHCC described in subsection (c)(6) of this section, vote on any matter before the SHCC respecting any individual or entity with which such member has (or, within the twelve months preceding the vote, had) any substantial ownership, employment, medical staff, fiduciary, contractual, creditor, or consultative relationship. Each SHCC shall require each of its members who has or has had such a relationship with an individual or entity involved in any matter before the SHCC to make a written disclosure of such relationship before any action is taken by the SHCC with respect to such matter in the exercise of any function under subsection (c) of this section and to make such relationship public in any meeting in which such action is to be taken.

(As amended Oct. 4, 1979, Pub. L. 96-79, title I, §§ 110(d)(2), 113(b), 115(a), (c)(1)(D), (d)(3), (g), (i)(2)-(4), 119(a), 124, 93 Stat. 604, 606-610, 621, 627; Jan. 2, 1980, Pub. L. 96-181, § 15(b), 93 Stat. 1316.)

AMENDMENTS

1980—Subsec. (c)(6). Pub. L. 96-181 substituted "Drug Abuse Prevention, Treatment, and Rehabilitation Act" for "Drug Abuse Office and Treatment Act of 1972".

1979—Subsec. (b)(1)(A)(i). Pub. L. 96-79, § 124(a)(3), inserted "(or if the number of representatives on the SHCC to which health systems agencies are entitled under the second sentence of clause (iii) is less than sixteen, no fewer than the number to which they are entitled)", following "sixteen representatives" and provision requiring each agency to submit a number of nominees to the governor which is at least twice the amount of representatives on the SHCC to which the agency is entitled, and struck out "at least five" following "from lists of".

Subsec. (b)(1)(A)(ii). Pub. L. 96-79, § 124(a)(1), inserted exception provision for a health systems agency designated for a health service area which is not located entirely within a State.

Subsec. (b)(1)(A)(iii). Pub. L. 96-79, § 124(a)(2), inserted "Except as otherwise provided in clause (ii) and this clause," preceding "each such agency" and provision that if there are more than ten health systems agencies within a State, each agency be entitled to at least one representative on the SHCC.

Subsec. (b)(1)(C). Pub. L. 96-79, § 124(c)(1)(A), substituted "one-half" for "one-third". Amendment by Pub. L. 96-79, § 124(c)(1)(B), which substituted "a nonvoting, ex officio" for "an ex officio", could not be executed to subsec. (b)(1)(C) and was executed to subsec. (b)(1)(D) to reflect the probable intent of Congress.

Subsec. (b)(1)(D). Pub. L. 96-79, § 124(c)(1)(B), (2), substituted "one or more" for "two or more", and "a nonvoting, ex officio" for "an ex officio". See Amendment note for subsec. (b)(1)(C) above.

Subsec. (b)(1)(E). Pub. L. 96-79, § 124(a)(4), added subsec. (b)(1)(E).

Subsec. (b)(2). Pub. L. 96-79, § 124(b), substituted provision directing the Governor, by and with the consent of the State senate or if appropriate the State legislature, to select the chairman of the SHCC from among its members, or if the Governor does not select the chairman, the SHCC to select the chairman from among its members for provision directing the SHCC to select a chairman from among its members.

Subsec. (c)(1). Pub. L. 96-79, § 115(a), (i)(3), substituted "Establish (in consultation with the health systems agencies in the State and the State Agency) a uniform format for HSP's review and coordinate at least triennally the HSP and review at least annually the AIP" for "Review annually and coordinate the HSP and AIP".

Subsec. (c)(2)(A). Pub. L. 96-79, § 115(c)(1)(D), (d)(3), (i)(2), (4), substituted ", review at least triennially, and revise as necessary" for "and review and revise as necessary (but at least annually)", inserted "as determined by the State Agency of the State" following "statewide health needs", in two places, and provision requiring the plan to describe the institutional health services and other health services needed to provide the well-being of persons receiving care within the State, the number and type of resources, including facilities, personnel, major medical equipment, and other resources required to meet the goals of the plan, the extent facilities are in need of modernization, conversion to other uses, or closure, and the extent new facilities need to be constructed or acquired, and struck out "for each year" following "SHCC its HSP".

Subsec. (c)(2)(B). Pub. L. 96-79, §§ 115(c)(1)(D), 124(d), substituted "State Agency" for "State agency" and inserted provision requiring that if in preparing or revising the State health plan the SHCC does not take an action proposed in a recommendation, the SHCC make available to the public a written statement of its reasons for not taking such action when publishing the plan.

Subsec. (c)(2)(C) to (F). Pub. L. 96-79, § 115(g), added subpars. (C) to (F).

Subsec. (c)(6). Pub. L. 96-79, § 119(a), substituted "recommend approval or disapproval of (A)" for "approve or disapprove" and "If after reviewing a recommendation of a SHCC to disapprove such State plan or application," for "If after such review", inserted "section 409 of the Drug Abuse Office and Treatment Act of 1972" following "Community Mental Health Centers Act", added cl. (B), and substituted provision prohibiting the Secretary from making federal funds available if the SHCC recommends disapproval of a State plan or application and the Secretary finds that the plan or application is not in conformity with the State health plan and directing the Secretary to notify the Governor of his findings and the reasons therefor and to advise the Governor that he has thirty days in which to submit a revised plan for provision prohibiting the Secretary from making federal funds available if the SHCC recommends disapproval of a State plan or application until the Secretary has made, at the request of the Governor, a review of the SHCC decision.

Subsec. (d). Pub. L. 96-79, § 110(d)(2), added subsec. (d).

Subsec. (e). Pub. L. 96-79, § 113(b), added subsec. (e).

Effective Date of 1979 Amendment

Amendment of subsecs. (b)(1)(A), (C) to (E), (2), (c)(1), (2), (6), and (e), by Pub. L. 96-79 effective one year after Oct. 4, 1979, see section 129(a) of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300*l* of this title.

Health Systems Agencies and Statewide Health Coordinating Councils; Changes in Membership; Vacancies Occurring After October 4, 1979

Effective on or after Oct. 4, 1979, changes in membership of health systems agencies and the Statewide Health Coordinating Councils required by amendments to this section by Pub. L. 96-79 implemented through selection of members to fill vacancies occurring after Oct. 4, 1979, see section 129(a)(1) of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300*l* of this title.

Health Systems Agencies, State Health Planning and Development Agencies, and Statewide Health Coordinating Councils; Organizational and Related Changes; Changes in Functions

Effective on or after Oct. 4, 1979, health systems agencies, State health planning and development agencies, and Statewide Health Coordinating Councils may make the organizational and related changes required by the amendments to this section by Pub. L. 96-79 and may act in accordance with the changes in their functions made by the amendments to this section by Pub. L. 96-79, see section 129(a)(2) and (3) of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300*l* of this title.

Section Referred to in Other Sections

This section is referred to in sections 246, 247, 247a, 247b, 254j, 300a-29, 300k-1, 300k-3, 300*l*-2, 300m, 300m-1, 300m-2, 300m-6, 300n-4, 300n-5, 300s-1a, 2689t, 4573, 6371d of this title; title 21 section 1176.

§ 300m-4. Grants for State health planning and development

(a) Availability of funds for succeeding fiscal year; limitation

The Secretary shall make grants to State health planning and development agencies designated under subsection (b)(2) or (b)(3) of section 300m of this title to assist them in meeting the costs of their operation. Funds under a grant which remain available for obligation at the end of the fiscal year in which the grant has been made shall remain available for obligation in the succeeding fiscal year, but no funds under any grant to a State Agency may be obligated in any period in which a designation agreement is not in effect for such State Agency. The amount of any grant made under this subsection shall be determined by the Secretary, except that no grant to a designated State Agency may exceed 75 per centum of its operation costs (as determined under regulations of the Secretary) during the period for which the grant is available for obligation.

[*See main edition for text of* (*b*)]

(c) Authorization of appropriations

For the purpose of making payments under grants under subsection (a) of this section, there are authorized to be appropriated $25,000,000 for the fiscal year ending June 30, 1975, $30,000,000 for the fiscal year ending June 30, 1976, $35,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, $35,000,000 for the fiscal year ending September 30, 1980, $40,000,000 for the fiscal year ending September 30, 1981, and $45,000,000 for the fiscal year ending September 30, 1982.

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 102(b), 91 Stat. 383; Oct. 4, 1979, Pub. L. 96-79, title I, §§ 107(c), 127(b), 93 Stat. 600, 629.)

Amendments

1979—Subsec. (a). Pub. L. 96-79, § 107(c), inserted provision that if State health planning and development agencies have unobligated funds at the end of a fiscal year, they may use those funds in the following fiscal year as long as the designation agreement remains in effect.

Subsec. (c). Pub. L. 96-79, § 127(b), authorized appropriations of $35,000,000 for the fiscal year ending September 30, 1980, $40,000,000 for the fiscal year ending September 30, 1981, and $45,000,000 for the fiscal year ending September 30, 1982.

1977—Subsec. (c). Pub. L. 95-83 substituted "each for the fiscal years ending September 30, 1977, and September 30, 1978" for "for the fiscal year ending June 30, 1977".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300m-3 of this title.

§ 300m-5. Grants for rate regulation

(a) Intention to regulate rates by State Agency or other entity

For the purpose of demonstrating the effectiveness of State Agencies regulating rates for the provision of health care, the Secretary may make grants to a State Agency designated, under an agreement entered into under section 300m(b)(3) of this title, for a State which (in accordance with regulations prescribed by the Secretary) has indicated an intent to regulate rates for the provision of health care within the State or to any other entity of the government of a State which has so indicated an intent to regulate such rates.

(b) Requirements; coordination between entity not a State Agency and State Agency

(1) An entity which receives a grant under subsection (a) of this section shall—

(A) provide the Secretary satisfactory evidence that the entity has under State law the authority to carry out rate regulation functions in accordance with this section and provide the Secretary a current budget for the performance of such functions by it;

[*See main edition for text of* (*B*) *and* (*C*)]

(D) if it is a State Agency, perform its functions in accordance with procedures established and published by it, which procedures shall conform to the requirements of section 300n-1 of this title;

(E) if it is a State Agency, comply with the requirements prescribed by paragraphs (6) through (12) of section 300m-1(b) of this title with respect to the functions prescribed by subsection (a) of this section;

(F) provide for the establishment of a procedure under which the entity will obtain the recommendation of the appropriate health systems agency prior to conducting a review of the rates charged or proposed to be charged for services; and

(G) meet such other requirements as the Secretary may prescribe.

If an entity which is not a State Agency receives a grant under subsection (a) of this section, such entity shall coordinate its activities under the grant with the State Agency for the State in which such entity is located, share with the State Agency data obtained from such activities, and for purposes of such activities, develop with the State Agency criteria for the review of institutional health services, equipment, and facilities which guidelines are not in conflict with criteria adopted by the State Agency.

(2) In prescribing requirements under paragraph (1) of this subsection, the Secretary shall consider the manner in which an entity shall perform its functions under a grant under subsection (a) of this section, including whether the entity should—

[*See main edition for text of* (*A*) *to* (*D*)]

(c) Terms and conditions; availability of funds for succeeding fiscal year

Grants under subsection (a) of this section shall be made on such terms and conditions as the Secretary may prescribe, except that no entity may receive more than three grants under subsection (a) of this section. Funds under a grant which remain available for obligation at the end of the fiscal year in which the grant has been made shall remain available for obligation in the succeeding fiscal year, but no funds under any grant to a State Agency may be obligated in any period in which a designation agreement is not in effect for such State Agency.

(d) Reports

Each entity which receives a grant under subsection (a) of this section shall report to the Secretary (in such form and manner as he shall prescribe) on the effectiveness of the rate regulation program assisted by such grant. The Secretary shall report annually to the Congress on the effectiveness of the programs assisted by the grants authorized by subsection (a) of this section.

(e) Authorization of appropriations

There are authorized to be appropriated to make payments under grants under subsection (a) of this section $4,000,000 for the fiscal year ending June 30, 1975, $5,000,000 for the fiscal year ending June 30, 1976, $6,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, $6,000,000 for the fiscal year ending September 30, 1980, $6,000,000 for the fiscal year ending September 30, 1981, and $6,000,000 for the fiscal year ending September 30, 1982.

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, §§ 102(c), 106(*o*), 91 Stat. 383, 385; Oct. 4, 1979, Pub. L. 96-79, title I, §§ 107(d), 120(c), 127(c), 93 Stat. 600, 622, 629.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-79, § 120(c)(1), (2)(A), struck out "(not later than six months after January 4, 1975)" following "intent to regulate" and provision that not more than six State Agencies receive grants under this subsection, and inserted "or to any other entity of the government of a State which has so indicated an intent to regulate such rates" following "within the State".

Subsec. (b)(1). Pub. L. 96-79, § 120(c)(2)(B) to (E), substituted in provision preceding subpar. (A), "An entity" for "A State Agency", in subpar. (A), "entity" for "State Agency", in subpar. (D), "if it is a State Agency, perform its functions" for "perform its functions", in subpar. (E), "if it is a State Agency, comply with the" for "comply with the", and in subpar. (F), "entity" for "State Agency", and inserted following subpar. (G), provision requiring an entity which is not a State Agency and receives a grant to coordinate its activities with the State Agency for the State in which the entity is located, to share data with the State Agency, and to develop criteria for review of institutional health services, equipment, and facilities which are not in conflict with the criteria adopted by the State Agency.

Subsec. (b)(2). Pub. L. 96–79, § 120(c)(2)(F), substituted in provision preceding subpar. (A), "an entity" for "a State Agency" and "entity" for "State Agency".

Subsec. (c). Pub. L. 96–79, §§ 107(d), 120(c)(2)(G), substituted "except that no entity may" for "(1) such a grant shall be available for obligation only during the one-year period beginning on the date such grant was made, and (2) no State Agency may" and inserted provision that if unobligated funds remain available at the end of a fiscal year, they shall remain available for obligation in a succeeding fiscal year as long as the designation agreement remains in effect.

Subsec. (d). Pub. L. 96–79, § 120(c)(2)(G), substituted "entity" for "State Agency".

Subsec. (e). Pub. L. 96–79, § 127(c), authorized appropriations of $6,000,000 for each of the fiscal years ending Sept. 30, 1980, 1981, and 1982.

1977—Subsec. (a). Pub. L. 95–83, § 106(*o*), inserted "grants" following "may make".

Subsec. (e). Pub. L. 95–83, § 102(c), substituted "each for the fiscal years ending September 30, 1977, and September 30, 1978" for "for the fiscal year ending June 30, 1977".

§ 300m–6. Certificate of need program

(a) Determination of need for equipment and services; criteria for review of application; timetable for delivery of equipment and services; withdrawal of certificate; maximum amount of capital expenditures; review of changes

The certificate of need program required by section 300m–2(a)(4)(B) of this title shall, in accordance with this section, provide for the following:

(1) Review and determination of need under such program for—

(A) major medical equipment and institutional health services, and

(B) capital expenditures,

shall be made before the time such equipment is acquired, such services are offered, substantial expenditures are undertaken in preparation for such offering, or capital expenditures are obligated.

(2) The acquisition and offering of only such equipment and services as may be found by the State Agency to be needed; and the obligation of only those capital expenditures found to be needed by the State Agency. Except as otherwise authorized by this section, review under the program of an application for a certificate of need may not be made subject to any criterion and the issuance of a certificate of need may not be made subject to any condition unless the criterion or condition directly relates to—

(A) criteria prescribed by section 300n–1(c) of this title,

(B) criteria prescribed by regulations of the Secretary promulgated under section 300n–1(a) of this title before October 4, 1979, or

(C) criteria prescribed by regulation by the State Agency in accordance with an authorization prescribed by State law.

The Secretary may not require a State to include in its program any criterion in addition to criteria described in subparagraphs (A) and (B).

(3) An application for a certificate of need for an institutional health service, medical equipment, or a capital expenditure shall specify the time the applicant will require to make such service or equipment available or to obligate such expenditure and a timetable for making such service or equipment available or obligating such expenditure. After the issuance of a certificate of need, the State Agency shall periodically review the progress of the holder of the certificate in meeting the timetable specified in the approved application for the certificate. If on the basis of such a review the State Agency determines that the holder of a certificate is not meeting such timetable and is not making a good faith effort to meet it, the State Agency may, after considering any recommendation made by the health systems agency which received a report from the State Agency on such review, withdraw the certificate.

(4) In issuing a certificate of need, the State shall specify in the certificate the maximum amount of capital expenditures which may be obligated under such certificate. The program shall, in accordance with regulations promulgated by the Secretary, prescribe the extent to which a project authorized by a certificate of need shall be subject to further review if the amount of capital expenditures obligated or expected to be obligated for the project exceed the maximum specified in the certificate of need.

(5) The program shall provide that (A) the requirements of section 300n–1 of this title shall apply to proceedings under the program, and (B) each decision to issue a certificate of need (i) may only be issued by the State Agency, and (ii) shall, except in emergency circumstances that pose a threat to public health, be consistent with the State health plan in effect for such State under section 300m–3(c) of this title.

(b) Exemption from certificate; conditions; sale, lease, or acquisition of facility or equipment; subsidiary health maintenance organization or ambulatory or health care facility; approval of application

(1) Under the program a State shall not require a certificate of need for the offering of an inpatient institutional health service or the acquisition of major medical equipment for the provision of an inpatient institutional health service or the obligation of a capital expenditure for the provision of an inpatient institutional health service by—

(A) a health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least 50,000 individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination;

(B) a health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least 50,000 individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization or organizations in the combination, or

(C) a health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least 50,000 individuals and on the date the application is submitted under paragraph (2) at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least 75 percent of the patients who can reasonably be expected to receive the institutional health service will be individuals enrolled with such organization,

if, with respect to such offering, acquisition, or obligation, the State Agency has, upon application under paragraph (2), granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under paragraph (1) from obtaining a certificate of need before offering an institutional health service, acquiring major medical equipment, or obligating capital expenditures unless—

(A) it has submitted, at such time and in such form and manner as the State Agency shall prescribe, an application for such exemption,

(B) the application contains such information respecting the organization, combination, or facility and the proposed offering, acquisition, or obligation as the State Agency may require to determine if the organization or combination meets the requirements of paragraph (1) or the facility meets or will meet such requirements, and

(C) the State Agency approves such application.

In the case of a proposed health care facility (or portion thereof) which has not begun to provide institutional health services on the date an application is submitted under this paragraph with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of paragraph (1) when the facility first provides such services. The State Agency shall approve an application submitted under this paragraph if it determines that the applicable requirements of paragraph (1) are met.

(3) Notwithstanding subsection (d) of this section, a health care facility (or any part thereof) or medical equipment with respect to which an exemption was granted under paragraph (1) may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired and a health care facility described in subparagraph (C) of paragraph (1) which was granted an exemption under paragraph (1) may not be used by any person other than the lessee described in such subparagraph unless—

(A) the State Agency issues a certificate of need approving the sale, lease, acquisition, or use, or

(B) the State Agency determines, upon application, that (i) the entity to which the facility or equipment is proposed to be sold or leased, which intends to acquire the controlling interest, or which intends to use the facility is a health maintenance organization or a combination of health maintenance organizations which meets the requirements of clause (i) of subparagraph (A) of paragraph (1) and (ii) with respect to such facility or equipment, the entity meets the requirements of clauses (ii) and (iii) of such subparagraph (A) or the requirements of clauses (i) and (ii) of subparagraph (B) of paragraph (1).

(4) In the case of a health maintenance organization or an ambulatory care facility or health care facility which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations, a State may under the program apply its certificate of need requirements only to the offering of inpatient institutional health services, the acquisition of major medical equipment, and the obligation of capital expenditures for the offering of inpatient institutional health services and then only to the extent that such offering, acquisition, or obligation is not exempt under paragraph (1).

(5) Notwithstanding section 300n-1(c) of this title, if a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization apply for a certificate of need, such application shall be approved by the State Agency if the State Agency finds (in accordance with criteria prescribed by the Secretary by regulation) that—

(A) approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll, and

(B) the health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its institutional health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

Except as provided in paragraph (1) and notwithstanding subsection (d) of this section, a health care facility (or any part thereof) or medical equipment with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or equipment or in a lease of such facility or equipment may not be acquired unless the State Agency issues a certificate of need approving the sale, acquisition, or lease.

(c) Capital expenditure for elimination or prevention of imminent safety hazards, compliance with State licensure standards, or compliance with accreditation standards for social security reimbursements or payments

Notwithstanding section 300n-1(c) of this title, an application for a certificate of need for a capital expenditure which is required—

(1) to eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations,

(2) to comply with State licensure standards, or

(3) to comply with accreditation standards compliance with which is required to receive reimbursements under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] or payments under a State plan for medical assistance approved under title XIX of such Act [42 U.S.C. 1396 et seq.],

shall be approved unless the State Agency finds that the facility or service with respect to which such capital expenditure is proposed to be made is not needed or that the obligation of such capital expenditure is not consistent with the State health plan in effect under section 300m-3 of this title. An application for a certificate of need approved under this subsection shall be approved only to the extent that the capital expenditure is required to eliminate or prevent the hazards described in paragraph (1) or to comply with the standards described in paragraph (2) or (3).

(d) Acquisition of existing facility

(1) Under the program a certificate of need shall, except as provided in subsection (b) of this section, be required for the obligation of a capital expenditure to acquire (either by purchase or under lease or comparable arrangement) an existing health care facility if—

(A) the notice required by paragraph (2) is not filed in accordance with that paragraph with respect to such acquisition, or

(B) the State Agency finds, within thirty days after the date it receives a notice in accordance with paragraph (2) with respect to such acquisition, that the services or bed capacity of the facility will be changed in being acquired.

(2) Before any person enters into a contractual arrangement to acquire an existing health care facility which arrangement will require the obligation of a capital expenditure, such person shall notify the State Agency of the State in which such facility is located of such person's intent to acquire such facility and of the services to be offered in the facility and its bed capacity. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the facility with respect to which the notice is given.

(e) Acquisition of major medical equipment not owned by or located in health care facility

(1)(A) Except as provided in subsection (b) of this section and subparagraph (B), under the program a certificate of need shall not be required for the acquisition of major medical equipment which will not be owned by or located in a health care facility unless—

(i) the notice required by paragraph (2) is not filed in accordance with that paragraph with respect to such acquisition, or

(ii) the State Agency finds, within thirty days after the date it receives a notice in accordance with paragraph (2) with respect to such acquisition, that the equipment will be used to provide services for inpatients of a hospital.

(B) The certificate of need program of a State may include a requirement for a certificate of need for an acquisition of major medical equipment which requirement is in addition to the requirement for a certificate of need established by subparagraph (A), except that after September 30, 1982, the certificate of need program of a State may not be changed to include any such additional requirement.

(2) Before any person enters into a contractual arrangement to acquire major medical equipment which will not be owned by or located in a health care facility, such person shall notify the State Agency of the State in which such equipment will be located of such person's intent to acquire such equipment and of the use that will be made of the equipment. Such notice shall be made in writing and shall be made at least thirty days before contractual arrangements are entered into to acquire the equipment with respect to which the notice is given.

(3) For purposes of this subsection, donations and leases of major medical equipment shall be considered acquisitions of such equipment, and an acquisition of medical equipment through a transfer of it for less than fair market value shall be considered an acquisition of major medical equipment if its fair market value is at least $150,000.

(f) Osteopathic or allopathic facilities

Notwithstanding section 300n-1(c) of this title, when an application is made by an osteopathic or allopathic facility for a certificate of need to construct, expand, or modernize a health care facility, acquire major medical equipment, or add services, the need for that construction, expansion, modernization, acquisition of equipment, or addition of services shall be considered on the basis of the need for and the availability in the community of services and facilities for osteopathic and allopathic physicians' and their patients. The State Agency shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathy and medicine at the student, internship, and residency training levels.

(g) Approval or disapproval of applications; recommendations from health systems agencies within State

In approving or disapproving applications for certificates of need or in withdrawing certificates of need under such a program, a State Agency shall take into account recommendations made by health systems agencies within the State under section 300*l*-2(f) of this title.

(July 1, 1944, ch. 373, title XV, § 1527, as added Oct. 4, 1979, Pub. L. 96-79, title I, § 117(a), 93 Stat. 614.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (c)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

EFFECTIVE DATE

Section 129(b)(2) of Pub. L. 96-79 provided that: "The amendments made by sections 116(d), 116(e), 117, and 126 [enacting this section, amending sections 300m-1(b)(13), 300m-2(a)(4), (4)(B), 300n(5) to (12), and 300n-1(b)(1), (2), (7), (12), (13), (c)(8) of this title, and enacting provisions set out as notes under sections 300m-6 and 300n of this title] shall take effect on the date of the enactment of this Act [Oct. 4, 1979], except that if the Secretary of Health, Education, and Welfare determines that any amendment made by any such section will require a State to change its laws before the State health planning and development agency designated for such State may perform its functions under section 1523(a)(4)(B) of the Public Health Service Act [section 300m-2(a)(4)(B) of this title], such amendment shall take effect in such State—

"(A) if the legislature of the State is in a regular session on the date of the enactment of the Health Planning and Resources Development Amendments of 1979 [Oct. 4, 1979] and the legislature will be in session for at least twelve months from such date, twelve months from such date, or

"(B) if the legislature of the State is in session on such date of enactment but twelve months do not remain in such session after such date or if the legislature of the State is not in session on such date, twelve months after the beginning of the first regular session of the legislature beginning after such date."

EVALUATION OF EXEMPTION AUTHORITY; CONTENTS OF EVALUATION; REPORT TO CONGRESS

Section 117(c) of Pub. L. 96-79 provided that: "The Comptroller General shall conduct an evaluation of the exemption authority provided by section 1527(b) of the Public Health Service Act [subsec. (b) of this section]. In conducting the evaluation, the Comptroller General shall determine—

"(1) the health maintenance organizations, combinations of health maintenance organizations, and health care facilities which have applied to receive an exemption under that section,

"(2) the services, facilities, and equipment with respect to which applications have been submitted under that section,

"(3) the impact of the exemption on existing contractual arrangements between health maintenance organizations and health care facilities and on plans of such organizations respecting such arrangements, and

"(4) the impact of the exemption on health care delivery systems, including its impact on the cost, availability, accessibility, and quality of health care.

The Comptroller General shall report the results of the evaluation to the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives not later than February 1, 1982."

ESTABLISHMENT OF CERTIFICATE OF NEED PROGRAMS; PROMULGATION OF REGULATIONS

Section 117(d) of Pub. L. 96-79 provided that: "Within one hundred and eighty days of the date of the enactment of this Act [Oct. 4, 1979], the Secretary of Health, Education, and Welfare shall promulgate such regulations as may be necessary to enable the States to establish certificate of need programs which meet the requirements of section 1527 of the Public Health Service Act [this section]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300n, 300n-1 of this title.

PART D—GENERAL PROVISIONS

§ 300n. Definitions

Except as otherwise provided, for purposes of this subchapter:

(1) The term "State" includes the District of Columbia.

[*See main edition for text of* (2)]

(3) The term "provider of health care" means an individual—

(A) who is a direct provider of health care (including a physician, dentist, nurse, podiatrist, optometrist, physician assistant, or ancillary personnel employed under the supervision of a physician) in that the individual's primary current activity is the provision of health care to individuals or the administration of facilities or institutions (including hospitals, long-term care facilities, rehabilitation facilities, alcohol and drug abuse treatment facilities, outpatient facilities, and health maintenance organizations) in which such care is provided and, when required by State law, the individual has received professional training in the provision of such care or in such administration and is licensed or certified for such provision or administration;

(B) who holds a fiduciary position with, or has a fiduciary interest in, any entity described in clause (ii) or (iv) of subparagraph (C) other than an entity described in such clause which is also an entity described in section 501(c)(3) of title 26 and which does not have as its primary purpose the delivery of health care, the conduct of research, the conduct of instruction for health professionals, or the production of drugs or articles described in clause (iii) of subparagraph (C);

(C) who receives (either directly or through the individual's spouse) more than one-fifth of his gross annual income from any one or combination of—

(i) fees or other compensation for research into or instruction in the provision of health care,

(ii) entities engaged in the provision of health care or in research or instruction in the provision of health care,

(iii) producing or supplying drugs or other articles for individuals or entities for use in the provision of or in research into or instruction in the provision of health care, or

(iv) entities engaged in producing drugs or such other articles;

(D) who is the member of the immediate family of an individual described in subparagraph (A), (B), or (C); or

(E) who is engaged in issuing any policy or contract of individual or group health insurance or hospital or medical service benefits.

An individual shall not be considered a provider of health care solely because the individual is the member of the governing board of an entity described in clause (ii) or (iv) of subparagraph (C).

[*See main edition for text of (4)*]

(5) The term "institutional health services" means health services which (A) are provided through private and public hospitals, rehabilitation facilities, nursing homes, and other health care facilities, as defined by the Secretary by regulation, and (B) entail annual operating costs of at least the expenditure minimum. For purposes of this paragraph, the term "expenditure minimum" means $75,000 for the twelve-month period beginning with October 1979 and for each twelve-month period thereafter, $75,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index maintained or developed by the Department of Commerce and designated by the Secretary by regulation for purposes of making such adjustment.

(6) For purposes of sections 300m-2 and 300m-6 of this title, the term "capital expenditure" means an expenditure—

(A) made by or on behalf of a health care facility (as such a facility is defined in regulations prescribed under paragraph (5)); and

(B)(i) which (I) under generally accepted accounting principles is not properly chargeable as an expense of operation and maintenance, or (II) is made to obtain by lease or comparable arrangement any facility or part thereof or any equipment for a facility or part; and

(ii) which (I) exceeds the expenditure minimum, (II) substantially changes the bed capacity of the facility with respect to which the expenditure is made, or (III) substantially changes the services of such facility.

For purposes of subparagraph (B)(ii)(I), the cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which an expenditure described in subparagraph (B)(i) is made shall be included in determining if such expenditure exceeds the expenditure minimum. Donations of equipment or facilities to a health care facility which if acquired directly by such facility would be subject to review under section 300m-6 of this title shall be considered capital expenditures for purposes of sections 300m-2 and 300m-6 of this title, and a transfer of equipment or facilities for less than fair market value shall be considered a capital expenditure for purposes of such sections if a transfer of the equipment or facilities at fair market value would be subject to review under section 300m-6 of this title. For purposes of this paragraph, the term "expenditure minimum" means $150,000 for the twelve-month period beginning with October 1979 and for each twelve-month period thereafter, $150,000 or, at the discretion of the State, the figure in effect for the preceding twelve-month period, adjusted to reflect the change in the preceding twelve-month period in an index maintained or developed by the Department of Commerce and designated by the Secretary by regulation for purposes of making such adjustment.

(7) For purposes of sections 300m-2 and 300m-6 of this title, the term "major medical equipment" means medical equipment which is used for the provision of medical and other health services and which costs in excess of $150,000, except that such term does not include medical equipment acquired by or on behalf of a clinical laboratory to provide clinical laboratory services if the clinical laboratory is independent of a physician's office and a hospital and it has been determined under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.] to meet the requirements of paragraphs (10) and (11) of section 1861(s) of such Act [42 U.S.C. 1395x(s)]. In determining whether medical equipment has a value in excess of $150,000, the value of studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition of such equipment shall be included.

(8) The term "health maintenance organization" means a public or private organization, organized under the laws of any State, which—

(A) is a qualified health maintenance organization under section 300e-9(d) of this title; or

(B)(i) provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: usual physician services, hospitalization, laboratory, X-ray, emergency and preventive services, and out of area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in clause (i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (I) directly through physicians who are either employees or partners of such organization, or (II) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(9) For purposes of paragraph (5) of this section and sections 300m-2(a)(4)(B) and 300m-6 of this title, the term "rehabilitation facility" means an inpatient facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of medical and other services which are provided under competent professional supervision. For purposes of the remain-

ing provisions of this subchapter, the term "rehabilitation facility" means an inpatient facility described in the preceding sentence and, in addition, an outpatient facility which is operated as described in such sentence.

(10) The term "medically underserved population" has the same meaning as such term has under section 254c(b)(3) of this title.

(11) Any reference to the term "health" includes physical and mental health.

(12) The term "physician" means a doctor of medicine or osteopathy legally authorized to practice medicine and surgery by a State.

(As amended Oct. 4, 1979, Pub. L. 96-79, title I, §§ 104(c)(2), 108(d)(2), 117(b)(3), 126(a)(1), (b), 93 Stat. 596, 602, 619, 628.)

REFERENCES IN TEXT

The Social Security Act, referred to in par. (7), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1979—Pub. L. 96-79, § 117(b)(3), substituted in provision preceding par. (1), "Except as otherwise provided, for" for "For".

Par. (1). Pub. L. 96-79, § 104(c)(2), struck out "and the Commonwealth of Puerto Rico" following "District of Columbia".

Par. (3). Pub. L. 96-79, § 108(d)(2), in subpar. (A), inserted ", or ancillary personnel employed under the supervision of a physician" following "physician assistant" and substituted "rehabilitation facilities, alcohol and drug abuse treatment facilities" for "substance abuse treatment facilities", redesignated former subpar. (B)(i) as subpar. (B), and in subpar. (B) as so redesignated, struck out requirement that the individual be an indirect provider of health care and exempted an individual who has a fiduciary position with or interest in any entity described in cls. (ii) or (iv) of subpar. (C) which is also an entity described in section 501(c)(3) of title 26 which does not have as its primary purpose the delivery of health care, the conduct of research or instruction of health professionals, or the production of drugs or articles described in cl. (iii) of subpar. (C), redesignated former subpar. (B)(ii) as subpar. (C), and in subpar. (C) as so redesignated, redesignated subcls. (I) to (IV) as cls. (i) to (iv), respectively, and substituted in provision preceding cl. (i), "one-fifth" for "one-tenth", redesignated former subpar. (B)(iii) and (iv) as subpars. (D) and (E), respectively, and inserted following subpar. (E), provision that an individual not be considered a provider of health care service solely because of membership on the governing board of an entity described in cl. (ii) or (iv) of subpar. (C).

Par. (5). Pub. L. 96-79, § 126(a)(1), substituted provision defining "institutional health services" to mean health services which are provided through private and public hospitals, rehabilitation facilities, nursing homes, and other health care facilities which entail annual operating costs of at least the expenditure minimum and defining for purposes of this paragraph "expenditure minimum" for provision defining "institutional health services" to mean health services provided through health care facilities and maintenance organizations, including the entities through which such services are provided.

Pars. (6) to (8). Pub. L. 96-79, § 117(b)(3), added pars. (6) to (8).

Pars. (9) to (12). Pub. L. 96-79, § 126(b), added pars. (9) to (12).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment of provision preceding par. (1) and of par. (5) and addition of pars. (6) to (12), by sections 117(b)(3) and 126(a)(1), (b) of Pub. L. 96-79 effective on Oct. 4, 1979 except that if the Secretary of Health, Education, and Welfare determines that any amendment made by such section will require a State to change its laws before the State health planning and development agency designated for such State may perform its functions under section 300m-2(a)(4)(B) of this title, such amendment shall take effect in such State, if the State legislature is in a regular session on Oct. 4, 1979 and the legislature will be in session for at least 12 months from Oct. 4, 1979, 12 months from Oct. 4, 1979, or if the State legislature is in session on Oct. 4, 1979 but 12 months do not remain in such session after Oct. 4, 1979, or if the State legislature is not in session on Oct. 4, 1979, 12 months after the beginning of the first regular session of the legislature beginning after Oct. 4, 1979, see section 129(b)(2) of Pub. L. 96-79, set out as an Effective Date note under section 300m-6 of this title.

Amendment of par. (3) by section 108(d)(2) of Pub. L. 96-79 one year after Oct. 4, 1979, see section 129(a) of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300*l* of this title.

PROMULGATION OF REGULATIONS DEFINING HEALTH CARE FACILITIES; CONSULTATION WITH CONGRESSIONAL COMMITTEES

Section 126(a)(2) of Pub. L. 96-79 provided that: "After the date of the enactment of this Act [Oct. 4, 1979], the Secretary shall consult with the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives before promulgating regulations defining health care facilities for purposes of section 1531(5) of the Public Health Service Act as amended by paragraph (1) [par. 5 of this section]."

HEALTH SYSTEMS AGENCIES AND STATEWIDE HEALTH COORDINATING COUNCILS; CHANGES IN MEMBERSHIP; VACANCIES OCCURRING AFTER OCTOBER 4, 1979

Effective on or after Oct. 4, 1979, changes in membership of health systems agencies and the Statewide Health Coordinating Councils required by amendments to this section by Pub. L. 96-79 implemented through selection of members to fill vacancies occurring after Oct. 4, 1979, see section 129(a)(1) of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300*l* of this title.

HEALTH SYSTEM AGENCY, STATE HEALTH PLANNING AND DEVELOPMENT AGENCY, AND STATEWIDE HEALTH COORDINATING COUNCIL; ORGANIZATIONAL AND RELATED CHANGES

Effective on or after Oct. 4, 1979, a health systems agency, a State health planning and development agency, and a Statewide Health Coordinating Council may make the organizational and related changes required by amendments to this section by Pub. L. 96-79, see section 129(a)(2) of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300*l* of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 201, 254j, 300*l*-1, 300*l*-2, 300m-3 of this title.

§ 300n-1. Procedures and criteria for review of proposed health system changes

[*See main edition for text of* (*a*)]

(b) Minimum procedures

Each health systems agency and State Agency shall include in the procedures required by subsection (a) of this section at least the following:

(1) Timely written notification to affected persons of the beginning of a review and, if a person has asked the entity conducting the review to place the person's name on a mailing list maintained by the entity, such notification shall be sent to such person.

(2) Schedules for reviews which provide that no review shall, to the extent practicable, take longer than ninety days from the date the notification described in paragraph (1) is made, or in the case of non-substantive reviews, provision for a shortened review period. If, after a review has begun, a State Agency, health systems agency, or Statewide Health Coordinating Council requires, in accordance with paragraph (3), the person subject to the review to submit information respecting the subject of the review, such person shall be provided at least fifteen days to submit the information.

[*See main edition for text of* (*3*) *to* (*6*)]

(7) Timely notification of providers of health services and other persons subject to agency or State Agency review of the status of the agency or State Agency review of the health services or proposals subject to review, findings made in the course of such review, and other appropriate information respecting such review.

[*See main edition for text of* (*8*) *to* (*11*)]

(12) The following procedural requirements with respect to proceedings under a certificate of need program:

(A) Hearings under a certificate of need program shall be held before a State Agency or a health systems agency to which the State Agency has delegated the authority to hold such a hearing. In a hearing under the program, any person shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing, any person directly affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matter, and a record of the hearing shall be maintained. The requirements of this subparagraph do not apply to hearings held by a health systems agency in the performance of a review under section 300*l*-2(f) of this title.

(B) Any decision of a State Agency to issue or to not issue a certificate of need or to withdraw a certificate of need shall be based solely (i) on the review of the State Agency conducted in accordance with procedures and criteria it has adopted in accordance with this section and regulations promulgated under this section, and (ii) on the record established in administrative proceedings held with respect to the application for such certificate or the Agency's proposal to withdraw the certificate, as the case may be. Any decision of a State Agency to approve or disapprove an application for an exemption under section 300m-6(b) of this title shall be based solely on the record established in the administrative proceedings held with respect to the application.

(C)(i) The State Agency shall establish the period within which approval or disapproval by the State Agency of applications for certificates of need and for exemptions under section 300m-6(b) of this title shall be made. If, after a review has begun by the State Agency, the State Agency or health systems agency requires, in accordance with subsection (b)(3) of this section, an applicant to submit information respecting the subject of the review, the period prescribed pursuant to the preceding sentence shall, at the request of the applicant, be extended fifteen days.

(ii) If the State Agency fails to approve or disapprove an application within the applicable period under clause (i), the applicant may, within a reasonable period of time following the expiration of such period, bring an action in an appropriate State court to require the State Agency to approve or disapprove the application.

(D) The program shall provide that each decision of the State Agency to issue, not to issue, or to withdraw a certificate of need or to approve or disapprove an application for an exemption under section 300m-6(b) of this title shall, upon request of any person directly affected by such decision, be administratively reviewed under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies or, if there is no such State law, by an entity (other than the State Agency) designated by the Governor.

(E) Any person adversely affected by a final decision of a State Agency with respect to a certificate of need or an application for an exemption under section 300m-6(b) of this title and a health systems agency if the decision respecting the certificate of need is inconsistent with a recommendation made by the agency to the State Agency with respect to the certificate of need may, within a reasonable period of time after such decision is made (and any administrative review of it completed), obtain judicial review of it in an appropriate State court. The decision of the State Agency shall be affirmed upon such judicial review unless it is found to be arbitrary or capricious or not made in compliance with applicable law.

(F) There shall be no ex parte contacts—

(i) in the case of an application for a certificate of need, between the applicant for the certificate of need, any person acting on behalf of the applicant, or any person opposed to the issuance of a certificate for the applicant and any person in the State Agency who exercises any responsibility respecting the application after the commencement of a hearing on the applicant's application and before a decision is made with respect for it; and

(ii) in the case of a proposed withdrawal of a certificate of need, between the holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of the withdrawal and any person in the State Agency who exercises responsibility respecting withdrawal of the certificate after commencement of a hearing on the Agency's proposal to withdraw the certificate of need and before a decision is made on withdrawal.

The requirements of this paragraph are in addition to the requirements of the other paragraphs of this subsection and may, as appropriate, apply to other review programs.

(13)(A) In the case of reviews by health systems agencies under section 300*l*-2(f) of this title and by State Agencies under paragraphs (4) and (5) of section 300m-2(a) of this title—

(i) provision for applications to be submitted in accordance with a timetable established by the reviewing agency,

(ii) provision for such reviews to be undertaken in a timely fashion, and

(iii) provision for all completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area to be considered in relation to each other (but no less often than twice a year).

(B) In the case of reviews by health systems agencies under section 300*l*-2(g) of this title and by State Agencies under paragraph (6) of section 300m-2(a) of this title, provision for reviews of similar types of institutional health services affecting the same health service area to be considered in relation to each other.

(c) Minimum criteria

Criteria required by subsection (a) of this section for health systems agency and State Agency review shall include consideration of at least the following:

[*See main edition for text of* (*1*) *to* (*7*)]

(8) The special needs and circumstances of health maintenance organizations.

(9) In the case of a construction project—

(A) the costs and methods of the proposed construction, including the costs and methods of energy provision, and

(B) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project.

(10) The special circumstances of health service institutions and the need for conserving energy.

The criteria established by any health systems agency or State Agency under paragraph (8) shall be consistent with the standards and procedures established by the Secretary under section 300e-5(c) of this title.

(As amended Nov. 9, 1978, Pub. L. 95-619, title III, § 303(b), (c), 92 Stat. 3248; Oct. 4, 1979, Pub. L. 96-79, title I, §§ 116(d), (e), 117(b)(5), 93 Stat. 611, 613, 620.)

AMENDMENT OF SECTION

Pub. L. 96-79, title I, §§ 103(d), 116(a)-(c), (f)-(i), 129(a), Oct. 4, 1979, 93 Stat. 595, 610, 611, 613, 614, 629, provided that, effective one year after Oct. 4, 1979, this section will read as follows:

(a) In conducting reviews pursuant to subsections (e), (f), and (g) of section 300l-2 of this title or in conducting any other reviews of proposed or existing health services, each health systems agency shall (except to the extent approved by the Secretary) follow procedures, and apply criteria, developed and published by the agency in accordance with regulations of the Secretary; in performing its review functions under section 300m-2 of this title, a State Agency shall (except to the extent approved by the Secretary) follow procedures, and apply criteria, developed and published by the State Agency in accordance with regulations of the Secretary; and in performing its review functions a Statewide Health Coordinating Council shall (except to the extent approved by the Secretary) follow procedures and apply criteria developed and published by the Council in accordance with regulations of the Secretary. Procedures and criteria for reviews by health systems agencies, State Agencies, and Statewide Health Coordinating Councils may vary according to the purpose for which a particular review is being conducted or the type of health services being reviewed. Health systems agencies, the State Agency, and, if appropriate, the Statewide Health Coordinating Council within each State shall cooperate in the development of procedures and criteria under this subsection to the extent appropriate to the achievement of efficiency in their reviews and consistency in criteria for such reviews. The Secretary shall review at least annually regulations promulgated under this section and provide opportunity for the submission of comments by health systems agencies, State Agencies, and Statewide Health Coordinating Councils on the need for the revision of such regulations. At least forty-five days before the initial publication of a regulation proposing a revision in a regulation of the Secretary under this section, the Secretary shall, with respect to such proposed revision, consult with and solicit the recommendations from health systems agencies, State Agencies, and Statewide Health Coordinating Councils.

(b) Each health systems agency, State Agency, and Statewide Health Coordinating Council shall include in the procedures required by subsection (a) of this section at least the following:

(1) Timely written notification to affected persons of the beginning of a review and, if a person has asked the entity conducting the review to place the person's name on a mailing list maintained by the entity, such notification shall be sent to such person.

(2) Schedules for reviews which provide that no review shall, to the extent practicable, take longer than ninety days from the date the notification described in paragraph (1) is made, or in the case of non-substantive reviews, provision for a shortened review period. If, after a review has begun, a State Agency, health systems agency, or Statewide Health Coordinating Council requires, in accordance with paragraph (3), the person subject to the review to submit information respecting the subject of the review, such person shall be provided at least fifteen days to submit the information.

(3) Provision for persons subject to a review to submit to the agency, State Agency, or

Statewide Health Coordinating Council (in such form and manner as the agency, State Agency, or Statewide Health Coordinating Council shall prescribe and publish) such information as the agency, State Agency, or Statewide Health Coordinating Council may require concerning the subject of such review. Each health systems agency, State Agency, and Statewide Health Coordinating Council shall develop procedures to assure that requests for information in connection with a review under this subchapter are limited to only that information which is necessary for the agency, State Agency, or Statewide Health Coordinating Council to perform the review.

(4) Submission of applications (subject to review by a health systems agency, State Agency, or Statewide Health Coordinating Council) made under this chapter or other provisions of law for Federal financial assistance for health services to the health systems agency, State Agency, or Statewide Health Coordinating Council at such time and in such manner as it may require.

(5) Submission of periodic reports by providers of health services and other persons subject to agency, State Agency, or Statewide Health Coordinating Council review respecting the development of proposals subject to review.

(6) Provision for written findings which state the basis for any final decision or recommendation made by the agency, State Agency, or Statewide Health Coordinating Council.

(7) Timely notification of providers of health services and other persons subject to agency, State Agency, or Statewide Health Coordinating Council review of the status of the agency, State Agency, or Statewide Health Coordinating Council review of the health services or proposals subject to review, findings made in the course of such review, and other appropriate information respecting such review.

(8) Provision for public hearings in the course of agency, State Agency, or Statewide Health Coordinating Council review if requested by persons directly affected by the review; and provision for public hearings, for good cause shown, respecting agency, State Agency, and Statewide Health Coordinating Council decisions.

(9) Preparation and publication of regular reports by the agency, State Agency, and Statewide Health Coordinating Council of the reviews being conducted (including a statement concerning the status of each such review) and of the reviews completed by the agency, State Agency, and Statewide Health Coordinating Council (including a general statement of the findings and decisions made in the course of such reviews) since the publication of the last such report.

(10) Access by the general public to all applications reviewed by the agency, State Agency, and Statewide Health Coordinating Council and to all other written materials essential to any agency, State Agency, or Statewide Health Coordinating Council review.

(11) In the case of construction projects, submission to the agency and State Agency by the entities proposing the projects of letters of intent in such detail as may be necessary to inform the agency and State Agency of the scope and nature of the projects at the earliest possible opportunity in the course of planning of such construction projects.

(12) The following procedural requirements with respect to proceedings under a certificate of need program:

(A) Hearings under a certificate of need program shall be held before a State Agency or a health systems agency to which the State Agency has delegated the authority to hold such a hearing. In a hearing under the program, any person shall have the right to be represented by counsel and to present oral or written arguments and evidence relevant to the matter which is the subject of the hearing, any person directly affected by the matter which is the subject of the hearing may conduct reasonable questioning of persons who make factual allegations relevant to such matter, and a record of the hearing shall be maintained. The requirements of this subparagraph do not apply to hearings held by a health systems agency in the performance of a review under section 300l–2(f) of this title.

(B) Any decision of a State Agency to issue or to not issue a certificate of need or to withdraw a certificate of need shall be based solely (i) on the review of the State Agency conducted in accordance with procedures and criteria it has adopted in accordance with this section and regulations promulgated under this section, and (ii) on the record established in administrative proceedings held with respect to the application for such certificate or the Agency's proposal to withdraw the certificate, as the case may be. Any decision of a State Agency to approve or disapprove an application for an exemption under section 300m–6(b) of this title shall be based solely on the record established in the administrative proceedings held with respect to the application.

(C)(i) The State Agency shall establish the period within which approval or disapproval by the State Agency of applications for certificates of need and for exemptions under section 300m–6(b) of this title shall be made. If, after a review has begun by the State Agency, the State Agency or health systems agency requires, in accordance with subsection (b)(3) of this section, an applicant to submit information respecting the subject of the review, the period prescribed pursuant to the preceding sentence shall, at the request of the applicant, be extended fifteen days.

(ii) If the State Agency fails to approve or disapprove an application within the applicable period under clause (i), the applicant may, within a reasonable period of time following the expiration of such period, bring an action in an appropriate State court to require the State Agency to approve or disapprove the application.

(D) The program shall provide that each decision of the State Agency to issue, not to issue, or to withdraw a certificate of need or to approve or disapprove an application for an exemption under section 300m-6(b) of this title shall, upon request of any person directly affected by such decision, be administratively reviewed under an appeals mechanism consistent with State law governing the practices and procedures of administrative agencies or, if there is no such State law, by an entity (other than the State Agency) designated by the Governor.

(E) Any person adversely affected by a final decision of a State Agency with respect to a certificate of need or an application for an exemption under section 300m-6(b) of this title and a health systems agency if the decision respecting the certificate of need is inconsistent with a recommendation made by the agency to the State Agency with respect to the certificate of need may, within a reasonable period of time after such decision is made (and any administrative review of it completed), obtain judicial review of it in an appropriate State court. The decision of the State Agency shall be affirmed upon such judicial review unless it is found to be arbitrary or capricious or not made in compliance with applicable law.

(F) There shall be no ex parte contacts—

(i) in the case of an application for a certificate of need, between the applicant for the certificate of need, any person acting on behalf of the applicant, or any person opposed to the issuance of a certificate for the applicant and any person in the State Agency who exercises any responsibility respecting the application after the commencement of a hearing on the applicant's application and before a decision is made with respect for it; and

(ii) in the case of a proposed withdrawal of a certificate of need, between the holder of the certificate of need, any person acting on behalf of the holder, or any person in favor of the withdrawal and any person in the State Agency who exercises responsibility respecting withdrawal of the certificate after commencement of a hearing on the Agency's proposal to withdraw the certificate of need and before a decision is made on withdrawal.

The requirements of this paragraph are in addition to the requirements of the other paragraphs of this subsection and may, as appropriate, apply to other review programs.

(13)(A) In the case of reviews by health systems agencies under section 300l-2(f) of this title and by State Agencies under paragraphs (4) and (5) of section 300m-2(a) of this title—

(i) provision for applications to be submitted in accordance with a timetable established by the reviewing agency,

(ii) provision for such reviews to be undertaken in a timely fashion, and

(iii) provision for all completed applications pertaining to similar types of services, facilities, or equipment affecting the same health service area to be considered in relation to each other (but no less often than twice a year).

(B) In the case of reviews by health systems agencies under section 300l-2(g) of this title and, by State Agencies under paragraph (6) of section 300m-2(a) of this title, provision for reviews of similar types of institutional health services affecting the same health service area to be considered in relation to each other.

(c) *Criteria required by subsection (a) of this section for health systems agency, State Agency, and Statewide Health Coordinating Council review shall include consideration of at least the following:*

(1) The relationship of the health services being reviewed to the applicable HSP, AIP, and State health plan.

(2) The relationship of services reviewed to the long-range development plan (if any) of the person providing or proposing such services.

(3) The need that the population served or to be served by such services has for such services.

(4) The availability of alternatives, less costly, or more effective methods of providing such services.

(5) The relationship of services reviewed to the existing health care system of the area in which such services are provided or proposed to be provided.

(6) In the case of health services proposed to be provided—

(A) the availability of resources (including health manpower, management personnel, and funds for capital and operating needs) for the provision of such services,

(B) the effect of the means proposed for the delivery of such services on the clinical needs of health professional training programs in the area in which such services are to be provided,

(C) if such services are to be available in a limited number of facilities, the extent to which the health professions schools in the area will have access to the services for training purposes,

(D) the availability of alternative uses of such resources for the provision of other health services, and

(E) the extent to which such proposed services will be accessible to all the residents of the area to be served by such services.

(7) The special needs and circumstances of those entities which provide a substantial portion of their services or resources, or both, to individuals not residing in the health service areas in which the entities are located or in adjacent health service areas. Such entities may include medical and other health professions schools, multidisciplinary clinics, specialty centers, and such other entities as the Secretary may by regulation prescribe.

(8) The special needs and circumstances of health maintenance organizations.

(9) In the case of a construction project—

(A) the costs and methods of the proposed construction, including the costs and methods of energy provision, and

(B) the probable impact of the construction project reviewed on the costs of providing health services by the person proposing such construction project and on the costs and charges to the public of providing health services by other persons.

(10) The special circumstances of health service institutions and the need for conserving energy.

(11) In accordance with section 300k-2(b) of this title, the factors which affect the effect of competition on the supply of the health services being reviewed.

(12) Improvements or innovations in the financing and delivery of health services which foster competition, in accordance with section 300k-2(b) of this title, and serve to promote quality assurance and cost effectiveness.

(13) In the case of health services or facilities proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed.

(14) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past.

The criteria established by any health systems agency, State Agency, or Statewide Health Coordinating Council under paragraph (8) shall be consistent with the standards and procedures established by the Secretary under section 300e-5(c) of this title.

AMENDMENTS

1979—Subsec. (b)(1). Pub. L. 96-79, § 116(d)(1)(A), substituted "Timely written" for "Written" and inserted "and, if a person has asked the entity conducting the review to place the person's name on a mailing list maintained by the entity, such notification shall be sent to such person" following "of a review".

Subsec. (b)(2). Pub. L. 96-79, § 116(d)(2), inserted provision requiring that if an individual, after a review has begun, is requested by a State Agency, health systems agency, or Statewide Health Coordinating Council to submit information, the individual be given at least fifteen days to submit the information.

Subsec. (b)(7). Pub. L. 96-79, § 116(d)(1)(B), substituted "Timely notification" for "Notification".

Subsec. (b)(12). Pub. L. 96-79, § 116(d)(3), added par. (12).

Subsec. (b)(13). Pub. L. 96-79, § 116(e), added par. (13).

Subsec. (c)(8). Pub. L. 96-79, § 117(b)(5), struck out "for which assistance may be provided under subchapter XI of this chapter" following "organizations".

1978—Subsec. (b)(2). Pub. L. 95-619, § 303(b), provided for a shortened review period in the case of a non-substantive review.

Subsec. (c). Pub. L. 95-619, § 303(c), inserted, "including the costs and methods of energy provision" following "proposed construction" in par. (9)(A) and added par. (10).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-79 effective on Oct. 4, 1979, except that if the Secretary of Health, Education, and Welfare determines that any amendment made by such section will require a State to change its laws before the State health planning and development agency designated for such State may perform its functions under section 300m-2(a)(4)(B) of this title, such amendment shall take effect in such State, if the State legislature is in a regular session on Oct. 4, 1979 and the legislature will be in session for at least 12 months from Oct. 4, 1979, 12 months from Oct. 4, 1979, or if the State legislature is in session on Oct. 4, 1979 but 12 months do not remain in such session after Oct. 4, 1979, or if the State legislature is not in session on Oct. 4, 1979, 12 months after the beginning of the first regular session of the legislature beginning after Oct. 4, 1979, see section 129(b)(2) of Pub. L. 96-79, set out as an Effective Date note under section 300m-6 of this title.

HEALTH SYSTEMS AGENCIES, STATE HEALTH PLANNING AND DEVELOPMENT AGENCIES, AND STATEWIDE HEALTH COORDINATING COUNCILS; CHANGES IN FUNCTIONS

Effective on or after Oct. 4, 1979, health systems agencies, health planning and development agencies, and Statewide Health Coordinating Councils may act in accordance with the changes in their functions made by amendments to this section by Pub. L. 96-79, see section 129(a)(3) of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300*l* of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300*l*-1, 300*l*-2, 300m-1, 300m-5, 300m-6 of this title.

§ 300n-3. Centers for health planning

[*See main edition for text of* (*a*)]

(b) Requirements

(1) No grant or contract may be made under this section for planning or developing a center unless the Secretary determines that when it is operational it will meet the requirements listed in paragraph (2) and it will be able to provide assistance and dissemination of information to health systems agencies and State Agencies as provided in subsections (a) and (c) of this section, and no grant or contract may be made under this section for operation of a center unless the center meets such requirements and is able to provide such assistance and dissemination of information.

[*See main edition for text of* (*2*)]

(c) Dissemination of planning approaches and methodologies

Centers assisted under this section (1) may enter into arrangements with health systems agencies and State Agencies for the provision of such services as may be appropriate and necessary in assisting the agencies and State Agencies in performing their functions under section 300*l*-2 or 300m-2 of this title, respectively, and (2) shall develop and use methods (satisfactory to the Secretary) to disseminate to such agencies and State Agencies planning approaches, methodologies (including methodologies to provide for education of new board members and new staff and continuing education of board members and staff of such agencies and State Agencies), policies, and standards.

(d) Authorization of appropriations

For the purpose of making payments pursuant to grants and contracts under subsection (a) of this section there are authorized to be appropriated $5,000,000 for the fiscal year ending June 30, 1975, $8,000,000 for the fiscal year ending June 30, 1976, $10,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, $6,000,000 for the fiscal year ending September 30, 1980, $8,000,000 for the fiscal year ending September 30, 1981, and $10,000,000 for the fiscal year ending September 30, 1982.

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 102(d), 91 Stat. 383; Oct. 4, 1979, Pub. L. 96-79, title I, §§ 125, 127(d), 93 Stat. 628, 629.)

AMENDMENTS

1979—Subsec. (b)(1). Pub. L. 96-79, § 125(a), inserted "and it will be able to provide assistance and dissemination of information to health systems agencies and State Agencies as provided in subsections (a) and (c) of this section," following "in paragraph (2)" and "and is able to provide such assistance and dissemination of information" following "such requirements".

Subsec. (c)(2). Pub. L. 96-79, § 125(b), inserted "develop and" following "(2) shall" and "(including methodologies to provide for education of new board members and new staff and continuing education of board members and staff of such agencies and State Agencies)" following "methodologies" and struck out "as they develop" following "and standards".

Subsec. (d). Pub. L. 96-79, § 127(d), authorized appropriations of $6,000,000 for the fiscal year ending Sept. 30, 1980, $8,000,000 of the fiscal year ending Sept. 30, 1981, and $10,000,000 for the fiscal year ending Sept. 30, 1982.

1977—Subsec. (d). Pub. L. 95-83 substituted "each for the fiscal years ending September 30, 1977, and September 30, 1978" for "for the fiscal year ending June 30, 1977".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment of subsecs. (b)(1) and (c)(2) by Pub. L. 96-79 effective one year after Oct. 4, 1979, see section 129(a) of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300*l* of this title.

§ 300n-4. Review by the Secretary

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300*l*, 300*l*-4, 300m, 300m-3, 300t of this title.

§ 300n-5. Special provisions for certain States and territories

(a) Any State which—

(1) has no county or municipal public health institution or department, and

(2) has, prior to January 4, 1975, maintained a health planning system which substantially complies with the purposes of this subchapter,

and the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and American Samoa shall each be considered in accordance with subsection (b) of this section to be a State for purposes of this subchapter.

(b) In the case of an entity which under subsection (a) of this section is to be considered a State for purposes of this subchapter—

[*See main edition for text of* (1) *to* (3)]

(4) the chief executive officer shall appoint the Statewide Health Coordinating Council prescribed by section 300m-3 of this title in accordance with regulations of the Secretary.

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 106(p), (q), 91 Stat. 385; Oct. 4, 1979, Pub. L. 96-79, title I, § 104(c)(1), 93 Stat. 596.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-79, inserted in provision following par. (2), "the Commonwealth of Puerto Rico," preceding "the Virgin Islands".

1977—Subsec. (a). Pub. L. 95-83, § 106(p), substituted "Trust Territory of the Pacific Islands, the Northern Mariana Islands" for "Trust Territories in the Pacific Islands".

Subsec. (b)(4). Pub. L. 95-83, § 106(q), substituted "officer" for "office", and "regulations" for "the regulation".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300*l* of this title.

SUBCHAPTER XIV—HEALTH RESOURCES DEVELOPMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 300k-3, 300m-1, 300n-4, 300u, 3188a of this title.

§§ 300*o* to 300*o*-3. Repealed. Pub. L. 96-79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632

Sections 300*o* to 300*o*-3, acts July 1, 1944, ch. 373, title XVI, §§ 1601-1604, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2258-2260, and amended Aug. 1, 1977, Pub. L. 95-83, title I, § 106(r)-(v), 91 Stat. 385, were repealed by Pub. L. 96-79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632.

Section 300*o* related to statement of purpose.

Section 300*o*-1 provided for promulgation of regulations and required provisions.

Section 300*o*-2 related to State medical facilities plans, submission and approval of the plans as prerequisite for approval of project assistance applications, required provisions, and procedure upon disapproval of plans.

Section 300*o*-3, provided for medical facility project applications, covering in submission of applications, required provisions, waivers, and projects subject to requirements, criteria for approval, procedure for disapproval, amendment of approved applications, and review by health systems agencies.

EFFECTIVE DATE OF REPEAL

Sections repealed effective Oct. 1, 1979, see section 204 of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§§ 300p to 300p-3. Repealed. Pub. L. 96-79, title II, § 201(a), Oct. 4, 1979, 93 Stat. 630

Sections 300p to 300p-3, acts July 1, 1944, ch. 373, title XVI, §§ 1610-1613, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2262-2264, and amended Apr. 22, 1976, Pub. L. 94-278, title XI, § 1106(b), 90 Stat. 416; Aug. 1, 1977, Pub. L. 95-83, title I, §§ 103(a), 106(w), 91 Stat. 383, 385, were repealed by Pub. L. 96-79, title II, § 201(a), Oct. 4, 1979, 93 Stat. 632.

Section 300p related to allotments to States for health resources development.

Section 300p-1 related to payments to States for approved medical facility projects.

Section 300p-2 related to compliance provisions and withholding of payments for noncompliance.

Section 300p-3 authorized appropriations for allotments to States.

EFFECTIVE DATE OF REPEAL

Sections repealed effective Oct. 1, 1979, see section 204 of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

PART A—LOANS AND LOAN GUARANTEES

AMENDMENTS

1979—Pub. L. 96-79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632, repealed PART A—PURPOSE, STATE PLAN, AND PROJECT APPROVAL, comprising former sections 300o to 300o-3 of this title, and redesignated former PART C as PART A—LOANS AND LOAN GUARANTEES.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300s, 300s-1 of this title.

§ 300q. Loan and loan guarantee authority

(a) Covered projects: duration; payment of principal and interest on loans for covered projects: duration; payments for reduction of interest rate

(1) The Secretary, during the period ending September 30, 1982, may, in accordance with this part, make loans from the fund established under section 300q-2(d) of this title to any public or nonprofit private entity for projects for—

(A) the discontinuance of unneeded hospital services or facilities,

(B) the conversion of unneeded hospital services and facilities to needed health services and medical facilities, including outpatient medical facilities and facilities for long-term care;

(C) the renovation and modernization of medical facilities, particularly projects for the prevention or elimination of safety hazards, projects to avoid noncompliance with licensure or accreditation standards, or projects to replace obsolete facilities;

(D) the construction of new outpatient medical facilities; and

(E) the construction of new inpatient medical facilities in areas which have experienced (as determined by the Secretary) recent rapid population growth.

(2)(A) The Secretary, during the period ending September 30, 1982, may, in accordance with this part, guarantee to—

(i) non-Federal lenders for their loans to public and nonprofit private entities for medical facilities projects described in paragraph (1), and

(ii) the Federal Financing Bank for its loans to public and nonprofit private entities for such projects,

payment of principal and interest on such loans.

(B) In the case of a guarantee of any loan to a public or nonprofit private entity under subparagraph (A)(i) which is located in an urban or rural poverty area, the Secretary may pay, to the holder of such loan and for and on behalf of the project for which the loan was made, amounts sufficient to reduce by not more than one half the net effective interest rate otherwise payable on such loan if the Secretary finds that without such assistance the project could not be undertaken.

(b) Amount of loans for medical facilities projects and such projects in urban or rural poverty areas

The principal amount of a loan directly made or guaranteed under subsection (a) of this section for a medical facilities project, when added to any other assistance provided such project under part B, may not exceed 90 per centum of the cost of such project unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the principal amount, when added to other assistance under part B, may cover up to 100 per centum of such costs.

[*See main edition for text of* (c) *and* (d)]

(July 1, 1944, ch. 373, title XVI, § 1601, formerly § 1620, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2264, and amended Apr. 21, 1976, Pub. L. 94-273, § 2(21), 90 Stat. 376; Aug. 1, 1977, Pub. L. 95-83, title I, § 106(x)(1), 91 Stat. 385; renumbered and amended Oct. 4, 1979, Pub. L. 96-79, title II, §§ 201(b)(1), 203(a)(1), (2), 93 Stat. 630, 635.)

PRIOR PROVISIONS

A prior section 1601 of act July 1, 1944, ch. 373, title XVI, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2258, was classified to section 300o of this title and was repealed by Pub. L. 96-79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-79, §§ 201(b)(1), 203(a)(2), added par. (1); substituted reference to section 1602(d) for 1622(d), set out in the text as "section 300q-2(d) of this title"; incorporated in par. (2) former subsec. (b) provisions made applicable for period ending Sept. 30, 1982, previously covering period beginning July 1, 1974, and ending Sept. 30, 1978, extended the provisions to public entities, eliminated existing condition that applications for assistance under the subchapter be approved under former section 300o-3 of this title, substituted in subpar. (2)(B) provision for payment of amounts sufficient to reduce by not more than one half the net effective interest otherwise payable on the loan for prior provision for amounts sufficient to reduce by 3 per centum per annum the net effective interest rate on the loan, and deleted provision granting contractual right of holder of a guaranteed loan to receive from the United States such interest payments.

Subsec. (b). Pub. L. 96-79, § 201(b)(1), added subsec. (b) and incorporated existing provisions of subsec. (b) relating to loan guarantee authority for payment of principal and interest on loans for approved projects, their duration, and payments for reduction of interest rate in subsec. (a)(2) of this section.

1977—Subsec. (a). Pub. L. 95-83 substituted "September 30, 1978" for "September 30, 1977".

Subsec. (b)(1). Pub. L. 95-83 substituted "September 30, 1978" for "September 30, 1977".

EFFECTIVE DATE OF 1979 AMENDMENT

Section 204 of Pub. L. 96-79 provided that: "The amendments made by this title [enacting sections 300s, 300s-1, and 300s-6, amending sections 201, 300q, 300q-2, 300r, 300s-1a, 300s-3, and 300s-5, and repealing sections 300o to 300o-3, 300p to 300p-3, 300q-1 and 300s of this title] shall take effect October 1, 1979, except that the amendments made by section 201(b) [to sections 300q(a), (b) and 300q-2(b)(2)(D) of this title] respecting the payment of an interest subsidy for a loan or loan guarantee made under part A of title XVI of the Public Health Service Act [this part] shall apply only with respect to loans and loan guarantees made after October 1, 1979, and with respect to loans and loan guarantees made under such part before such date the Secretary shall continue to pay the interest subsidy authorized for such loans and loan guarantees before such date."

§ 300q-1. Repealed. Pub. L. 96-79, title II, § 203(a)(1), Oct. 4, 1979, 93 Stat. 635

Section, act July 1, 1944, ch. 373, title XVI, § 1621, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2265, related to allocation among States of total amount of principal, criteria, availability of unobligated amounts, and reallotments.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1979, see section 204 of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§ 300q-2. General provisions

[*See main edition for text of* (*a*)]

(b) Loans; criteria for approval; terms and conditions; waiver of recovery of payments by United States

[*See main edition for text of* (*1*)]

(2) Any loan made under this part shall (A) have such security, (B) have such maturity date, (C) be repayable in such installments, (D) bear interest at a rate comparable to the current rate of interest prevailing, on the date the loan is made, with respect to loans guaranteed under this part, minus any interest subsidy made in accordance with section 300q(a)(2)(B) of this title with respect to a loan made for a project located in an urban or rural poverty area, and (E) be subject to such other terms and conditions (including provisions for recovery in case of default), as the Secretary determines to be necessary to carry out the purposes of this subchapter while adequately protecting the financial interests of the United States.

[*See main edition for text of* (*3*)]

(c) Sale of loans; authority; amount; agreements with purchasers; deposit of proceeds

[*See main edition for text of* (*1*) *to* (*4*)]

(5) If any loan to a public entity under this part is sold and guaranteed by the Secretary under this subsection, interest paid on such loan after its sale and any interest subsidy paid, under paragraph (3)(A)(ii), by the Secretary with respect to such loan which is received by the purchaser of the loan (or the purchaser's successor in interest) shall be included in the gross income of the purchaser or successor for the purpose of chapter 1 of title 26.

(d) Loan and loan guarantee fund; establishment; amounts authorized to be appropriated; issuance, purchase, and sale of notes, obligations, etc.; interest rates; public debt transactions

(1) There is established in the Treasury a loan and loan guarantee fund (hereinafter in this subsection referred to as the "fund") which shall be available to the Secretary without fiscal year limitation, in such amounts as may be specified from time to time in appropriations Acts—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) for payment of interest under section 300q(a)(2)(B) of this title on loans guaranteed under this part,

(D) for repurchase of loans under subsection (c)(3)(B) of this section,

(E) for payment of interest on loans which are sold and guaranteed, and

(F) to enable the Secretary to take the action authorized by subsection (f) of this section.

There are authorized to be appropriated from time to time such amounts as may be necessary to provide the sums required for the fund. There shall also be deposited in the fund amounts received by the Secretary in connection with loans and loan guarantees under this part and other property or assets derived by him from his operations respecting such loans and loan guarantees, including any money derived from the sale of assets.

(2) If at any time the sums in the funds are insufficient to enable the Secretary—

(A) to make payments of interest under section 300q(a)(2)(B) of this title,

[*See main edition for text of* (*B*) *and* (*C*)]

(D) to repurchase loans under subsection (c)(3)(B) of this section,

(E) to make payments of interest on loans which are sold and guaranteed, and

(F) to enable the Secretary to take the action authorized by subsection (f) of this section,

he is authorized to issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions, as may be prescribed by the Secretary with the approval of the Secretary of the Treasury. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury,, taking into consideration the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations issued under this paragraph and for that purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, and the purposes for which the securities may be issued under that Act are extended to include any purchase of such notes and obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this paragraph. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as public debt transactions of the United States. Sums borrowed under this paragraph shall be deposited in the fund and redemption of such notes and obligations shall be made by the Secretary from the fund.

(e) Transfers to and additional capitalization of loan and loan guarantee fund

[*See main edition for text of* (*1*)]

(2) To provide additional capitalization for the fund established under subsection (d) of this section there are authorized to be appro-

priated to the fund, such sums as may be necessary for the fiscal years ending June 30, 1975, June 30, 1976, September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, September 30, 1981, and September 30, 1982.

(f) Default prevention measures; terms and conditions; implementation of reforms; foreclosures; protection of Federal interest on default

(1) The Secretary may take such action as may be necessary to prevent a default on a loan made or guaranteed under this part or under subchapter IV of this chapter, including the waiver of regulatory conditions, deferral of loan payments, renegotiation of loans, and the expenditure of funds for technical and consultative assistance, for the temporary payment of the interest and principal on such a loan, and for other purposes. Any such expenditure made under the preceding sentence on behalf of a medical facility shall be made under such terms and conditions as the Secretary shall prescribe, including the implementation of such organizational, operational, and financial reforms as the Secretary determines are appropriate and the disclosure of such financial or other information as the Secretary may require to determine the extent of the implementation of such reforms.

(2) The Secretary may take such action, consistent with State law respecting foreclosure procedures, as he deems appropriate to protect the interest of the United States in the event of a default on a loan made or guaranteed under this part or under subchapter IV of this chapter, including for a reasonable period of time taking possession of, holding, and using real property pledged as security for such a loan or loan guarantee.

(July 1, 1944, ch. 373, title XVI, § 1602, formerly § 1622, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2265, and amended Aug. 1, 1977, Pub. L. 95-83, title I, § 106(x)(2), (y), 91 Stat. 385; renumbered and amended Oct. 4, 1979, Pub. L. 96-79, title II, §§ 201(b)(2), (3), 203(a)(1), (3), (g), 93 Stat. 631, 635.)

REFERENCES IN TEXT

Subchapter IV of this chapter, referred to in subsec. (f), is classified to section 291 et seq. of this title.

PRIOR PROVISIONS

A prior section 1602 of act July 1, 1944, ch. 373, title XVI, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2258, and amended Aug. 1, 1977, Pub. L. 95-83, title I, § 106(r), (s), 91 Stat. 385, was classified to section 300o-1 of this title and was repealed by Pub. L. 96-79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632.

AMENDMENTS

1979—Subsec. (b)(2)(D). Pub. L. 96-79, § 201(b)(2), substituted "minus any interest subsidy made in accordance with section 300q(a)(2)(B) of this title (with respect to a loan made for a project located in an urban or rural poverty area" for "minus 3 per centum per annum".

Subsec. (d)(1). Pub. L. 96-79, § 203(a)(3), (g)(2), substituted in subpar. (C) reference to section "300q(a)(2)(B)" for "300q(b)(2)" of this title and added subpar. (F).

Subsec. (d)(2). Pub. L. 96-79, § 203(a)(3), (g)(3), substituted in subpar. (A) reference to section "300q(a)(2)(B)" for "300q(b)(2)" of this title and added subpar. (F).

Subsec. (e)(2). Pub. L. 96-79, § 201(b)(3), authorized appropriations for fiscal years ending Sept. 30, 1979 through 1982.

Subsec. (f). Pub. L. 96-79, § 203(g)(1), added subsec. (f).

1977—Subsec. (c)(5). Pub. L. 95-83, § 106(y), added subsec. (c)(5).

Subsec. (e)(2). Pub. L. 95-83, § 106(x)(2), substituted reference to appropriations authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year ending June 30, 1977, and authorized appropriations for fiscal year ending Sept. 30, 1978.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-79 effective Oct. 1, 1979, except that amendment of subsec. (b)(2)(D) respecting interest subsidy payments for loans or loan guarantees applicable only with respect to loans and loan guarantees made after Oct. 1, 1979, and that subsidies for such commitments made before Oct. 1, 1979, payable as authorized before Oct. 1, 1979, see section 204 of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

PART B—PROJECT GRANTS

AMENDMENTS

1979—Pub. L. 96-79, title II, §§ 201(a), 202(a), Oct. 4, 1979, 93 Stat. 630, 632, repealed PART B—ALLOTMENTS, comprising former sections 300p to 300p-3 of this title, and redesignated former PART D as PART B—PROJECT GRANTS.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300q, 300s, 300s-1, 300s-3 of this title.

§ 300r. Grants for construction or modernization projects

(a) Authority; objectives; eligible grantees; maximum amounts; authorization of appropriations; availability of unobligated funds

(1)(A) The Secretary may make grants for construction or modernization projects designed to—

(i) eliminate or prevent in medical facilities imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or

(ii) avoid noncompliance by medical facilities with State or voluntary licensure or accreditation standards.

(B) A grant under subparagraph (A) may only be made to—

(i) a State or political subdivision of a State, including any city, town, county, borough, hospital district authority, or public or quasi-public corporation, for any medical facility owned or operated by the State or political subdivision; and

(ii) a nonprofit private entity for any medical facility owned or operated by the entity but only if the Secretary determines—

(I) the level of community service provided by the facility and the proportion of its patients who are unable to pay for services rendered in the facility is similar to such level and proportion in a medical facility of a State or political subdivision, and

(II) that without a grant under subparagraph (A) there would be a disruption of the provision of health care to low-income individuals.

(2) The amount of any grant under paragraph (1) may not exceed 75 per centum of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 100 per centum of such costs.

(3) There are authorized to be appropriated for grants under paragraph (1) $40,000,000 for the fiscal year ending September 30, 1980, $50,000,000 for the fiscal year ending September 30, 1981, and $50,000,000 for the fiscal year ending September 30, 1982. Funds available for obligation under this subsection (as in effect before October 4, 1979) in the fiscal year ending September 30, 1979, shall remain available for obligation under this subsection in the succeeding fiscal year.

(b) Projects for medically underserved populations; eligible grantees; maximum amounts; authorization of appropriations

(1) The Secretary may make grants to public and nonprofit private entities for projects for (A) construction or modernization of outpatient medical facilities which are located apart from hospitals and which will provide services for medically underserved populations, and (B) conversion of existing facilities into outpatient medical facilities or facilities for long-term care to provide services for such populations.

(2) The amount of any grant under paragraph (1) may not exceed 80 per centum of the cost of the project for which the grant is made unless the project is located in an area determined by the Secretary to be an urban or rural poverty area, in which case the grant may cover up to 100 per centum of such costs.

(3) There are authorized to be appropriated for grants under paragraph (1) $15,000,000 for the fiscal year ending September 30, 1981, and $15,000,000 for the fiscal year ending September 30, 1982.

(July 1, 1944, ch. 373, title XVI, § 1610, formerly § 1625, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2268, and amended Aug. 1, 1977, Pub. L. 95-83, title I, § 103(b), 91 Stat. 383; renumbered and amended Oct. 4, 1979, Pub. L. 96-79, title II, §§ 201(c), 203(b), 93 Stat. 631, 635.)

PRIOR PROVISIONS

A prior section 1610 of act July 1, 1944, ch. 373, title XVI, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2262, and amended Aug. 1, 1977, Pub. L. 95-83, title I, § 106(w), 91 Stat. 385, was classified to section 300p of this title and was repealed by Pub. L. 96-79, title II, § 201(a), Oct. 4, 1979, 93 Stat. 630.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-79, § 201(c), incorporated existing provisions in par. (1); inserted in subpar. (A) in cls. (i) and (ii) the phrases "in medical facilities" and "by medical facilities"; substituted in subpar. (B)(i) "for any medical facility owned or operated by the State or political subdivision" for "for a project described in the preceding sentence for any medical facility owned or operated by it"; added cl. (a)(1)(B)(ii); redesignated former subsec. (c) as par. (2); and added par. (3).

Subsec. (b). Pub. L. 96-79, § 201(c), added provisions respecting projects for medically underserved populations and deleted provisions respecting criteria for approval of applications under former section 300o-3 of this title.

Subsec. (c). Pub. L. 96-79, § 201(c), redesignated subsec. (c) as subsec. (a)(2) of this section.

Subsec. (d). Pub. L. 96-79, § 201(c), deleted former subsec. (d) which related to provisions making available 22 per centum of sums appropriated under former section 300p-3 of this title for subsec. (a) grants, including an additional appropriations authorization of $67,500,000 for such grants for fiscal year ending Sept. 30, 1978.

1977—Subsec. (d). Pub. L. 95-83 authorized additional grant appropriations of $67,500,000 for fiscal year ending Sept. 30, 1978.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-79 effective Oct. 1, 1979, see section 204 of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

PART C—GENERAL PROVISIONS

AMENDMENTS

1979—Pub. L. 96-79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632, redesignated former PART E as PART C—GENERAL PROVISIONS and former PART C as PART A.

§ 300s. General regulations

The Secretary shall by regulation—

(1) prescribe the manner in which he shall determine the priority among projects for which assistance is available under part A or B, based on the relative need of different areas for such projects and giving special consideration—

(A) to projects for medical facilities serving areas with relatively small financial resources and for medical facilities serving rural communities,

(B) in the case of projects for modernization of medical facilities, to projects for facilities serving densely populated areas,

(C) in the case of projects for construction of outpatient medical facilities, to projects that will be located in, and provide services for residents of, areas determined by the Secretary to be rural or urban poverty areas,

(D) to projects designed to (i) eliminate or prevent imminent safety hazards as defined by Federal, State, or local fire, building, or life safety codes or regulations, or (ii) avoid noncompliance with State or voluntary licensure or accreditation standards, and

(E) to projects for medical facilities which, alone or in conjunction with other facilities, will provide comprehensive health care, including outpatient and preventive care as well as hospitalization;

(2) prescribe for medical facilities projects assisted under part A or B general standards of construction, modernization, and equipment, which standards may vary on the basis of the class of facilities and their location; and

(3) prescribe the general manner in which each entity which receives financial assistance under part A or B or has received financial assistance under part A or B or subchapter IV of this chapter shall be required

to comply with the assurances required to be made at the time such assistance was received and the means by which such entity shall be required to demonstrate compliance with such assurances.

An entity subject to the requirements prescribed pursuant to paragraph (3) respecting compliance with assurances made in connection with receipt of financial assistance shall submit periodically to the Secretary data and information which reasonably supports the entity's compliance with such assurances. The Secretary may not waive the requirement of the preceding sentence.

(July 1, 1944, ch. 373, title XVI, § 1620, as added Oct. 4, 1979, Pub. L. 96-79, title II, § 202(b), 93 Stat. 632.)

PRIOR PROVISIONS

A prior section 300s, act July 1, 1944, ch. 373, title XVI, § 1630, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2269, which provided for judicial review by the United States Court of Appeals, was repealed by Pub. L. 96-79, title II, § 202(b), Oct. 4, 1979, 93 Stat. 632, eff. Oct. 1, 1979.

A prior section 1620 of act July 1, 1944, was renumbered 1601 by Pub. L. 96-79, title II, § 203(a)(1), Oct. 4, 1979, 93 Stat. 635, and is classified to section 300q of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 204 of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300s-1 of this title.

§ 300s-1. Medical facility project applications

(a) Submissions

No loan, loan guarantee, or grant may be made under part A or B for a medical facilities project unless an application for such project has been submitted to and approved by the Secretary. If two or more entities join in a project, an application for such project may be filed by any of such entities or by all of them.

(b) Form; required provisions; waiver; projects subject to requirements

(1) An application for a medical facilities project shall be submitted in such form and manner as the Secretary shall by regulation prescribe and shall, except as provided in paragraph (2), set forth—

(A) in the case of a modernization project for a medical facility for continuation of existing health services, a finding by the State Agency of a continued need for such services, and, in the case of any other project for a medical facility, a finding by the State Agency of the need for the new health services to be provided through the medical facility upon completion of the project;

(B) in the case of an application for a grant, assurances satisfactory to the Secretary that (i) the applicant making the application would not be able to complete the project for which the application is submitted without the grant applied for, and (ii) in the case of a project to construct a new medical facility, it would be inappropriate to convert an existing medical facility to provide the services to be provided through the new medical facility;

(C) in the case of a project for the discontinuance of a service or facility or the conversion of a service or a facility, an evaluation of the impact of such discontinuance or conversion on the provision of health care in the health service area in which such service was provided or facility located;

(D) a description of the site of such project;

(E) plans and specifications therefor which meet the requirements of the regulations prescribed under section 300s(2) of this title;

(F) reasonable assurance that title to such site is or will be vested in one or more of the entities filing the application or in a public or other nonprofit entity which is to operate the facility on completion of the project;

(G) reasonable assurance that adequate financial support will be available for the completion of the project and for its maintenance and operation when completed, and, for the purpose of determining if the requirements of this subparagraph are met, Federal assistance provided directly to a medical facility which is located in an area determined by the Secretary to be an urban or rural poverty area or through benefits provided individuals served at such facility shall be considered as financial support;

(H) the type of assistance being sought under part A or B for the project;

(I) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on a project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a-5, known as the Davis-Bacon Act), and the Secretary of Labor shall have with respect to such labor standards the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 5 U.S.C. Appendix) and section 276c of title 40;

(J) in the case of a project for the construction or modernization of an outpatient facility, reasonable assurance that the services of a general hospital will be available to patients at such facility who are in need of hospital care; and

(K) reasonable assurance that at all times after such application is approved (i) the facility or portion thereof to be constructed, modernized, or converted will be made available to all persons residing or employed in the area served by the facility, and (ii) there will be made available in the facility or portion thereof to be constructed, modernized, or converted a reasonable volume of services to persons unable to pay therefor and the Secretary, in determining the reasonableness of the volume of services provided, shall take into consideration the extent to which compliance is feasible from a financial viewpoint.

(2)(A) The Secretary may waive—

(i) the requirements of subparagraph (D) of paragraph (1) for compliance with modernization and equipment standards prescribed pursuant to section 300s(2) of this title, and

(ii) the requirement of subparagraph (E) of paragraph (1) respecting title to a project site,

in the case of an application for a project described in subparagraph (B) of this paragraph.

(B) A project referred to in subparagraph (A) is a project—

(i) for the modernization of an outpatient medical facility which will provide general purpose health services, which is not part of a hospital, and which will serve a medically underserved population as defined in section 300s-3 of this title or as designated by a health systems agency, and

(ii) for which the applicant seeks a loan under part A the principal amount of which does not exceed $20,000.

(July 1, 1944, ch. 373, title XVI, § 1621, as added Oct. 4, 1979, Pub. L. 96-79, title II, § 202(b), 93 Stat. 633.)

REFERENCES IN TEXT

The Act of March 3, 1931 (40 U.S.C. 276a—276a-5, known as the Davis-Bacon Act), referred to in subsec. (b)(1)(I), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

PRIOR PROVISIONS

A prior section 300s-1 was redesignated 300s-1a and amended as part of the general revision of this subchapter by Pub. L. 96-79.

A prior section 1621 of act July 1, 1944, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2265, which related to the allocation among States of the total amount of principal of loans and loan guarantees, was classified to section 300q-1 of this title and was repealed as part of the general revision of this subchapter by Pub. L. 96-79.

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 204 of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300s-1a, 300s-5 of this title.

§ 300s-1a. Recovery by United States of proceeds from sale or transfer or termination of use of facility constructed, modernized, or converted with project funds; amount recoverable; waiver

(a) If any facility constructed, modernized, or converted with funds provided under this subchapter is, at any time within twenty years after the completion of such construction, modernization, or conversion with such funds—

(1) sold or transferred to any person or entity (A) which is not qualified to file an application under section 300s-1 or 300t-12 of this title or (B) which is not approved as a transferee by the State Agency of the State in which such facility is located, or its successor; or

(2) not used as a medical facility, and the Secretary has not determined that there is good cause for termination of such use,

the United States shall be entitled to recover from either the transferor or the transferee in the case of a sale or transfer or from the owner in the case of termination of use an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the district court of the United States for the district in which the facility is situated) of so much of such facility as constituted an approved project or projects, as the amount of the Federal participation bore to the cost of the construction, modernization, or conversion of such project or projects. Such right of recovery shall not constitute a lien upon such facility prior to judgment.

(b) The Secretary may waive the recovery rights of the United States under subsection (a) of this section with respect to a facility in any State—

(1) if (as determined under regulations prescribed by the Secretary) the amount which could be recovered under subsection (a) of this section with respect to such facility is applied to the development, expansion, or support of another medical facility located in such State which has been approved by the Statewide Health Coordinating Council for such State as consistent with the State health plan established pursuant to section 300m-3(c) of this title; or

(2) if the Secretary determines, in accordance with regulations, that there is good cause for waiving such requirement with respect to such facility.

If the amount which the United States is entitled to recover under subsection (a) of this section exceeds 90 per centum of the total cost of the construction or modernization project for a facility, a waiver under this subsection shall only apply with respect to an amount which is not more than 90 per centum of such total cost.

(July 1, 1944, ch. 373, title XVI, § 1622, formerly § 1631, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2269, and amended Apr. 22, 1976, Pub. L. 94-278, title XI, § 1106(c), 90 Stat. 416; renumbered and amended Oct. 4, 1979, Pub. L. 96-79, title II, §§ 202(b), 203(c), 93 Stat. 632, 635.)

CODIFICATION

Section was formerly classified to section 300s-1 of this title prior to the general revision of this subchapter by Pub. L. 96-79.

PRIOR PROVISIONS

A prior section 1622 of act July 1, 1944, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2265, was renumbered 1602 as part of the general revision of this subchapter by Pub. L. 96-79 and is classified to section 300q-2 of this title.

AMENDMENTS

1979—Subsec. (a)(1)(A). Pub. L. 96-79, § 203(c), substituted "section 300s-1 or 300t-12 of this title" for "section 300o-3 of this title".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-79 effective Oct. 1, 1979, see section 204 of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§ 300s-2. State supervision or control of operations of facilities receiving funds

[*See main edition for text of section*]

(July 1, 1944, ch. 373, title XVI, § 1623, formerly § 1632, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2270, and renumbered Oct. 4, 1979, Pub. L. 96-79, title II, § 202(b), 93 Stat. 632.)

§ 300s-3. Definitions

Except as provided in section 300t-12(e) of this title, for purposes of this subchapter—

(1) The term "hospital" includes general, tuberculosis, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, facilities related to programs for home health services, self-care units, and central service facilities, operated in connection with hospitals, and also includes education or training facilities for health professonal[1] personnel operated as an integral part of a hospital, but does not include any hospital furnishing primarily domiciliary care.

(2) The term "public health center" means a publicly owned facility for the provision of public health services, including related publicly owned facilities such as laboratories, clinics, and administrative offices operated in connection with such a facility.

(3) The term "nonprofit" as applied to any facility means a facility which is owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(4) The term "outpatient medical facility" means a medical facility (located in or apart from a hospital) for the diagnosis or diagnosis and treatment of ambulatory patients (including ambulatory inpatients)—

(A) which is operated in connection with a hospital,

(B) in which patient care is under the professional supervision of persons licensed to practice medicine or surgery in the State, or in the case of dental diagnosis or treatment, under the professional supervision of persons licensed to practice dentistry in the State; or

(C) which offers to patients not requiring hospitalization the services of licensed physicians in various medical specialties, and which provides to its patients a reasonably full-range of diagnostic and treatment services.

(5) The term "rehabilitation facility" means a facility which is operated for the primary purpose of assisting in the rehabilitation of disabled persons through an integrated program of—

(A) medical evaluation and services, and

(B) psychological, social, or vocational evaluation and services,

under competent professional supervision, and in the case of which the major portion of the required evaluation and services is furnished within the facility; and either the facility is operated in connection with a hospital, or all medical and related health services are prescribed by, or are under the general direction of, persons licensed to practice medicine or surgery in the State.

(6) The term "facility for long-term care" means a facility (including a skilled nursing or intermediate care facility) providing in-patient care for convalescent or chronic disease patients who required skilled nursing or intermediate care and related medical services—

(A) which is a hospital (other than a hospital primarily for the care and treatment of mentally ill or tuberculous patients) or is operated in connection with a hospital, or

(B) in which such care and medical services are prescribed by, or are performed under the general direction of, persons licensed to practice medicine or surgery in the State.

(7) The term "construction" means construction of new buildings and initial equipment of such buildings and, in any case in which it will help to provide a service not previously provided in the community, equipment of any buildings; including architects' fees, but excluding the cost of off-site improvements and, except with respect to public health centers, the cost of the acquisition of land.

(8) The term "cost" as applied to construction, modernization, or conversion means the amount found by the Secretary to be necessary for construction, modernization, or conversion, respectively, under a project, except that, in the case of a modernization project or a project assisted under part B of this subchapter, such term does not include any amount found by the Secretary to be attributable to expansion of the bed capacity of any facility.

(9) The term "modernization" includes the alteration, expansion, major repair (to the extent permitted by regulations), remodeling, replacement, and renovation of existing buildings (including initial equipment thereof), and the replacement of obsolete equipment of existing buildings.

(10) The term "title,"[1] when used with reference to a site for a project, means a fee simple, or such other estate or interest (including a leasehold on which the rental does not exceed 4 per centum of the value of the land) as the Secretary finds sufficient to assure for a period of not less than twenty-five years' undisturbed use and possession for the purposes of construction, modernization, or conversion and operation of the project for a period of not less than (A) twenty years in the case of a project assisted under an allotment or grant under this subchapter, or (B) the term of repayment of a loan made or guaranteed under this subchapter in the case of a project assisted by a loan or loan guarantee.

(11) The term "medical facility" means a hospital, public health center, outpatient medical facility, rehabilitation facility, facility for long-term care, or other facility (as may be designated by the Secretary) for the provision of health care to ambulatory patients.

(12) The term "State Agency" means the State health planning and development agency of a State designated under subchapter XIII of this chapter.

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[1] So in original. Probably should be "professional".

[1] So in original. The comma probably should follow the ending quotations.

(13) The term "urban or rural poverty area" means an urban or rural geographical area (as defined by the Secretary) in which a percentage (as defined by the Secretary in accordance with the next sentence) of the residents of the area have incomes below the poverty level (as defined by the Secretary of Commerce). The percentage referred to in the preceding sentence shall be defined so that the percentage of the population of the United States residing in urban and rural poverty areas is—

(A) not more than the percentage of the total population of the United States with incomes below the poverty level (as so defined) plus five per centum, and

(B) not less than such percentage minus five per centum.

(14) The term "medically underserved population" means the population of an urban or rural area designated by the Secretary as an area with a shortage of health facilities or a population group designated by the Secretary as having a shortage of such facilities.

(July 1, 1944, ch. 373, title XVI, § 1624, formerly § 1633, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2270, and amended Oct. 12, 1976, Pub. L. 94-484, title IX, § 905(b)(1), 90 Stat. 2325; Aug. 1, 1977, Pub. L. 95-83, title I, § 106(z), 91 Stat. 386; renumbered and amended Oct. 4, 1979, Pub. L. 96-79, title II, §§ 202(b), 203(e)(1), title III, § 301(b), 93 Stat. 632, 635, 640.)

CODIFICATION

"Part B of this subchapter" was substituted for "Part D of this subchapter" in par. (8) pursuant to the redesignation of former part D of this subchapter as B by Pub. L. 96-79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632.

AMENDMENTS

1979—Pub. L. 96-79, § 301(b), inserted introductory phrase "Except as provided in section 300t-12(e) of this title".

Pars. (1) to (16). Pub. L. 96-79, § 203(e)(1), struck out former pars. (1) and (2) which defined "State" and "Federal share" and redesignated pars. (3) through (16) as pars. (1) through (14).

1977—Par. (14). Pub. L. 95-83 substituted "subchapter XIII" for "subchapter XII".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-79 effective Oct. 1, 1979, see section 204 of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300s-1, 4581, 6372 of this title.

§ 300s-4. Reporting and audit requirements for recipients

[*See main edition for text of section*]

(July 1, 1944, ch. 373, title XVI, § 1625, formerly § 1634, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2273, and renumbered Oct. 4, 1979, Pub. L. 96-79, title II, § 202(b), 93 Stat. 632.)

PRIOR PROVISIONS

A prior section 1625 of act July 1, 1944, was renumbered 1610 by Pub. L. 96-79, title II, § 203(b), Oct. 4, 1979, 93 Stat. 635, and is classified to section 300r of this title.

§ 300s-5. Availability of technical and other nonfinancial assistance to eligible applicants

The Secretary shall provide (either through the Department of Health, Education, and Welfare or by contract) all necessary technical and other nonfinancial assistance to any public or other entity which is eligible to apply for assistance under this subchapter to assist such entity in developing applications to be submitted to the Secretary under section 300s-1 or 300t-12 of this title. The Secretary shall make every effort to inform eligible applicants of the availability of assistance under this subchapter.

(July 1, 1944, ch. 373, title XVI, § 1626, formerly § 1635, as added Jan. 4, 1975, Pub. L. 93-641, § 4, 88 Stat. 2273, and renumbered and amended Oct. 4, 1979, Pub. L. 96-79, title II, §§ 202(b), 203(f), 93 Stat. 632, 635.)

AMENDMENTS

1979—Pub. L. 96-79, § 203(f), substituted "other entity" for "other nonprofit entity" and "section 300s-1 or 300t-12 of this title" for "section 300o-3 of this title."

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-79 effective Oct. 1, 1979, see section 204 of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

§ 300s-6. Enforcement of assurances

The Secretary shall investigate and ascertain, on a periodic basis, with respect to each entity which is receiving financial assistance under this subchapter or which has received financial assistance under subchapter IV of this chapter or this subchapter, the extent of compliance by such entity with the assurances required to be made at the time such assistance was received. If the Secretary finds that such an entity has failed to comply with any such assurance, the Secretary shall report such noncompliance to the health systems agency for the health service area in which such entity is located and the State health planning and development agency of the State in which the entity is located and shall take any action authorized by law (including an action for specific performance brought by the Attorney General upon request of the Secretary) which will effect compliance by the entity with such assurances. An action to effectuate compliance with any such assurance may be brought by a person other than the Secretary only if a complaint has been filed by such person with the Secretary and the Secretary has dismissed such complaint or the Attorney General has not brought a civil action for compliance with such assurance within six months after the date on which the complaint was filed with the Secretary.

(July 1, 1944, ch. 373, title XVI, § 1627, as added Oct. 4, 1979, Pub. L. 96-79, title II, § 202(c), 93 Stat. 634.)

EFFECTIVE DATE

Section effective Oct. 1, 1979, see section 204 of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300q of this title.

PART D—AREA HEALTH SERVICES DEVELOPMENT FUNDS

AMENDMENTS

1979—Pub. L. 96-79, title II, § 202(a), Oct. 4, 1979, 93 Stat. 632, redesignated former PART F as PART D-AREA HEALTH SERVICES DEVELOPMENT FUNDS and former Part D as Part B.

§ 300t. Development grants for health systems agencies

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Authorization of appropriations

For the purpose of making payments pursuant to grants under subsection (a) of this section, there are authorized to be appropriated $25,000,000 for the fiscal year ending June 30, 1975, $75,000,000 for the fiscal year ending June 30, 1976, $120,000,000 each for the fiscal years ending September 30, 1977, and September 30, 1978, $20,000,000 for the fiscal year ending September 30, 1981, and $30,000,000 for the fiscal year ending September 30, 1982.

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 103(c), 91 Stat. 383; Oct. 4, 1979, Pub. L. 96-79, title I, § 127(e), 93 Stat. 629.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-79 authorized appropriations of $20,000,000 for the fiscal year ending Sept. 30, 1981 and $30,000,000 for the fiscal year ending Sept. 30, 1982.

1977—Subsec. (d). Pub. L. 95-83 substituted "each for the fiscal years ending September 30, 1977, and September 30, 1978" for "for the fiscal year ending June 30, 1977".

PART E—PROGRAM TO ASSIST AND ENCOURAGE VOLUNTARY DISCONTINUANCE OF UNNEEDED HOSPITAL SERVICES AND CONVERSION OF UNNEEDED HOSPITAL SERVICES TO OTHER HEALTH SERVICES NEEDED BY THE COMMUNITY

AMENDMENTS

1979—Pub. L. 96-79, title II, § 202(a), title III, § 301(a), Oct. 4, 1979, 93 Stat. 632, 636, added PART E—PROGRAM TO ASSIST AND ENCOURAGE VOLUNTARY DISCONTINUANCE OF UNNEEDED HOSPITAL SERVICES AND CONVERSION OF UNNEEDED HOSPITAL SERVICES TO OTHER HEALTH SERVICES NEEDED BY THE COMMUNITY and redesignated former Part E as Part C.

§ 300t-11. Grants and assistance for establishment of program

The Secretary shall, by April 1, 1980, establish a program under which—

(1) grants and technical assistance may be provided to hospitals in operation on October 4, 1979, (A) for the discontinuance of unneeded hospital services, and (B) for the conversion of unneeded hospital services to other health services needed by the community; and

(2) grants may be provided to State Agencies designated under section 300m(b)(3) of this title for reducing excesses in resources and facilities of hospitals.

(July 1, 1944, ch. 373, title XVI, § 1641, as added Oct. 4, 1979, Pub. L. 96-79, title III, § 301(a), 93 Stat. 636.)

UNNEEDED HOSPITAL SERVICES; STUDY AND REPORT OF EFFECT OF ELIMINATION

Section 302 of Pub. L. 96-79 provided that: "The Secretary of Health, Education, and Welfare shall conduct a study of the effect on the elimination of unneeded hospital services made during the two fiscal year period ending September 30, 1981, by the program authorized by part E of title XVI of the Public Health Service Act [this part]. The Secretary shall not later than January 1, 1982, report the results of the study to Congress together with his recommendations for any revisions in the program under such part E which he determines to be appropriate, including any revision in the authorizations of appropriations for grants under such program."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300t-12 of this title.

§ 300t-12. Grants for discontinuance and conversion

(a) Terms and conditions; determination of amount; authorized uses

(1) A grant to a hospital under the program shall be subject to such terms and conditions as the Secretary may by regulation prescribe to assure that the grant is used for the purpose for which it was made.

(2) The amount of any such grant shall be determined by the Secretary. The recipient of such a grant may use the grant—

(A) in the case of a grantee which discontinues the provision of all hospital services or all inpatient hospital services or an identifiable part of a hospital facility which provides inpatient hospital services, for the liquidation of the outstanding debt on the facilities of the grantee used for the provision of the services or for the liquidation of the outstanding debt of the grantee on such identifiable part;

(B) in the case of a grantee which in discontinuing the provision of an inpatient hospital service converts or proposes to convert an identifiable part of a hospital facility used in the provision of the discontinued service to the delivery of other health services, for the planning, development (including construction and acquisition of equipment), and delivery of the health service;

(C) to provide reasonable termination pay for personnel of the grantee who will lose employment because of the discontinuance of hospital services made by the grantee, retraining of such personnel, assisting such personnel in securing employment, and other costs of implementing arrangements described in subsection (c) of this section; and

(D) for such other costs which the Secretary determines may need to be incurred by the grantee in discontinuing hospital services.

(b) Application; submission and approval; form; required provisions; review by health systems agency; basis of State Agency's recommendations; urban or rural poverty population considerations; approval by Secretary; restrictions and special considerations

(1) No grant may be made to a hospital unless an application therefor is submitted to and approved by the Secretary. Such an application shall be in such form and submitted in such manner as the Secretary may prescribe and shall include—

(A) a description of each service to be discontinued and, if a part of a hospital is to be discontinued or converted to another use in connection with such discontinuance, a description of such part;

(B) an evaluation of the impact of such discontinuance and conversion on the provision of health care in the health service area in which such service is provided;

(C) an estimate of the change in the applicant's costs which will result from such discontinuance and conversion; and

(D) reasonable assurance that all laborers and mechanics employed by contractors or subcontractors in the performance of work on a project will be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a-5, known as the Davis-Bacon Act), and the Secretary of Labor shall have with respect to such labor standards the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 FR 3176; 5 U.S.C. Appendix) and section 276c of title 40;

(E) such other information as the Secretary may require.

(2)(A) The health systems agency for the health service area in which is located a hospital applying for a grant under the program shall (i) in making the review of the applicant's application under section 300*l*-2(e) of this title, determine the need for each service or part proposed to be discontinued by the applicant, (ii) in the case of an application for the conversion of a facility, determine the need for each service which will be provided as a result of the conversion, and (iii) make a recommendation to the State Agency for the State in which the applicant is located respecting approval by the Secretary of the applicant's application.

(B) A State Agency which has received a recommendation from a health systems agency under subparagraph (A) respecting an application shall, after consideration of such recommendation, make a recommendation to the Secretary respecting the approval by the Secretary of the application. A State Agency's recommendation under this subparagraph respecting the approval of an application (i) shall be based upon (I) the need for each service or part proposed to be discontinued by the applicant, (II) in the case of an application for the conversion of a facility, the need for each service which will be provided as a result of the conversion, and (III) such other criteria as the Secretary may prescribe, and (ii) shall be accompanied by the health systems agency's recommendation made with respect to the approval of the application.

(C) In determining, under subparagraphs (A) and (B), the need for the service (or services) or part proposed to be discontinued or converted by an applicant for a grant, a health systems agency and State Agency shall give special consideration to the unmet needs and existing access patterns of urban or rural poverty populations.

(3)(A) The Secretary may not approve an application of a hospital for a grant—

(i) if a State Agency recommended that the application not be approved, or

(ii) if the Secretary is unable to determine that the cost of providing inpatient health services in the health service area in which the applicant is located will be less than if the inpatient health services proposed to be discontinued were not discontinued.

(B) In considering applications of hospitals for grants the Secretary shall consider the recommendations of health systems agencies and State Agencies and shall give special consideration to applications (i) which will assist health systems agencies and State Agencies to meet the goals in their health systems plans and State health plans, or (ii) which will result in the greatest reduction in hospital costs within a health service area.

(c) Certification of protective arrangements for employment benefits and interests; guidelines; satisfactory arrangement determinations

(1) Except as provided in paragraph (3), the Secretary may not approve an application submitted under subsection (b) of this section unless the Secretary of Labor has certified that fair and equitable arrangements have been made to protect the interests of employees affected by the discontinuance of services against a worsening of their positions with respect to their employment, including arrangements to preserve the rights of employees under collective-bargaining agreements, continuation of collective-bargaining rights consistent with the provisions of the National Labor Relations Act [29 U.S.C. 151 et seq.], reassignment of affected employees to other jobs, retraining programs, protecting pension, health benefits, and other fringe benefits of affected employees, and arranging adequate severance pay, if necessary.

(2) The Secretary of Labor shall by regulation prescribe guidelines for arrangements for the protection of the interests of employees affected by the discontinuance of hospital services. The Secretary of Labor shall consult with the Secretary of Health, Education, and Welfare in the promulgation of such guidelines. Such guidelines shall first be promulgated not later than the promulgation of regulations by the Secretary for the administration of the grants authorized by section 300t-11 of this title.

(3) The Secretary of Labor shall review each application submitted under subsection (b) of this section to determine if the arrangements described in paragraph (1) have been made and if they are satisfactory and shall notify the Secretary respecting his determination. Such review shall be completed within—

(A) ninety days from the date of the receipt of the application from the Secretary of Health, Education, and Welfare, or

(B) one hundred and twenty days from such date if the Secretary of Labor has by regulation prescribed the circumstances under which the review will require at least one hundred and twenty days.

If within the applicable period, the Secretary of Labor does not notify the Secretary of Health, Education, and Welfare respecting his determination, the Secretary of Health, Education, and Welfare shall review the application to determine if the applicant has made the arrangements described in paragraph (1) and if such arrangements are satisfactory. The Secretary may not approve the application unless he determines that such arrangements have been made and that they are satisfactory.

(d) Records and audits requirements

The records and audits requirements of section 292e of this title shall apply with respect to grants made under subsection (a) of this section.

(e) Hospital defined

For purposes of this part, the term "hospital" means, with respect to any fiscal year, an institution (including a distinct part of an institution participating in the programs established under title XVIII of the Social Security Act [42 U.S.C. 1395 et seq.])—

(1) which satisfies paragraphs (1) and (7) of section 1861(e) of such Act [42 U.S.C. 1395x(e)],

(2) imposes charges or accepts payments for services provided to patients, and

(3) the average duration of a patient's stay in which was thirty days or less in the preceding fiscal year,

but such term does not include a Federal hospital or a psychiatric hospital (as described in section 1861(f)(1) of the Social Security Act [42 U.S.C. 1395x(f)(1)]).

(July 1, 1944, ch. 373, title XVI, § 1642, as added Oct. 4, 1979, Pub. L. 96-79, title III, § 301(a), 93 Stat. 637.)

References In Text

The Act of March 3, 1931 (40 U.S.C. 276a—276a-5, known as the Davis-Bacon Act), referred to in subsec. (b)(1)(D), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

The National Labor Relations Act, referred to in subsec. (c)(1), is act July 5, 1935, ch. 372, 49 Stat. 452, as amended, which is classified generally to subchapter II (§ 151 et seq.) of chapter 7 of Title 29, Labor. For complete classification of this Act to the Code, see section 167 of Title 29 and Tables.

The Social Security Act, referred to in subsec. (e) is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XVIII of the Social Security Act is classified generally to subchapter XVIII (§ 1395 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

Section Referred to in Other Sections

This section is referred to in sections 300s-1a, 300s-3, 300s-5, 300t-14 of this title.

§ 300t-13. Grants to States for reduction of excess hospital capacity

(a) Excess hospital capacity defined; particular activities

For the purpose of demonstrating the effectiveness of various means for reducing excesses in resources and facilities of hospitals (referred to in this section as "excess hospital capacity"), the Secretary may make grants to State Agencies designated under section 300m(b)(3) of this title to assist such Agencies in—

(1) identifying (by geographic region or by health service) excess hospital capacity,

(2) developing programs to inform the public of the costs associated with excess hospital capacity,

(3) developing programs to reduce excess hospital capacity in a manner which will produce the greatest savings in the cost of health care delivery,

(4) developing means to overcome barriers to the reduction of excess hospital capacity,

(5) in planning, evaluating, and carrying out programs to decertify health care facilities providing health services that are not appropriate, and

(6) any other activity related to the reduction of excess hospital capacity.

(b) Terms and conditions

Grants under subsection (a) of this section shall be made on such terms and conditions as the Secretary may prescribe.

(July 1, 1944, ch. 373, title XVI, § 1643, as added Oct. 4, 1979, Pub. L. 96-79, title III, § 301(a), 93 Stat. 639.)

Section Referred to in Other Sections

This section is referred to in section 300t-14 of this title.

§ 300t-14. Authorization of appropriations

To make payments under grants under sections 300t-12 and 300t-13 of this title there are authorized to be appropriated $30,000,000 for the fiscal year ending September 30, 1980, $50,000,000 for the fiscal year ending September 30, 1981, and $75,000,000 for the fiscal year ending September 30, 1982, except that in any fiscal year not more than 10 percent of the amount appropriated under this section may be obligated for grants under section 300t-13 of this title.

(July 1, 1944, ch. 373, title XVI, § 1644, as added Oct. 4, 1979, Pub. L. 96-79, title III, § 301(a), 93 Stat. 640.)

SUBCHAPTER XV—HEALTH INFORMATION AND HEALTH PROMOTION

§ 300u. General authority of Secretary

[*See main edition for text of* (a)]

(b) Authorization of appropriations

For payments under grants and contracts under this subchapter (other than grants and contracts under sections 300u-6, 300u-7, and 300u-8 of this title) there are authorized to be appropriated $7,000,000 for the fiscal year ending September 30, 1977, $10,000,000 for the fiscal year ending September 30, 1978, $14,000,000 for the fiscal year ending September 30, 1979, $14,000,000 for the fiscal year ending September 30, 1980, $15,000,000 for the fiscal year ending September 30, 1981, and $16,000,000 for the fiscal year ending September 30, 1982.

[*See main edition for text of* (c)]

(As amended July 10, 1979, Pub. L. 96-32, § 7(n), 93 Stat. 85; Sept. 29, 1979, Pub. L. 96-76, title II, § 209, 93 Stat. 584.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-76 added provisions authorizing appropriations for the fiscal years ending Sept. 30, 1980, Sept. 30, 1981, and Sept. 30, 1982.

Pub. L. 96-32 inserted "(other than grants and contracts under sections 300u-6, 300u-7, and 300u-8 of this title)" following "grants and contracts under this subchapter".

§ 300u-4. Status reports to President and Congress; study of health education and preventative health services with respect to insurance coverage

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 247, 247b of this title.

§ 300u-5. Office of Health Information, Health Promotion and Physical Fitness and Sports Medicine

(a) Establishment

The Secretary shall establish within the Office of the Assistant Secretary for Health an Office of Health Information, Health Promotion and Physical Fitness and Sports Medicine which shall—

(1) coordinate all activities within the Department which relate to health information and health promotion, preventive health services, and education in the appropriate use of health care;

(2) coordinate its activities with similar activities of organizations in the private sector;

(3) establish a national information clearinghouse to facilitate the exchange of information concerning matters relating to health information and health promotion, preventive health services, and education in the appropriate use of health care, to facilitate access to such information, and to assist in the analysis of issues and problems relating to such matters; and

(4) support projects, conduct research, and disseminate information in the areas of physical fitness and sports medicine.

(b) Research and investigations; model projects; appointment of Director

The Office shall also—

(1) assist, and foster research, investigations, and model projects on the nature of physical fitness, the development of physical fitness, and the relation of physical fitness to health;

(2) assist, and foster research and investigations into the utilization of sports medicine, the development of sports medicine techniques, and the application of sports medicine throughout organized systems of athletic competition and in personal physical fitness development activities at every age and competition level;

(3) foster and assist research into the proper role of nutrition in physical fitness programs;

(4) promote the coordination of research and model programs conducted by the Office with similar programs conducted by other agencies of the Federal Government and other public and private organizations;

(5) communicate the results of the studies in the widest possible manner to the American people and to special groups with particular interests and special needs in the development of physical fitness, such as young children, the handicapped, senior citizens, and workers in occupations which present special risks of physical disability; and

(6) have a Director appointed by the Secretary.

(c) President's Council on Physical Fitness

The President's Council on Physical Fitness shall serve as the Advisory Body of the Office on all matters related to physical fitness. The activities of the Office and guidelines for the physical fitness programs supported by the Office shall be in conformance to guidelines developed by the President's Council on Physical Fitness.

(As amended Nov. 10, 1978, Pub. L. 95-626, title V, § 501, 92 Stat. 3592.)

AMENDMENTS

1978—Pub. L. 95-626 designated existing provisions as subsec. (a), substituted "Office of Health Information, Health Promotion and Physical Fitness and Sports Medicine" for "Office of Health Information and Health Information and Health Promotion" in the provisions preceding par. (1) of subsec. (a) as so designated, added par. (4) of subsec. (a) as so designated, and added subsecs. (b) and (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300u-7 of this title.

§ 300u-6. Project grants to State Councils on Physical Fitness for physical fitness improvement

(a) Grant authority

The Office may make grants to each State for the establishment by the Governor of a State Council on Physical Fitness or appropriate similar administrative unit.

(b) Membership of State Councils

The State Council shall consist of at least fifteen members, chosen by the Governor to serve terms of four years, and appointed from among persons who have distinguished records in the areas of physical fitness, sports medicine, public health, athletic competition, education, labor, business management, and nutrition.

(c) Duties of State Councils

It shall be the duty of the State Council on Physical Fitness to—

(1) promote the development of physical fitness with the assistance of local health and educational agencies, business, labor unions,

health action and advocacy groups, religious, fraternal and social organizations, community based multiservice recreational agencies, and health maintenance organizations;

(2) assess the physical fitness and nutrition status of residents of the State;

(3) plan and administer a program of grants-in-aid to support physical fitness projects, research projects, and public information efforts to promote the development of physical fitness for the residents of the State;

(4) evaluate and improve the availability and quality of sports medicine and athletic trainer programs in the State.

(d) Amount of grants

Each State shall be eligible for a grant under this section in an amount which is equal to not less than 1 per centum of the funds appropriated for the purposes of this section. The first $75,000 of grant funds to each State under this section shall not be made until an amount equal to the amount of the grant is made available to the State for the purposes of this section from non-Federal sources.

(e) Supplanting of non-Federal funds prohibited

Funds made available for the purposes of this section shall not be used to supplant non-Federal funds.

(f) Allocation of funds

Fifty per centum of the funds appropriated under section 300u-7(c) of this title shall be allocated for the purposes of this section.

(g) Project descriptions

In submitting an annual application for funds under this section the applicant must provide a description of all projects intended to be funded under subsection (c)(3) of this section.

(July 1, 1944, ch. 373, title XVII, § 1707, as added Nov. 10, 1978, Pub. L. 95-626, title V, § 502, 92 Stat. 3593, and amended July 10, 1979, Pub. L. 96-32, § 6(k), 93 Stat. 84.)

AMENDMENTS

1979—Subsec. (f). Pub. L. 96-32 struck out a reference to funds appropriated under section 503(d) of this Act and inserted in lieu thereof a reference to fund appropriated under section 300u-7(c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300u, 300u-7 of this title.

§ 300u-7. Project grants for physical fitness improvement and research projects

(a) Research; model projects

The Director of the Office may make grants or enter into contracts with public or private entities to conduct research and establish model projects with regard to improvement of physical fitness.

(b) Projects encompassed

Projects encompassed under this section may encompass—

(1) entire small communities, both urban and rural,

(2) educational settings for a variety of age groups,

(3) occupational settings,

(4) groups of handicapped individuals, and

(5) groups of senior citizens.

(c) Authorization of appropriations

There are authorized to be appropriated for the purposes of section 300u-6 of this title, section 300u-5 of this title, and this section $6,000,000 for the fiscal year ending September 30, 1980, and $6,000,000 for the fiscal year ending September 30, 1981.

(July 1, 1944, ch. 373, title XVII, § 1708, as added Nov. 10, 1978, Pub. L. 95-626, title V, § 502, 92 Stat. 3594, and amended July 10, 1979, Pub. L. 96-32, § 6(*l*), 93 Stat. 84.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-32 redesignated as subsec. (c) the provisions relating to authorization of appropriations, which in the original were designated as (d) and which had been editorially designated as (c) to reflect the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300u, 300u-6 of this title.

§ 300u-8. National program on sports medicine research

(a) Project grants

The Office shall establish a program of project grants to conduct research into the problem of athletic injuries with specific concentration on frequency of injuries, seriousness of injuries, the development of training and conditioning techniques and the development of athletic protective equipment to enable participants to avoid injuries to the maximum extent feasible, recovery rates, and problems associated with full recovery from athletic injuries.

(b) Clearinghouse on Sports Medicine Research

The Office shall, in cooperation with the President's Council on Physical Fitness, establish a Clearinghouse on Sports Medicine Research to disseminate the results of that research to practitioners in relevant fields of health care and physical fitness.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this section $1,500,000 for the fiscal year ending September 30, 1980, and $1,500,000 for the fiscal year ending September 30, 1981.

(July 1, 1944, ch. 373, title XVII, § 1709, as added Nov. 10, 1978, Pub. L. 95-626, title V, § 502, 92 Stat. 3594.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300u of this title.

§ 300u-9. Conference on Education in Lifetime Sports

(a) The Office and the Office of Education of the Department of Health, Education, and Welfare shall conduct a joint conference during 1979 on the teaching and support of educational programs in lifetime sports by secondary and postsecondary educational institutions.

(b) The purpose of the Conference shall be to explore current programs on lifetime sports within these institutions and to support the expansion of such educational programs in other institutions of secondary and postsecondary education.

(July 1, 1944, ch. 373, title XVII, § 1710, as added Nov. 10, 1978, Pub. L. 95-626, title V, § 502, 92 Stat. 3594.)

TRANSFER OF FUNCTIONS

For transfer of functions and offices (relating to education) of the Secretary and Department of Health, Education, and Welfare to the Secretary and Department of Education, and termination of certain offices and positions, see sections 3441 and 3503 of Title 20, Education.

SUBCHAPTER XVI—PRESIDENT'S COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIOR RESEARCH [NEW]

§ 300v. Commission

(a) Establishment; composition; appointment of members; vacancies

(1) There is established the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (hereinafter in this subchapter referred to as the "Commission") which shall be composed of eleven members appointed by the President. The members of the Commission shall be appointed as follows:

(A) Three of the members shall be appointed from individuals who are distinguished in biomedical or behavioral research.

(B) Three of the members shall be appointed from individuals who are distinguished in the practice of medicine or otherwise distinguished in the provision of health care.

(C) Five of the members shall be appointed from individuals who are distinguished in one or more of the fields of ethics, theology, law, the natural sciences (other than a biomedical or behavioral science), the social sciences, the humanities, health administration, government, and public affairs.

(2) No individual who is a full-time officer or employee of the United States may be appointed as a member of the Commission. The Secretary of Health, Education, and Welfare, the Secretary of Defense, the Director of Central Intelligence, the Director of the Office of Science and Technology Policy, the Administrator of Veterans' Affairs, and the Director of the National Science Foundation shall each designate an individual to provide liaison with the Commission.

(3) No individual may be appointed to serve as a member of the Commission if the individual has served for two terms of four years each as such a member.

(4) A vacancy in the Commission shall be filled in the manner in which the original appointment was made.

(b) Terms of members

(1) Except as provided in paragraphs (2) and (3), members shall be appointed for terms of four years.

(2) Of the members first appointed—

(A) four shall be appointed for terms of three years, and

(B) three shall be appointed for terms of two years,

as designated by the President at the time of appointment.

(3) Any member appointed to fill a vacancy occurring before the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A member may serve after the expiration of his term until his successor has taken office.

(c) Chairman

The Chairman of the Commission shall be appointed by the President, by and with the advice and consent of the Senate, from members of the Commission.

(d) Meetings

(1) Seven members of the Commission shall constitute a quorum for business, but a lesser number may conduct hearings.

(2) The Commission shall meet at the call of the Chairman or at the call of a majority of its members.

(e) Compensation; travel expenses, etc.

(1) Members of the Commission shall each be entitled to receive the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule for each day (including travel time) during which they are engaged in the actual performance of duties vested in the Commission.

(2) While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5.

(July 1, 1944, ch. 373, title XVIII, § 1801, as added Nov. 9, 1978, Pub. L. 95-622, title III, § 301, 92 Stat. 3438.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (e), is set out under section 5332 of Title 5, Government Organization and Employees.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

APPOINTMENT OF INITIAL MEMBERS

Section 302(a) of Pub. L. 95-622 provided that: "The President shall initially appoint members to the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research (established under the amendment made by section 301) [enacting this subchapter] not later than 90 days after the date of the enactment of this title [Nov. 9, 1978]."

EX. ORD. NO. 12184. PRESIDENT'S SPECIAL COMMISSION FOR THE STUDY OF ETHICAL PROBLEMS IN MEDICINE AND BIOMEDICAL AND BEHAVIORAL RESEARCH

Ex. Ord. No. 12184, Dec. 17, 1979, 44 F.R. 75091, provided:

Public Law 95-622 established the President's Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research [this subchapter]. Appropriations to fund the work of the Commission, although authorized, have not been sought or received, but entities within the Department of Health, Education and Welfare have authority and funds which may be available to carry on activities identical to those to be undertaken by the Commission. Therefore, in order to permit these entities to support the conduct of those activities by the Commission, and under the authority vested in me as President by the Constitution of the United States, it is ordered:

1-101. There is established the President's Special Commission for the Study of Ethical Problems in Medicine and Biomedical and Behavioral Research. The Special Commission established by this Order shall be constituted in accordance with and subject to the provisions of Title III of Public Law 95-622 [this subchapter], except that it shall receive financial support, to the extent permitted by law and subject to the availability of funds, from the Department of Health, Education and Welfare. The Administrator of General Services shall provide administrative support services to the Special Commission on a reimbursable basis.

1-102. The Special Commission established by this Order shall terminate upon enactment and availability of appropriations for the Commission established by Public Law 95-622 [this subchapter], and in any event, unless extended, no later than two years from the date of this Order. No funds transferred by the Department of Health, Education and Welfare pursuant to this Order shall be expended by either Commission following termination of the Special Commission.

JIMMY CARTER.

§ 300v-1. Duties of Commission

(a) Studies and investigations; priority and order; report to President and Congress

(1) The Commission shall undertake studies of the ethical and legal implications of—

(A) the requirements for informed consent to participation in research projects and to otherwise undergo medical procedures;

(B) the matter of defining death, including the advisability of developing a uniform definition of death;

(C) voluntary testing, counseling, and information and education programs with respect to genetic diseases and conditions, taking into account the essential equality of all human beings, born and unborn;

(D) the differences in the availability of health services as determined by the income or residence of the persons receiving the services;

(E) current procedures and mechanisms designed (i) to safeguard the privacy of human subjects of behavioral and biomedical research, (ii) to ensure the confidentiality of individually identifiable patient records, and (iii) to ensure appropriate access of patients to information continued[1] in such records, and

(F) such other matters relating to medicine or biomedical or behavioral research as the President may designate for study by the Commission.

The Commission shall determine the priority and order of the studies required under this paragraph.

(2) The Commission may undertake an investigation or study of any other appropriate matter which relates to medicine or biomedical or behavioral research (including the protection of human subjects of biomedical or behavioral research) and which is consistent with the purposes of this subchapter on its own initiative or at the request of the head of a Federal agency.

(3) In order to avoid duplication of effort, the Commission may, in lieu of, or as part of, any study or investigation required or otherwise conducted under this subsection, use a study or investigation conducted by another entity if the Commission sets forth its reasons for such use.

(4) Upon the completion of each investigation or study undertaken by the Commission under this subsection (including a study or investigation which merely uses another study or investigation), it shall report its findings (including any recommendations for legislation or administrative action) to the President and the Congress and to each Federal agency to which a recommendation in the report applies.

(b) Recommendations to agencies; subsequent administrative requirements

(1) Within 60 days of the date a Federal agency receives a recommendation from the Commission that the agency take any action with respect to its rules, policies, guidelines, or regulations, the agency shall publish such recommendation in the Federal Register and shall provide opportunity for interested persons to submit written data, views, and arguments with respect to adoption of the recommendation.

(2) Within the 180-day period beginning on the date of such publication, the agency shall determine whether the action proposed by such recommendation is appropriate, and, to the extent that it determines that—

(A) such action is not appropriate, the agency shall, within such time period, provide the Commission with, and publish in the Federal Register, a notice of such determination (including an adequate statement of the reasons for the determination), or

(B) such action is appropriate, the agency shall undertake such action as expeditiously as feasible and shall notify the Commission of the determination and the action undertaken.

(c) Report on protection of human subjects; scope; submission to President, etc.

The Commission shall biennially report to the President, the Congress, and appropriate Federal agencies on the protection of human subjects of biomedical and behavioral research. Each such report shall include a review of the adequacy and uniformity (1) of the rules, policies, guidelines, and regulations of all Federal agencies regarding the protection of human subjects of biomedical or behavioral research which such agencies conduct or support, and (2) of the implementation of such rules, policies, guidelines, and regulations by such agencies, and may include such recommendations for legislation and administrative action as the Commission deems appropriate.

(d) Annual report; scope; submission to President, etc.

Not later than December 15 of each year (beginning with 1979) the Commission shall report to the President, the Congress, and appropriate Federal agencies on the activities of the Commission during the fiscal year ending in such year. Each such report shall include a complete list of all recommendations described in subsection (b)(1) of this section made to Federal agencies by the Commission during the fiscal year and the actions taken, pursant [1] to subsection (b)(2) of this section, by the agencies upon such recommendations, and may include such recommendations for legislation and administrative action as the Commission deems appropriate.

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[1] So in original. Probably should be "contained".

(e) Publication and dissemination of reports

The Commission may at any time publish and disseminate to the public reports respecting its activities.

(f) Definitions

For purposes of this section:

(1) The term "Federal agency" means an authority of the government of the United States, but does not include (A) the Congress, (B) the courts of the United States, and (C) the government of the Commonwealth of Puerto Rico, the government of the District of Columbia, or the government of any territory or possession of the United States.

(2) The term "protection of human subjects" includes the protection of the health, safety, and privacy of individuals.

(July 1, 1944, ch. 373, title XVIII, § 1802, as added Nov. 9, 1978, Pub. L. 95-622, title III, § 301, 92 Stat. 3439, and amended July 10, 1979, Pub. L. 96-32, § 4, 93 Stat. 82.)

AMENDMENTS

1979—Subsec. (f). Pub. L. 96-32 redesignated the definitions subsection following subsec. (e) as (f), which in the original was designated as "(b)" and which had been editorially designated as "(f)" as the probable intent of Congress.

§ 300v-2. Administrative provisions

(a) Hearings

The Commission may for the purpose of carrying out this subchapter hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence, as the Commission may deem advisable.

(b) Appointment and compensation of staff personnel; procurement and compensation of temporary and intermittent services; detail of personnel from other Federal agencies

(1) The Commission may appoint and fix the pay of such staff personnel as it deems desirable. Such personnel shall be appointed subject to the provisions of title 5 governing appointments in the competitive service, and shall be paid in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

(2) The Commission may procure temporary and intermittent services to the same extent as is authorized by section 3109(b) of title 5, but at rates for individuals not to exceed the daily equivalent of the annual rate of basic pay in effect for grade GS-18 of the General Schedule.

(3) Upon request of the Commission, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of the personnel of such agency to the Commission to assist it in carrying out its duties under this subchapter.

(c) Contracting authority

The Commission, in performing its duties and functions under this subchapter, may enter into contracts with appropriate public or nonprofit private entities. The authority of the Commission to enter into such contracts is effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

(d) Informational requirements and prohibitions

(1) The Commission may secure directly from any Federal agency information necessary to enable it to carry out this subchapter. Upon request of the Chairman of the Commission, the head of such agency shall furnish such information to the Commission.

(2) The Commission shall promptly arrange for such security clearances for its members and appropriate staff as are necessary to obtain access to classified information needed to carry out its duties under this subchapter.

(3) The Commission shall not disclose any information reported to or otherwise obtained by the Commission which is exempt from disclosure under subsection (a) of section 552 of title 5 by reason of paragraphs (4) and (6) of subsection (b) of such section.

(e) Support services from Administrator of General Services

The Administrator of General Services shall provide to the Commission on a reimbursable basis such administrative support services as the Commission may request.

(July 1, 1944, ch. 373, title XVIII, § 1803, as added Nov. 9, 1978, Pub. L. 95-622, title III, § 301, 92 Stat. 3440.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b)(1), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

The General Schedule, referred to in subsecs. (b)(1) and (2), is set out under section 5332 of Title 5.

§ 300v-3. Authorization of appropriations; termination of Commission

(a) To carry out this subchapter there are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1979, $5,000,000 for the fiscal year ending September 30, 1980, $5,000,000 for the fiscal year ending September 30, 1981, and $5,000,000 for the fiscal year ending September 30, 1982.

(b) The Commission shall be subject to the Federal Advisory Committee Act, except that, under section 14(a)(1)(B) of such Act, the Commission shall terminate on December 31, 1982.

(July 1, 1944, ch. 373, title XVIII, § 1804, as added Nov. 9, 1978, Pub. L. 95-622, title III, § 301, 92 Stat. 3441.)

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[1] So in original. Probably should be "pursuant".

REFERENCES IN TEXT

The Federal Advisory Committee Act, referred to in subsec. (b), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees. Section 14(a)(1)(B) of such Act, referred to in subsec. (b), means section 14(a)(1)(B) of the Federal Advisory Committee Act.

CHAPTER 7—SOCIAL SECURITY

SUBCHAPTER II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

Sec.
- 426-1. End stage renal disease program [New].
    - (a) Entitlement to benefits.
    - (b) Duration of period of entitlement.
    - (c) Individuals participating in self-care dialysis training programs; kidney transplant failures; resumption of previously terminated regular course of dialysis.
- 433. International agreements [New].
    - (a) Purpose of agreement.
    - (b) Definitions.
    - (c) Crediting periods of coverage; conditions of payment of benefits.
    - (d) Regulations.
    - (e) Reports to Congress; effective date of agreements.

SUBCHAPTER IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

PART A—AID TO FAMILIES WITH DEPENDENT CHILDREN

- 611. Availability of wage information to States and political subdivisions; procedural safeguards [New].

PART D—CHILD SUPPORT AND ESTABLISHMENT OF PATERNITY

- 661. Regulations pertaining to garnishments [New].
    - (a) Authority to promulgate.
    - (b) Requisite content of promulgated regulations.
    - (c) Priority of processes.
- 662. Definitions [New].

SUBCHAPTER VII—ADMINISTRATION

- 907a. National Commission on Social Security [New].
    - (a) Establishment; membership; Chairman and Vice Chairman; quorum; terms of office; vacancies; per diem and expense reimbursement; meetings.
    - (b) Continuing study, investigation, and review of social security program; scope of study, etc., and public participation.
    - (c) Special, annual, and final reports to President and Congress concerning implementation, etc., of study, investigation, and review responsibilities; termination of Commission.
    - (d) Executive Director and additional personnel; appointment and compensation.
    - (e) Administrative procedures.
    - (f) Data and information from other Federal departments and agencies.
    - (g) Administrative support services from General Services Administration; reimbursement.
    - (h) Authorization of appropriations.

Sec.
    - (i) Notice of and attendance at meetings of Health Insurance Benefits Advisory Council.
- 909. Delivery of benefit checks; recovery of overpayments [New].

SUBCHAPTER XI—GENERAL PROVISIONS AND PROFESSIONAL STANDARDS REVIEW

PART A—GENERAL PROVISIONS

- 1320a. Uniform reporting systems for health services facilities and organizations [New].
    - (a) Establishment; criteria for regulations; requirements for hospitals.
    - (b) Monitoring, etc., of systems by Secretary.
    - (c) Availability of information to appropriate agencies and organizations.
- 1320a-3. Disclosure of ownership and related information; procedure; definitions; scope of requirements [New].
- 1320a-4. Issuance of subpenas by Comptroller General [New].
    - (a) Authorization; scope; service and proof of service.
    - (b) Contumacy or refusal to obey subpena; contempt proceedings.
    - (c) Nondisclosure of personal medical records by General Accounting Office.
- 1320a-5. Disclosure by institutions, organizations, and agencies of owners, officers, etc., convicted of offenses related to programs; notification requirements; definition [New].

PART B—PROFESSIONAL STANDARDS REVIEW

- 1320c-20. Federal-State relations [New].
    - (a) Memorandum of understanding between Professional Standards Review Organization and State agency as prerequisite for conclusiveness of determinations of Organization; waiver.
    - (b) Specification by Organization of review goals and methods in memorandum of understanding; procedures applicable.
    - (c) Contract by State agency and Organization for performance of additional review responsibilities by Organization; reimbursement as expense of State agency.
    - (d) State monitoring plans for State agency oversight of Organization performance of review responsibilities; development, approval, and contents; criteria and procedure for suspension of authority of Organization by Secretary.
    - (e) Establishment by Secretary of procedures and mechanisms to govern relations with State agencies; requirements for procedures and mechanisms; disclosure of information and data by Organization to State agency.
- 1320c-21. Annual reports to Congress; contents [New].
- 1320c-22. Medical officers in American Samoa, Northern Mariana Islands, and the Trust Territory of the Pacific Islands includable in program [New].

SUBCHAPTER XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

PART C—MISCELLANEOUS PROVISIONS

- 1395rr. End stage renal disease program [New].
    - (a) Type, duration, and scope of benefits.

Sec.
- (b) Payments with respect to services; dialysis; regulations; physicians' services; target reimbursement rates; home dialysis supplies and equipment; self-care home dialysis support services; self-care dialysis units.
- (c) Renal disease network areas; coordinating councils, executive committees, and medical review boards; national end stage renal disease medical information system; functions of network organizations.
- (d) Donors of kidney for transplant surgery.
- (e) Reimbursement of providers and facilities for costs of artificial kidney and automated dialysis peritoneal machines to be used in dialyzing at home.
- (f) Experiments, studies, and pilot projects.
- (g) Annual report to Congress.

SUBCHAPTER XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

1396k. Assignment, enforcement, and collection of rights of payments for medical care; establishment of procedures pursuant to State plan; amounts retained by State [New].

SUBCHAPTER XX—GRANTS TO STATES FOR SERVICES

1397e-1. Child day care services [New].
- (a) Sums granted for meeting work incentive program expenses.
- (b) Wage payments not qualifying as child day care services expenditures.
- (c) Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 242c, 256, 907a, 1437f, 2932, 3195, 4636 of this title; title 20 section 1070a; title 25 sections 459e, 609c-1, 639, 640d-21, 1264, 1407; title 26 sections 162, 412, 1402; title 29 sections 953, 1082; title 31 sections 1351, 1352; title 45 sections 231, 231a, 231b, 231c, 231d, 231e, 231f, 231q, 231r; title 50 App. section 1291.

SUBCHAPTER I—GRANTS TO STATES FOR OLD-AGE ASSISTANCE AND MEDICAL ASSISTANCE FOR THE AGED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 428, 602, 1301, 1306a, 1308, 1309, 1311, 1315, 1316, 1318, 1319, 1382, 1395v, 1395z, 1396a, 1396b, 1396d, 1397b of this title; title 29 section 802; title 31 section 665.

§ 301. Authorization of appropriations

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 302. State old-age and medical assistance plans

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§§ 303, 304

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER II—FEDERAL OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 662, 907, 907a, 909, 1320b-1, 1382c, 1382f, 1383, 1395c, 1395v, 1395gg, 1395ii, 1395*oo*, 1396a, 5055 of this title; title 5 sections 8141, 8311, 8345; title 7 sections 2012, 2014; title 10 section 1451; title 14 section 760; title 22 section 3310; title 26 sections 401, 404, 408, 411, 3121; title 29 sections 206, 762a, 938, 995, 1026, 1054, 1056; title 30 sections 922, 923; title 38 sections 412, 415, 3005, 3112; title 45 sections 231b, 231c, 231f, 231n, 231r, 354; title 50 App. section 36.

§ 401. Trust Funds

[*See main edition for text of* (*a*)]

(b) Federal Disability Insurance Trust Fund

There is created on the books of the Treasury of the United States a trust fund to be known as the "Federal Disability Insurance Trust Fund". The Federal Disability Insurance Trust Fund shall consist of such gifts and bequests as may be made as provided in subsection (i)(1) of this section, and such amounts as may be appropriated to, or deposited in, such fund as provided in this section. There is appropriated to the Federal Disability Insurance Trust Fund for the fiscal year ending June 30, 1957, and for each fiscal year thereafter, out of any moneys in the Treasury not otherwise appropriated, amounts equivalent to 100 per centum of—

(1)(A) one-half of 1 per centum of the wages (as defined in section 3121 of the Internal Revenue Code of 1954) paid after December 31, 1956, and before January 1, 1966, and reported to the Secretary of the Treasury or his delegate pursuant to subtitle F of the Internal Revenue Code of 1954, (B) 0.70 of 1 per centum of the wages (as so defined) paid after December 31, 1965, and before January 1, 1968, and so reported, (C) 0.95 of 1 per centum of the wages (as so defined) paid after December 31, 1967, and before January 1, 1970, and so reported, (D) 1.10 per centum of the wages (as so defined) paid after December 31, 1969, and before January 1, 1973, and so reported, (E) 1.1 per centum of the wages (as so defined) paid after December 31, 1972, and before January 1, 1974, and so reported, (F) 1.15 per centum of the wages (as so defined) paid after December 31, 1973, and before January 1, 1978, and so reported, (G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported, (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1981, and so reported, (I) 1.65 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1985, and so reported, (J)

1.90 per centum of the wages (as so defined) paid after December 31, 1984, and before January 1, 1990, and so reported, and (K) 2.20 per centum of the wages (as so defined) paid after December 31, 1989, and so reported, which wages shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of wages established and maintained by such Secretary in accordance with such reports; and

(2)(A) three-eighths of 1 per centum of the amount of self-employment income (as defined in section 1402 of the Internal Revenue Code of 1954) reported to the Secretary of the Treasury or his delegate on tax returns under subtitle F of the Internal Revenue Code of 1954 for any taxable year beginning after December 31, 1956, and before January 1, 1966, (B) 0.525 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1965, and before January 1, 1968, (C) 0.7125 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1967, and before January 1, 1970, (D) 0.825 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1969, and before January 1, 1973, (E) 0.795 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1972, and before January 1, 1974, (F) 0.815 of 1 per centum of the amount of self-employment income (as so defined) as reported for any taxable year beginning after December 31, 1973, and before January 1, 1978, (G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, (H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1981, (I) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1985, (J) 1.4250 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1984, and before January 1, 1990, and (K) 1.650 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989, which self-employment income shall be certified by the Secretary of Health, Education, and Welfare on the basis of the records of self-employment income established and maintained by the Secretary of Health, Education, and Welfare in accordance with such returns.

[*See main edition for text of* (*c*) *to* (*i*)]

(As amended Dec. 20, 1977, Pub. L. 95-216, title I, § 102(a), 91 Stat. 1513.)

Amendments

1977—Subsec. (b)(1). Pub. L. 95-216, § 102(a)(1), substituted "(G) 1.55 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1979, and so reported, (H) 1.50 per centum of the wages (as so defined) paid after December 31, 1978, and before January 1, 1981, and so reported, (I) 1.65 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1985, and so reported, (J) 1.90 per centum of the wages (as so defined) paid after December 31, 1984, and before January 1, 1990, and so reported, and (K) 2.20 per centum of the wages (as so defined) paid after December 31, 1989, and so reported" for "(G) 1.2 per centum of the wages (as so defined) paid after December 31, 1977, and before January 1, 1981, and so reported, (H) 1.3 per centum of the wages (as so defined) paid after December 31, 1980, and before January 1, 1986, and so reported, (I) 1.4 per centum of the wages (as so defined) paid after December 31, 1985, and before January 1, 2011, and so reported, and (J) 1.7 per centum of the wages (as so defined) paid after December 31, 2010, and so reported".

Subsec. (b)(2). Pub. L. 95-216, § 102(a)(2), substituted "(G) 1.090 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1979, (H) 1.0400 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1978, and before January 1, 1981, (I) 1.2375 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1985, (J) 1.4250 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1984, and before January 1, 1990, and (K) 1.650 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1989" for "(G) 0.850 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1977, and before January 1, 1981, (H) 0.920 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1980, and before January 1, 1986, (I) 0.990 of 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 1985, and before January 1, 2011, and (J) 1 per centum of the amount of self-employment income (as so defined) so reported for any taxable year beginning after December 31, 2010".

Change of Name

The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-216 applicable with respect to remuneration paid or received, and taxable years beginning after 1977, see section 104 of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 1401 of Title 26, Internal Revenue Code.

§ 402. Old-age and survivors insurance benefit payments

[*See main edition for text of* (*a*)]

(b) Wife's insurance benefits

(1) The wife (as defined in section 416(b) of this title) and every divorced wife (as defined in section 416(d) of this title) of an individual entitled to old-age or disability insurance benefits, if such wife or such divorced wife—

[*See main edition for text of* (*A*) *to* (*F*)]

(G) in the case of a wife, they are divorced and either (i) she has not attained age 62, or (ii) she has attained age 62 but has not been married to such individual for a period of 10 years immediately before the date the divorce became effective,

[*See main edition for text of* (*H*) *to* (*K*)]

(L) Redesignated (K)

(2) Except as provided in subsection (q) of this section and paragraph (4) of this subsection, such wife's insurance benefit for each month shall be equal to one-half of the primary insurance amount of her husband (or, in the case of a divorced wife, her former husband) for such month.

[*See main edition for text of* (*3*)]

(4)(A) The amount of a wife's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) of this section shall be reduced (but not below zero) by an amount equal to the amount of any monthly periodic benefit payable to such wife (or divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title.

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(c) Husband's insurance benefits

(1) The husband (as defined in section 416(f) of this title) of an individual entitled to old-age or disability insurance benefits, if such husband—

(A) has filed application for husband's insurance benefits,

(B) has attained age 62, and

(C) is not entitled to old-age or disability insurance benefits, or is entitled to old-age or disability insurance benefits based on a primary insurance amount which is less than one-half of the primary insurance amount of his wife,

shall be entitled to a husband's insurance benefit for each month, beginning with the first month after August 1950 in which he becomes so entitled to such insurance benefits and ending with the month preceding the month in which any of the following occurs: he dies, his wife dies, they are divorced, he becomes entitled to an old-age or disability insurance benefit based on a primary insurance amount which is equal to or exceeds one-half of the primary insurance amount of his wife, or his wife is not entitled to disability insurance benefits and is not entitled to old-age insurance benefits.

(2)(A) The amount of a husband's insurance benefit for each month as determined after application of the provisions of subsections (q) and (k) of this section shall be reduced (but not below zero) by an amount equal to the amount of any monthly periodic benefit payable to such husband for such month which is based upon his earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title.

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(3) Except as provided in subsection (q) of this section, and paragraph (2) of this subsection, such husband's insurance benefit for each month shall be equal to one-half of the primary insurance amount of his wife for such month.

[*See main edition for text of* (*d*)]

(e) Widow's insurance benefits

[*See main edition for text of* (*1*)]

(2)(A) Except as provided in subsection (q) of this section, paragraph (8) of this subsection, and subparagraph (B) of this paragraph, such widow's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of such deceased individual. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5) or (6) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which he was receiving (or would upon application have received) for the month prior to the month in which he died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section[1] the number of increment months shall include any month in the months of the calendar year in which he died, prior to the month in which he died, which satisfy the conditions in paragraph (2) of subsection (w) of this section.

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[1] So in original. Probably should be followed by a closing parenthesis.

(B) If the deceased individual (on the basis of whose wages and self-employment income a widow or surviving divorced wife is entitled to widow's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widow's insurance benefit of such widow or surviving divorced wife for any month shall, if the amount of the widow's insurance benefit of such widow or surviving divorced wife (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased individual would have been entitled (after application of subsection (q) of this section) for such month if such individual were still living and section 415(f)(5) or (6) of this title were applied, where applicable, and

(ii) 82½ percent of the primary insurance amount of such deceased individual,

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(3) If a widow, before attaining age 60, or a surviving divorced wife, marries—

(A) an individual entitled to benefits under subsection (f) or (h) of this section, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

such widow's or surviving divorced wife's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection, but subject to subsection (s) of this section, not be terminated by reason of such marriage; except that, in the case of such a marriage to an individual entitled to benefits under subsection (d) of this section, the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under subsection (d) of this section unless he ceases to be so entitled by reason of his death.

(4) If a widow, after attaining age 60, marries, such marriage shall, for purposes of paragraph (1), be deemed not to have occurred.

[*See main edition for text of* (5) *to* (7)]

(8)(A) The amount of a widow's insurance benefit for each month as determined (after application of the provisions of subsections (q) and (k) of this section, paragraph (2)(B), and paragraph (4)) shall be reduced (but not below zero) by an amount equal to the amount of any monthly periodic benefit payable to such widow (or surviving divorced wife) for such month which is based upon her earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day she was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title.

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(f) Widower's insurance benefits

(1) The widower (as defined in section 416(g) of this title) of an individual who died a fully insured individual, if such widower—

[*See main edition for text of* (A) *to* (C)]

(D) is not entitled to old-age insurance benefits or is entitled to old-age insurance benefits each of which is less than the primary insurance amount of his deceased wife,

shall be entitled to a widower's insurance benefit for each month, beginning with—

(E) if he satisfies subparagraph (B) by reason of clause (i) thereof, the first month in which he becomes so entitled to such insurance benefits, or

(F) if he satisfies subparagraph (B) by reason of clause (ii) thereof—

(i) the first month after his waiting period (as defined in paragraph (7)) in which he becomes so entitled to such insurance benefits, or

(ii) the first month during all of which he is under a disability and in which he becomes so entitled to such insurance benefits, but only if he was previously entitled to insurance benefits under this subsection on the basis of being under a disability and such first month occurs (I) in the period specified in paragraph (6) and (II) after the month in which a previous entitlement to such benefits on such basis terminated,

and ending with the month preceding the first month in which any of the following occurs: he remarries, dies, or becomes entitled to an old-age insurance benefit equal to or exceeding the primary insurance amount of his deceased wife, or, if he became entitled to such benefits before he attained age 60, the third month following the month in which his disability ceases (unless he attains age 65 on or before the last day of such third month).

(2)(A) The amount of a widower's insurance benefit for each month (as determined after application of the provisions of subsections (k) and (q) of this section, paragraph (3)(B), and paragraph (5)) shall be reduced (but not below zero) by an amount equal to the amount of any monthly periodic benefit payable to such widower for such month which is based upon his earnings while in the service of the Federal Government or any State (or any political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day he was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title.

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

(3)(A) Except as provided in subsection (q) of this section, paragraph (2) of this subsection, and subparagraph (B) of this paragraph, such widower's insurance benefit for each month shall be equal to the primary insurance amount (as determined after application of the following sentence) of his deceased wife. If such deceased individual was (or upon application would have been) entitled to an old-age insurance benefit which was increased (or subject to being increased) on account of delayed retirement under the provisions of subsection (w) of this section, then, for purposes of this subsection, such individual's primary insurance amount, if less than the old-age insurance benefit (increased, where applicable, under section 415(f)(5) or (6) of this title and under section 415(i) of this title as if such individual were still alive in the case of an individual who has died) which she was receiving (or would upon application have received) for the month prior to the month in which she died, shall be deemed to be equal to such old-age insurance benefit, and (notwithstanding the provisions of paragraph (3) of subsection (w) of this section) the number of increment months shall include any month in the months of the calendar year in which she died, prior to the month in which she died, which satisfy the conditions in paragraph (2) of subsection (w) of this section.

(B) If the deceased wife (on the basis of whose wages and self-employment income a widower is entitled to widower's insurance benefits under this subsection) was, at any time, entitled to an old-age insurance benefit which was reduced by reason of the application of subsection (q) of this section, the widower's insurance benefit of such widower for any month shall, if the amount of the widower's insurance benefit of such widower (as determined under subparagraph (A) and after application of subsection (q) of this section) is greater than—

(i) the amount of the old-age insurance benefit to which such deceased wife would have been entitled (after application of subsection (q) of this section) for such month if such wife were still living and section 415(f)(5) or (6) of this title were applied, where applicable, and

(ii) 82½ percent of the primary insurance amount of such deceased wife;

be reduced to the amount referred to in clause (i), or (if greater) the amount referred to in clause (ii).

(4) If a widower, before attaining age 60, remarries—

(A) an individual entitled to benefits under subsection (b), (e), (g), or (h) of this section, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

such widower's entitlement to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage.

(5) If a widower, after attaining age 60, marries, such marriage shall, for purposes of paragraph (1), be deemed not to have occurred.

[*See main edition for text of (6)*]

(7) The waiting period referred to in paragraph (1)(F), in the case of any widower, is the earliest period of five consecutive calendar months—

[*See main edition for text of (A) and (B), (8)*]

(g) Mother's insurance benefits

[*See main edition for text of (1)*]

(2) Except as provided in paragraph (4) of this subsection, such mother's insurance benefit for each month shall be equal to three-fourths of the primary insurance amount of such deceased individual.

(3) In the case of a widow or surviving divorced mother who marries—

(A) an individual entitled to benefits under subsection (a), (f), or (h) of this section, or under section 423(a) of this title, or

(B) an individual who has attained the age of eighteen and is entitled to benefits under subsection (d) of this section,

the entitlement of such widow or surviving divorced mother to benefits under this subsection shall, notwithstanding the provisions of paragraph (1) of this subsection but subject to subsection (s) of this section, not be terminated by reason of such marriage; except that, in the case of such a marriage to an individual entitled to benefits under section 423(a) of this title or subsection (d) of this section, the preceding provisions of this paragraph shall not apply with respect to benefits for months after the last month for which such individual is entitled to such benefits under section 423(a) of this title or subsection (d) of this section unless (i) he ceases to be so entitled by reason of his death, or (ii) in the case of an individual who was entitled to benefits under section 423(a) of this title, he is entitled, for the month following such last month, to benefits under subsection (a) of this section.

(4)(A) The amount of a mother's insurance benefit for each month to which any individual is entitled under this subsection (as determined after application of subsection (k) of this section) shall be reduced (but not below zero) by an amount equal to the amount of any monthly periodic benefit payable to such individual for such month which is based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 418(b)(2) of this title) if, on the last day such individual was employed by such entity, such service did not constitute "employment" as defined in section 410 of this title.

(B) For purposes of this paragraph, any periodic benefit which otherwise meets the requirements of subparagraph (A), but which is paid on other than a monthly basis, shall be allocated on a basis equivalent to a monthly benefit (as determined by the Secretary) and such equivalent monthly benefit shall constitute a monthly periodic benefit for purposes of subparagraph (A). For purposes of this subparagraph, the term "periodic benefit" includes a benefit payable in a lump sum if it is a commutation of, or a substitute for, periodic payments.

[*See main edition for text of* (*h*) *and* (*i*)]

(j) Application for monthly insurance benefits

(1) Subject to the limitations contained in paragraph (4), an individual who would have been entitled to a benefit under subsections (a) to (g), or (h) of this section for any month after August 1950 had he filed application therefor prior to the end of such month shall be entitled to such benefit for such month if he files application therefor prior to the end of the twelfth month immediately succeeding such month. Any benefit under this subchapter for a month prior to the month in which application is filed shall be reduced, to any extent that may be necessary, so that it will not render erroneous any benefit which, before the filing of such application, the Secretary has certified for payment for such prior month.

[*See main edition for text of* (*2*) *and* (*3*)]

(4)(A) Except as provided in subparagraph (B), no individual shall be entitled to a monthly benefit under subsection (a), (b), (c), (e), or (f) of this section for any month prior to the month in which he or she files an application for benefits under that subsection if the effect of entitlement to such benefit would be to reduce, pursuant to subsection (q) of this section, the amount of the monthly benefit to which such individual would otherwise be entitled for the month in which such application is filed.

(B)(i) If the individual applying for retroactive benefits is applying for such benefits under subsection (a) of this section, and there are one or more other persons who would (except for subparagraph (A)) be entitled for any month, on the basis of the wages and self-employment income of such individual and because of such individual's entitlement to such retroactive benefits, to retroactive benefits under subsection (b), (c), or (d) of this section not subject to reduction under subsection (q) of this section, then subparagraph (A) shall not apply with respect to such month or any subsequent month.

(ii) If the individual applying for retroactive benefits is a widow, surviving divorced wife, or widower and is under a disability (as defined in section 423(d) of this title), and such individual would, except for subparagraph (A), be entitled to retroactive benefits as a disabled widow or widower or disabled surviving divorced wife for any month before attaining the age of 60, then subparagraph (A) shall not apply with respect to such month or any subsequent month.

(iii) If the individual applying for retroactive benefits has excess earnings (as defined in section 403(f) of this title) in the year in which he or she files an application for such benefits which could, except for subparagraph (A), be charged to months in such year prior to the month of application, then subparagraph (A) shall not apply to so many of such months immediately preceding the month of application as are required to charge such excess earnings to the maximum extent possible.

(iv) As used in this subparagraph, the term "retroactive benefits" means benefits to which an individual becomes entitled for a month prior to the month in which application for such benefits is filed.

[*See main edition for text of* (*k*) *to* (*l*)]

(m) Minimum survivor's benefit

(1) In any case in which an individual is entitled to a monthly benefit under this section on the basis of a primary insurance amount computed under section 415(a) or (d) of this title, as in effect after December 1978, on the basis of the wages and self-employment income of a deceased individual for any month and no other person is (without the application of subsection (j)(1) of this section) entitled to a monthly benefit under this section for that month on the basis of such wages and self-employment income, the individual's benefit amount for that month, prior to reduction under subsection (k)(3) of this section, shall not be less than that provided by subparagraph (C)(i)(I) of section 415(a)(1) of this title and increased under section 415(i) of this title for months after May of the year in which the insured individual died as though such benefit were a primary insurance amount.

[*See main edition for text of* (*2*); (*n*) *and* (*o*)]

(p) Extension of period for filing proof of support and applications for lump-sum death payment

In any case in which there is a failure—

(1) to file proof of support under subparagraph (B) of subsection (h)(1) of this section, or under clause (B) of subsection (f)(1) of this section as in effect prior to the Social Security Act Amendments of 1950, within the period prescribed by such subparagraph or clause, or

[*See main edition for text of* (*2*)]

any proof or application, as the case may be, which is filed after the expiration of such period shall be deemed to have been filed within such period if it is shown to the satisfaction of the Secretary that there was good cause for failure to file such proof or application within such period. The determination of what constitutes good cause for purposes of this subsection shall be made in accordance with regulations of the Secretary.

(q) Reduction of benefit amounts for certain beneficiaries

[*See main edition for text of* (*1*) *and* (*2*)]

(3)(A) If the first month for which an individual both is entitled to a wife's, husband's, widow's, or widower's insurance benefit and has attained age 62 (in the case of a wife's or husband's insurance benefit) or age 50 (in the case of a widow's or widower's insurance benefit) is a month for which such individual is also entitled to—

(i) an old-age insurance benefit (to which such individual was first entitled for a month before he attains age 65), or

(ii) a disability insurance benefit,

then in lieu of any reduction under paragraph (1) (but subject to the succeeding paragraphs of this subsection) such wife's, husband's, widow's, or widower's insurance benefit for each month shall be reduced as provided in subparagraph (B), (C), or (D).

[*See main edition for text of (B) to (G)*]

(H) Notwithstanding subparagraph (A) of this paragraph, if the first month for which an individual is entitled to a widow's or widower's insurance benefit is a month for which such individual is also entitled to an old-age insurance benefit to which such individual was first entitled for that month or for a month before she or he became entitled to a widow's or widower's benefit, the reduction in such widow's or widower's insurance benefit shall be determined under paragraph (1).

(4) If—

(A) an individual is or was entitled to a benefit subject to reduction under paragraph (1) or (3) of this subsection, and

(B) such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based,

then the amount of the reduction of such benefit (after the application of any adjustment under paragraph (7)) for each month beginning with the month of such increase in the primary insurance amount shall be computed under paragraph (1) or (3), whichever applies, as though the increased primary insurance amount had been in effect for and after the month for which the individual first became entitled to such monthly benefit reduced under such paragraph (1) or (3).

[*See main edition for text of (5) and (6)*]

(7) For purposes of this subsection the "adjusted reduction period" for an individual's old-age, wife's, husband's, widow's, or widower's insurance benefit is the reduction period prescribed in paragraph (6)(A) for such benefit, and the "additional adjusted reduction period" for an individual's, widow's, or widower's insurance benefit is the additional reduction period prescribed by paragraph (6)(B) for such benefit, excluding from each such period—

[*See main edition for text of (A) and (B)*]

(C) in the case of wife's or husband's insurance benefits, any month for which such individual was not entitled to such benefits because of the occurrence of an event that terminated her or his entitlement to such benefits,

[*See main edition for text of (D) to (F), (8) and (9)*]

(10) For purposes of applying paragraph (4), with respect to monthly benefits payable for any month after December 1977 to an individual who was entitled to a monthly benefit as reduced under paragraph (1) or (3) prior to January 1978, the amount of reduction in such benefit for the first month for which such benefit is increased by reason of an increase in the primary insurance amount of the individual on whose wages and self-employment income such benefit is based and for all subsequent months (and similarly for all subsequent increases) shall be increased by a percentage equal to the percentage increase in such primary insurance amount (such increase being made in accordance with the provisions of paragraph (8)). In the case of an individual whose reduced benefit under this section is increased as a result of the use of an adjusted reduction period or an additional adjusted reduction period (in accordance with paragraphs (1) and (3) of this subsection), then for the first month for which such increase is effective, and for all subsequent months, the amount of such reduction (after the application of the previous sentence, if applicable) shall be determined—

(A) in the case of old-age, wife's, and husband's insurance benefits, by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period to (ii) the number of months in the reduction period,

(B) in the case of widow's and widower's insurance benefits for the month in which such individual attains age 62, by multiplying such amount by the ratio of (i) the number of months in the reduction period beginning with age 62 multiplied by $\frac{19}{40}$ of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by $\frac{19}{40}$ of 1 percent, plus the number of months in the adjusted additional reduction period multiplied by $\frac{43}{240}$ of 1 percent to (ii) the number of months in the reduction period multiplied by $\frac{19}{40}$ of 1 percent, plus the number of months in the additional reduction period multiplied by $\frac{43}{240}$ of 1 percent, and

(C) in the case of widow's and widower's insurance benefits for the month in which such individual attains age 65, by multiplying such amount by the ratio of (i) the number of months in the adjusted reduction period multiplied by $\frac{19}{40}$ of 1 percent, plus the number of months in the adjusted additional reduction period multiplied by $\frac{43}{240}$ of 1 percent to (ii) the number of months in the reduction period beginning with age 62 multiplied by $\frac{19}{40}$ of 1 percent, plus the number of months in the adjusted reduction period prior to age 62 multiplied by $\frac{19}{40}$ of 1 percent, plus the number of months in the adjusted additional reduction period multiplied by $\frac{43}{240}$ of 1 percent,

such determination being made in accordance with the provisions of paragraph (8).

(11) When an individual is entitled to more than one monthly benefit under this subchapter and one or more of such benefits are reduced under this subsection, paragraph (10) shall apply separately to each such benefit reduced under this subsection before the application of subsection (k) of this section (pertaining to the method by which monthly benefits are offset when an individual is entitled to more than one kind of benefit) and the application of

this paragraph shall operate in conjunction with paragraph (3).

[*See main edition for text of* (*r*)]

(s) Child aged 18 or over attending school

[*See main edition for text of* (*1*) *and* (*2*)]

(3) So much of subsections (b)(3), (d)(5), (e)(3), (g)(3), and (h)(4) of this section as follows the semicolon, the last sentence of subsection (c) of section 403 of this title, subsection (f)(1)(C) of section 403 of this title, and subsections (b)(3)(B), (c)(6)(B), (f)(3)(B), and (g)(6)(B) of section 416 of this title shall not apply in the case of any child with respect to any month referred to therein unless in such month or the third month prior thereto such child was under a disability (as defined in section 423(d) of this title).

(t) Suspension of benefits of aliens who are outside the United States

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Paragraph (1) of this subsection shall not apply to any benefit for any month if—

[*See main edition for text of* (*A*) *to* (*D*)]

(E) the individual on whose employment such benefit is based had been in service covered by the Railroad Retirement Act which was treated as employment covered by this chapter pursuant to the provisions of section 5(k)(1) of the Railroad Retirement Act [45 U.S.C. 288e(k)(1)];

except that subparagraphs (A) and (B) of this paragraph shall not apply in the case of any individual who is a citizen of a foreign country that has in effect a social insurance or pension system which is of general application in such country and which satisfies subparagraph (A) but not subparagraph (B) of paragraph (2), or who is a citizen of a foreign country that has no social insurance or pension system of general application if at any time within five years prior to the month in which the Social Security Amendments of 1967 are enacted (or the first month thereafter for which his benefits are subject to suspension under paragraph (1)) payments to individuals residing in such country were withheld by the Treasury Department under section 123 of title 31.

[*See main edition for text of* (*5*) *to* (*10*)]

(u) Conviction of subversive activities, etc.

(1) If any individual is convicted of any offense (committed after August 1, 1956) under—

(A) chapter 37 (relating to espionage and censorship), chapter 105 (relating to sabotage), or chapter 115 (relating to treason, sedition, and subversive activities) of title 18, or

(B) section 783, 822, or 823 of title 50,

then the court may, in addition to all other penalties provided by law, impose a penalty that in determining whether any monthly insurance benefit under this section or section 423 of this title is payable to such individual for the month in which he is convicted or for any month thereafter, in determining the amount of any such benefit payable to such individual for any such month, and in determining whether such individual is entitled to insurance benefits under part A of subchapter XVIII of this chapter for any such month, there shall not be taken into account—

(C) any wages paid to such individual or to any other individual in the calendar year in which such conviction occurs or in any prior calendar year, and

(D) any net earnings from self-employment derived by such individual or by any other individual during a taxable year in which such conviction occurs or during any prior taxable year.

[*See main edition for text of* (*2*) *and* (*3*)]

(v) Waiver of benefits

Notwithstanding any other provisions of this subchapter, in the case of any individual who files a waiver pursuant to section 1402(g) of the Internal Revenue Code of 1954 and is granted a tax exemption thereunder, no benefits or other payments shall be payable under this subchapter to him, no payments shall be made on his behalf under part A of subchapter XVIII of this chapter, and no benefits or other payments under this subchapter shall be payable on the basis of his wages and self-employment income to any other person, after the filing of such waiver; except that, if thereafter such individual's tax exemption under such section 1402(g) ceases to be effective, such waiver shall cease to be applicable in the case of benefits and other payments under this subchapter and part A of subchapter XVIII of this chapter to the extent based on his self-employment income for and after the first taxable year for which such tax exemption ceases to be effective and on his wages for and after the calendar year (if any) which begins in or with the beginning of such taxable year.

(w) Increase in old-age insurance benefit amounts on account of delayed retirement

(1) The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title as in effect in December 1978, or section 415(a)(1)(C)(i)(II) of this title as in effect thereafter) which is payable without regard to this subsection to an individual shall be increased by—

(A) 1/12 of 1 percent of such amount, or, in the case of an individual who first becomes eligible for an old-age insurance benefit after December 1978, one-quarter of 1 percent of such amount, multiplied by

(B) the number (if any) of the increment months for such individual.

[*See main edition for text of* (*2*) *to* (*4*)]

(5) If an individual's primary insurance amount is determined under paragraph (3) of section 415(a) of this title is in effect in December 1978, or section 415(a)(1)(C)(i)(II) of this title as in effect thereafter, and, as a result of this subsection, he would be entitled to a higher old-age insurance benefit if his primary insurance amount were determined under sec-

tion 415(a) of this title (whether before, in, or after December 1978) without regard to such paragraph, such individual's old-age insurance benefit based upon his primary insurance amount determined under such paragraph shall be increased by an amount equal to the difference between such benefit and the benefit to which he would be entitled if his primary insurance amount were determined under such section without regard to such paragraph.

(As amended Dec. 20, 1977, 95-216, title II, §§ 203, 204(a)-(d), 205(a), (b), title III, §§ 331(a)-(c), 332(a)(1), (2), 334(a)-(d)(4)(A), (5), (6), (e), 336(a), (b), 337(b), 353(f)(1), 91 Stat. 1527-1529, 1541-1548, 1554; Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(j)(14)(A), 92 Stat. 2942.)

AMENDMENTS

1978—Subsec. (v). Pub. L. 95-600 substituted "1402(g)" for "1402(h)".

1977—Subsec. (b)(1)(G). Pub. L. 95-216, § 337(b), substituted "10" for "20".

Subsec. (b)(2). Pub. L. 95-216, § 334(a)(1), added reference to par. (4) of this subsection.

Subsec. (b)(4). Pub. L. 95-216, § 334(a)(2), added par. (4).

Subsec. (c)(1). Pub. L. 95-216, § 334(b)(1), in subpar. (B) added "and" following "62,", struck out subpar. (C), which related to support payment requirements for the husband, and redesignated former subpar. (D) as (C).

Subsec. (c)(2). Pub. L. 95-216, § 334(b)(2), substituted provisions relating to reduction of the amount of the husband's insurance benefit for each month as determined after application of the provisions of subsecs. (q) and (k) of this section for provisions relating to applicability of provisions of former subsec. (c)(1)(C) of this section, as subject to subsec. (s) of this section.

Subsec. (c)(3). Pub. L. 95-216, § 334(b)(3), added reference to par. (2) of this subsection.

Subsec. (e)(2)(A). Pub. L. 95-216, §§ 204(a), 334(c)(1), 336(a)(1), added "(as determined after application of the following sentence)" following "primary insurance amount", provisions relating to entitlement of the deceased to an old-age insurance benefit which was increased or was to be increased on account of delayed retirement, and reference to par. (8) of this subsection, and struck out reference to par. (4) of this subsection.

Subsec. (e)(2)(B). Pub. L. 95-216, § 204(b), added reference to section 415(f)(5) or (6) of this title in cl. (i).

Subsec. (e)(3). Pub. L. 95-216, § 336(a)(2), substituted "If a widow, before attaining age 60, or a surviving divorced wife," for "In the case of a widow or surviving divorced wife who".

Subsec. (e)(4). Pub. L. 95-216, § 336(a)(3), struck out reference to an individual (other than one described in subsec. (e)(3)(A) or (B) of this section) as the husband, and provisions relating to benefits during the marriage.

Subsec. (e)(8). Pub. L. 95-216, § 334(c)(2), added par. (8).

Subsec. (f)(1). Pub. L. 95-216, § 334(d)(1), struck out subpar. (D), which related to receipt of support by the widower in accordance with regulations promulgated by the Secretary, and redesignated former subpars. (E) to (G) as (D) to (F), respectively.

Subsec. (f)(2). Pub. L. 95-216, § 334(d)(2), substituted provisions relating to reduction of the amount of the widower's insurance benefit for each month as determined after application of the provisions of subsecs. (k) and (q) of this section and pars. (3)(B) and (5) of this subsec., for provisions relating to applicability of former subsec. (f)(1)(D) of this section, as subject to subsec. (s) of this section.

Subsec. (f)(3)(A). Pub. L. 95-216, §§ 204(c), 334(d)(3), 336(b)(1), added "(as determined after application of the following sentence)" following "primary insurance amount", provisions relating to entitlement of the deceased to an old-age insurance benefit which was increased or was to be increased on account of delayed retirement, and reference to par. (2) of this subsection, and struck out reference to par. (5) of this subsection.

Subsec. (f)(3)(B). Pub. L. 95-216, § 204(d), added reference to section 415(f)(5) or (6) of this title in cl. (i).

Subsec. (f)(4). Pub. L. 95-216, § 336(b)(2), substituted "If a widower, before attaining age 60," for "In the case of a widower who".

Subsec. (f)(5). Pub. L. 95-216, § 336(b)(3), struck out reference to an individual (other than one described in subsec. (f)(4)(A) or (B) of this section) as the wife, and provisions relating to benefits during the marriage.

Subsec. (f)(7). Pub. L. 95-216, § 334(d)(4)(A), substituted "(F)" for "(G)".

Subsec. (g)(2). Pub. L. 95-216, § 334(e)(1), substituted "Except as provided in paragraph (4) of this subsection, such" for "Such".

Subsec. (g)(4). Pub. L. 95-216, § 334(e)(2), added par. (4).

Subsec. (j)(1). Pub. L. 95-216, § 332(a)(1), substituted "Subject to the limitations contained in paragraph (4), an" for "An".

Subsec. (j)(4). Pub. L. 95-216, § 332(a)(2), added par. (4).

Subsec. (m)(1). Pub. L. 95-216, § 205(a), substituted provisions relating to entitlement to monthly benefits under this section on the basis of primary insurance amounts computed under section 415(a) or (d) of this title as in effect after Dec., 1978, for provisions relating to entitlement to monthly benefits under this section on the basis of wages and self-employment income of deceased individuals for any month.

Subsec. (p)(1). Pub. L. 95-216, § 334(d)(5), struck out references to subsecs. (c)(1)(C) and (f)(1)(D)(i) or (ii) of this section.

Subsec. (q)(3)(H). Pub. L. 95-216, § 331(c)(2), added "for that month or" following "first entitled".

Subsec. (q)(4). Pub. L. 95-216, § 331(a), substituted provisions setting forth factors for the computation of the amount of the reduction of the benefit for each month beginning with the month of the increase in the primary insurance amount, after application of any adjustment under par. (7) of this subsec., for provisions setting forth factors for the computation of the amount of the reduction of the benefit for each month.

Subsec. (q)(7)(C). Pub. L. 95-216, § 331(c)(1), substituted "of the occurrence of an event that terminated her or his entitlement to such benefits" for "the spouse on whose wages and self-employment income such benefits were based ceased to be under a disability".

Subsec. (q)(10), (11). Pub. L. 95-216, § 331(b), added pars. (10) and (11).

Subsec. (s)(3). Pub. L. 95-216, § 334(d)(6), substituted "So" for "Subsections (c)(2)(B) and (f)(2)(B) of this section, so".

Subsec. (u)(1)(C). Pub. L. 95-216, § 353(f)(1), substituted "year" for "quarter" wherever appearing therein.

Subsec. (w)(1). Pub. L. 95-216, §§ 203(1), 205(b)(1), substituted "The amount of an old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title as in effect in December 1978 or section 415(a)(1)(C)(i)(II) of this title as in effect thereafter) which is payable without regard to this subsection to an individual" for "If the first month for which an old-age insurance benefit becomes payable to an individual is not earlier than the month in which such individual attains age 65 (or his benefit payable at such age is not reduced under subsection (q) of this section), the amount of the old-age insurance benefit (other than a benefit based on a primary insurance amount determined under section 415(a)(3) of this title) which is payable without regard to this subsection to such individual".

Subsec. (w)(1)(A). Pub. L. 95-216, § 203(2), added provision relating to individuals eligible after Dec., 1978.

Subsec. (w)(5). Pub. L. 95-216, § 205(b)(2), (3), added "as in effect in December 1978, or section 415(a)(1)(C)(i)(II) of this title as in effect thereafter," following "(3) of section 415(a) of this title" and "(whether before, in, or after December 1978)" following "under section 415(a) of this title".

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of Title 26, Internal Revenue Code.

Effective Date of 1977 Amendment

Section 206 of title II of Pub. L. 95-216 provided that: "The amendments made by the provisions of this title other than sections 201(d), 204, and 205(a) [amending subsec. (w)(1) and (5) of this section and sections 403(a), 415(a) to (c), (e), (f)(2) to (4), (7), (8), (i)(2)(A)(ii) to (v), (D), (4), 417(b)(1), 424a(a) and 1395r(c)(3)(B) of this title] shall be effective with respect to monthly benefits under title II of the Social Security Act [this subchapter] payable for months after December 1978 and with respect to lump-sum death payments with respect to deaths occurring after such month. The amendments made by section 201(d) [amending section 415(d)(1)(A), (B), (D), (3), and (4) of this title] shall be effective with respect to monthly benefits of an individual who becomes eligible for an old-age or disability insurance benefit, or dies, after December 1977. The amendments made by section 204 [amending subsec. (e)(2)(A), (B)(i), (f)(3)(A), and (B)(i) of this section and section 403(a)(8) of this title] shall be effective with respect to monthly benefits for months after May 1978. The amendment made by section 205(a) [amending subsec. (m)(1) of this section] shall be effective with respect to monthly benefits payable for months after December 1978 based on the wages and self-employment income of individuals who die after December 1978."

Section 331(d) of Pub. L. 95-216 provided that: "The amendments made by this section [amending subsec. (q)(3)(H), (4), (7)(C), (10), and (11) of this section] shall be effective with respect to monthly benefits payable for months after December 1977."

Section 332(b) of Pub. L. 95-216 provided that: "The amendments made by subsection (a) [amending subsec. (j)(1) and (4) of this section and section 426(h)(4) of this title] shall be effective with respect to monthly insurance benefits under title II of the Social Security Act to which an individual becomes entitled on the basis of an application filed on or after January 1, 1978."

Section 334(f) of Pub. L. 95-216 provided that: "The amendments made by this section [amending subsecs. (b)(2), (4), (c)(1)(B) to (D), (2), (3), (e)(2)(A), (8), (f)(1)(D) to (G), (2), (3)(A), (7), (g)(2), (4), (p)(1) and (s)(3) of this section and section 426(h)(1)(B) of this title and enacting provisions set out as notes under this section] shall apply with respect to monthly insurance benefits payable under title II of the Social Security Act [this subchapter] for months beginning with the month in which this Act is enacted [Dec., 1977], on the basis of applications filed in or after the month in which this Act is enacted."

Section 336(c)(1) of Pub. L. 95-216 provided that: "The amendments made by this section [amending subsecs. (e)(2)(A), (3), (4), (f)(3)(A), (4), and (5) of this section] shall apply only with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979."

Section 337(c) of Pub. L. 95-216 provided that: "The amendments made by this section [amending subsec. (b)(1)(G) of this section and section 416(d)(1) and (2) of this title] shall apply with respect to monthly benefits payable under title II of the Social Security Act [this subchapter] for months after December 1978, and, in the case of individuals who are not entitled to benefits of the type involved for December 1978, only on the basis of applications filed on or after January 1, 1979."

Section 353(f)(1) of Pub. L. 95-216 provided in part that the amendment of subsec. (u)(1)(C) by Pub. L. 95-216 is effective with respect to convictions after Dec. 31, 1977.

Nonapplicability of Amendments by Section 334 of Pub. L. 95-216 to Monthly Insurance Benefits Payable to Individuals Eligible for Monthly Periodic Benefits; Savings Provisions

Section 334(g) of Pub. L. 95-216 provided that:

"(1) The amendments made by the preceding provisions of this section [see section 334(f) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note above] shall not apply with respect to any monthly insurance benefit payable, under subsection (b), (c), (e), (f), or (g) (as the case may be) of section 202 of the Social Security Act [subsec. (b), (c), (e), (f), or (g) of this section] to an individual—

"(A) to whom there is payable for any month within the 60-month period beginning with the month in which this Act [Dec., 1977] is enacted (or who is eligible in any such month for) a monthly periodic benefit (within the meaning of such provisions) based upon such individual's earnings while in the service of the Federal Government or any State (or political subdivision thereof, as defined in section 218(b)(2) of the Social Security Act) [section 418(b)(2) of this title]; and

"(B) who at time of application for or initial entitlement to such monthly insurance benefit under such subsection (b), (c), (e), (f), or (g) meets the requirements of that subsection as it was in effect and being administered in January 1977.

"(2) For purposes of paragraph (1)(A), an individual is eligible for a monthly periodic benefit for any month if such benefit would be payable to such individual for that month if such individual were not employed during that month and had made proper application for such benefit.

"(3) If any provision of this subsection, or the application thereof to any person or circumstance, is held invalid, the remainder of this section shall not be affected thereby, but the application of this subsection to any other persons or circumstances shall also be considered invalid."

Redetermination of Widow's and Widower's Monthly Insurance Benefits for Months After December 1978

Section 336(c)(2) of Pub. L. 95-216 provided that: "In the case of an individual who was entitled for the month of December 1978 to monthly insurance benefits under subsection (e) or (f) of section 202 of the Social Security Act [subsec. (e) or (f) of this section] to which the provisions of subsection (e)(4) or (f)(5) [subsec. (e)(4) or (f)(5) of this section] applied, the Secretary shall, if such benefits would be increased by the amendments made by this section [amending subsecs. (e)(2)(A), (3), (4), (f)(3)(A), (4), and (5) of this section] redetermine the amount of such benefits for months after December 1978 as if such amendments had been in effect for the first month for which the provisions of section 202(e)(4) or 202(f)(5) [subsec. (e)(4) or (f)(5) of this section] became applicable."

Minimum Monthly Insurance Benefits for Months After December 1978, for Widow or Widower and Other Jointly Entitled Individuals

Section 336(d) of Pub. L. 95-216 provided that:

"Where—

"(1) two or more persons are entitled to monthly benefits under section 202 of the Social Security Act [this section] for December 1978 on the basis of the wages and self-employment income of a deceased individual, and one or more of such persons is so entitled under subsection (e) or (f) of such section 202 [subsec. (e) or (f) of this section], and

"(2) one or more of such persons is entitled on the basis of such wages and self-employment income to monthly benefits under subsection (e) or (f) of such section 202 (as amended by this section) [subsec. (e) or (f) of this section] for January 1979, and

"(3) the total of benefits to which all persons are entitled under section 202 of such Act [section 202 of this title] on the basis of such wages and self-employment income for January 1979 is reduced by reason of section 203(a) of such Act as amended by this Act [section 403(a) of this title] (or would, but for the first sentence of section 203(a)(4) [section 403(a)(4) of this title], be so reduced),

then the amount of the benefit to which each such person referred to in paragraph (1) is entitled for months after December 1978 shall in no case be less after the application of this section [see section 336(c)(1) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under this section.] and such section 203(a) [section 403(a) of this title] than the amount it would have been without the application of this section."

Termination of Special 50 Payments Under Tax Reduction Act of 1975

Pub. L. 95-30, title IV, § 406, May 23, 1977, 91 Stat. 156, provided that: "Notwithstanding the provisions of section 702(a) of the Tax Reduction Act of 1975 [see Pub. L. 94-12, § 702, set out as a note under this section in the main Edition], no payment shall, after the date of the enactment of this Act [May 23, 1977], be made under that section."

Section Referred to in Other Sections

This section is referred to in sections 401, 403, 405, 415, 416, 417, 422, 423, 424a, 425, 426, 426a, 427, 428, 433, 1320b-1, 1395i-1, 1395p, 1395s of this title; title 5 section 8332; title 30 sections 902, 922; title 38 sections 412, 422; title 45 sections 231a, 231c, 231e, 231f.

§ 403. Reduction of insurance benefits

(a) Maximum benefits

(1) In the case of an individual whose primary insurance amount has been computed or recomputed under section 415(a)(1) or (4) of this title or section 415(d) of this title, as in effect after December 1978, the total monthly benefits to which beneficiaries may be entitled under section 402 or 423 of this title for a month on the basis of the wages and self-employment income of such individual shall, except as provided by paragraph (3) (but prior to any increases resulting from the application of paragraph (2)(A)(ii)(III) of section 415(i) of this title), be reduced as necessary so as not to exceed—

(A) 150 percent of such individual's primary insurance amount to the extent that it does not exceed the amount established with respect to this subparagraph by paragraph (2),

(B) 272 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (A) but does not exceed the amount established with respect to this subparagraph by paragraph (2),

(C) 134 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (B) but does not exceed the amount established with respect to this subparagraph by paragraph (2), and

(D) 175 percent of such individual's primary insurance amount to the extent that it exceeds the amount established with respect to subparagraph (C).

Any such amount that is not a multiple of $0.10 shall be increased to the next higher multiple of $0.10.

(2)(A) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming so eligible for such benefits), in the calendar year 1979, the amounts established with respect to subparagraphs (A), (B), and (C) of paragraph (1) shall be $230, $332, and $433, respectively.

(B) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming so eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established for the calendar year 1979 by subparagraph (A) of this paragraph and the quotient obtained under subparagraph (B)(ii) of section 415(a)(1) of this title, with such product being rounded in the manner prescribed by section 415(a)(1)(B)(iii) of this title.

(C) In each calendar year after 1978 the Secretary shall publish in the Federal Register, on or before November 1, the formula which (except as provided in section 415(i)(2)(D) of this title) is to be applicable under this paragraph to individuals who become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in the following calendar year.

(D) A year shall not be counted as the year of an individual's death or eligibility for purposes of this paragraph or paragraph (7) in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefits to which he was entitled during such 12 months).

(3)(A) When an individual who is entitled to benefits on the basis of the wages and self-employment income of any insured individual and to whom this subsection applies would (but for the provisions of section 402(k)(2)(A) of this title) be entitled to child's insurance benefits for a month on the basis of the wages and self-employment income of one or more other insured individuals, the total monthly benefits to which all beneficiaries are entitled on the bases of such wages and self-employment income shall not be reduced under this subsection to less than the smaller of—

(i) the sum of the maximum amounts of benefits payable on the basis of the wages and self-employment income of all such insured individuals, or

(ii) an amount equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefit base determined for that year under section 430 of this title.

(B) When two or more persons were entitled (without the application of section 402(j)(1) of this title and section 423(b) of this title) to monthly benefits under section 402 or 423 of this title for January 1971 or any prior month on the basis of the wages and self-employment income of such insured individual and the provisions of this subsection as in effect for any such month were applicable in determining the benefit amount of any persons on the basis of such wages and self-employment income, the total of benefits for any month after January 1971 shall not be reduced to less than the largest of—

(i) the amount determined under this subsection without regard to this subparagraph,

(ii) the largest amount which has been determined for any month under this subsection for persons entitled to monthly benefits on the basis of such insured individual's wages and self-employment income, or

(iii) if any persons are entitled to benefits on the basis of such wages and self-employment income for the month before the effective month (after September 1972) of a general benefit increase under this title (as defined in section 415(i)(3) of this title) or a benefit increase under the provisions of section 415(i) of this title, an amount equal to the sum of amounts derived by multiplying the benefit amount determined under this subchapter (excluding any part thereof determined under section 402(w) of this title) for the month before such effective month (including this subsection, but without the application of section 422(b) of this title, section 402(q) of this title, and subsections (b), (c), and (d) of this section), for each such person for such month, by a percentage equal to the percentage of the increase provided under such benefit increase (with any such increased amount which is not a multiple of $0.10 being rounded to the next higher multiple of $0.10);

but in any such case (I) subparagraph (A) of this paragraph shall not be applied to such total of benefits after the application of clause (ii) or (iii), and (II) if section 402(k)(2)(A) of this title was applicable in the case of any such benefits for a month, and ceases to apply for a month after such month, the provisions of clause (ii) or (iii) shall be applied, for and after the month in which section 402(k)(2)(A) of this title ceases to apply, as though subparagraph (A) of this paragraph had not been applicable to such total of benefits for the last month for which clause (ii) or (iii) was applicable.

(C) When any of such individuals is entitled to monthly benefits as a divorced spouse under section 402(b) or (c) of this title or as a surviving divorced spouse under section 402(e) or (f) of this title for any month, the benefit to which he or she is entitled on the basis of the wages and self-employment income of such insured individual for such month shall be determined without regard to this subsection, and the benefits of all other individuals who are entitled for such month to monthly benefits under section 402 of this title on the wages and self-employment income of such insured individual shall be determined as if no such divorced spouse or surviving divorced spouse were entitled to benefits for such month.

(4) In any case in which benefits are reduced pursuant to the preceding provisions of this subsection, the reduction shall be made after any deductions under this section and after any deductions under section 422(b) of this title. Whenever a reduction is made under this subsection in the total of monthly benefits to which individuals are entitled for any month on the basis of the wages and self-employment income of an insured individual, each such benefit other than the old-age or disability insurance benefit shall be proportionately decreased.

(5) Notwithstanding any other provision of law, when—

(A) two or more persons are entitled to monthly benefits for a particular month on the basis of the wages and self-employment income of an insured individual and (for such particular month) the provisions of this subsection are applicable to such monthly benefits, and

(B) such individual's primary insurance amount is increased for the following month under any provision of this subchapter,

then the total of monthly benefits for all persons on the basis of such wages and self-employment income for such particular month, as determined under the provisions of this subsection, shall for purposes of determining the total monthly benefits for all persons on the basis of such wages and self-employment income for months subsequent to such particular month be considered to have been increased by the smallest amount that would have been required in order to assure that the total of monthly benefits payable on the basis of such wages and self-employment income for any such subsequent month will not be less (after the application of the other provisions of this subsection and section 402(q) of this title) than the total of monthly benefits (after the application of the other provisions of this subsection and section 402(q) of this title) payable on the basis of such wages and self-employment income for such particular month.

(6) In the case of any individual who is entitled for any month to benefits based upon the primary insurance amounts of two or more insured individuals, one or more of which primary insurance amounts were determined under section 415(a) or (d) of this title as in effect (without regard to the table contained therein) prior to January 1979 and one or more of which primary insurance amounts were determined under section 415(a)(1) or (4) of this title, or section 415(d) of this title, as in effect after December 1978, the total benefits payable to that individual and all other individuals entitled to benefits for that month based upon those primary insurance amounts shall be reduced to an amount equal to the product of 1.75 and the primary insurance amount that would be computed under section 415(a)(1) of this title for that month with respect to average indexed monthly earnings equal to one-twelfth of the contribution and benefits base determined under section 430 of this title for the year in which that month occurs.

(7) Subject to paragraph (6), this subsection as in effect in December 1978 shall remain in effect with respect to a primary insurance amount computed under section 415(a) or (d) of this title, as in effect (without regard to the table contained therein) in December 1978, except that a primary insurance amount so computed with respect to an individual who first becomes eligible for an old-age or disability insurance benefit, or dies (before becoming eligible for such a benefit), after December 1978, shall instead be governed by this section as in effect after December 1978.

(8) When—

(A) one or more persons were entitled (without the application of section 402(j)(1) of this title) to monthly benefits under section 402 of this title for May 1978 on the basis of the wages and self-employment income of an individual,

(B) the benefit of at least one such person for June 1978 is increased by reason of the amendments made by section 204 of the Social Security Amendments of 1977; and

(C) the total amount of benefits to which all such persons are entitled under such section 402 of this title are reduced under the provisions of this subsection (or would be so reduced except for the first sentence of subsection (a)(4) of this section),

then the amount of the benefit to which each such person is entitled for months after May 1978 shall be increased (after such reductions are made under this subsection) to the amount such benefits would have been if the benefit of the person or persons referred to in subparagraph (B) had not been so increased.

[*See main edition for text of* (*b*) *to* (*e*)]

(f) Months to which earnings are charged

For purposes of subsection (b) of this section—

(1) The amount of an individual's excess earnings (as defined in paragraph (3) shall be charged to months as follows: There shall be charged to the first month of such taxable year an amount of his excess earnings equal to the sum of the payments to which he and all other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income (or the total of his excess earnings if such excess earnings are less than such sum), and the balance, if any, of such excess earnings shall be charged to each succeeding month in such year to the extent, in the case of each such month, of the sum of the payments to which such individual and all other persons are entitled for such month under section 402 of this title on the basis of his wages and self-employment income, until the total of such excess has been so charged. Where an individual is entitled to benefits under section 402(a) of this title and other persons are entitled to benefits under section 402(b), (c), or (d) of this title on the basis of the wages and self-employment income of such individual, the excess earnings of such individual for any taxable year shall be charged in accordance with the provisions of this subsection before the excess earnings of such persons for a taxable year are charged to months in such individual's taxable year. Notwithstanding the preceding provisions of this paragraph but subject to section 402(s) of this title, no part of the excess earnings of an individual shall be charged to any months (A) for which such individual was not entitled to a benefit under this subchapter, (B) in which such individual was age seventy-two or over, (C) in which such individual, if a child entitled to child's insurance benefits, has attained the age of 18, (D) for which such individual is entitled to widow's insurance benefits and has not attained age 65 (but only if she became so entitled prior to attaining age 60), or widower's insurance benefits and has not attained age 65 (but only if he became so entitled prior to attaining age 60), or (E) in which such individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8), if such month is in the taxable year in which occurs the first month that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applicable exempt amount as determined under paragraph (8).

[*See main edition for text of* (*2*)]

(3) For purposes of paragraph (1) and subsection (h) of this section, an individual's excess earnings for a taxable year shall be 50 per centum of his earnings for such year in excess of the product of the applicable exempt amount as determined under paragraph (8), multiplied by the number of months in such year, except that, in determining an individual's excess earnings for the taxable year in which he attains age 72, there shall be excluded any earnings of such individual for the month in which he attains such age and any subsequent month (with any net earnings or net loss from self-employment in such year being prorated in an equitable manner under regulations of the Secretary). The excess earnings as derived under the preceding sentence, if not a multiple of $1, shall be reduced to the next lower multiple of $1.

(4) For purposes of clause (E) of paragraph (1)—

[*See main edition for text of* (*A*)]

(B) an individual will be presumed, with respect to any month, to have rendered services for wages (determined as provided in paragraph (5) of this subsection) of more than the applicable exempt amount as determined under paragraph (8) until it is shown to the satisfaction of the Secretary that such individual did not render such services in such month for more than such amount.

[*See main edition for text of* (*5*) *to* (*7*)]

(8)(A) Whenever the Secretary pursuant to section 415(i) of this title increases benefits effective with the month of June following a cost-of-living computation quarter he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C)) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year in which such benefit increase is effective (or, in the case of an individual who dies during the calendar year after the calendar year in which the benefit increase is effective, with respect to such individual's taxable year which ends, upon his death, during such year).

(B) Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals, for each month of a particular taxable year, shall each be whichever of the following is the larger—

(i) the corresponding exempt amount which is in effect with respect to months in the taxable year in which the determination under subparagraph (A) is made, or

(ii) the product of the exempt amount described in clause (i) and the ratio of (I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the calendar year in which the determination under subparagraph (A) is made to (II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before the most recent calendar year in which an increase in the exempt amount was enacted or a determination resulting in such an increase was made under subparagraph (A), with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such product is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

Whenever the Secretary determines that an exempt amount is to be increased in any year under this paragraph, he shall notify the House Committee on Ways and Means and the Senate Committee on Finance within 30 days after the close of the base quarter (as defined in section 415(i)(1)(A) of this title) in such year of the estimated amount of such increase, indicating the new exempt amount, the actuarial estimates of the effect of the increase, and the actuarial assumptions and methodology used in preparing such estimates.

[*See main edition for text of* (*C*)]

(D) Notwithstanding any other provision of this subsection, the exempt amount which is applicable to an individual who has attained age 65 before the close of the taxable year involved—

(i) shall be $333.33⅓ for each month of any taxable year ending after 1977 and before 1979,

(ii) shall be $375 for each month of any taxable year ending after 1978 and before 1980,

(iii) shall be $416.66⅔ for each month of any taxable year ending after 1979 and before 1981,

(iv) shall be $458.33⅓ for each month of any taxable year ending after 1980 and before 1982, and

(v) shall be $500 for each month of any taxable year ending after 1981 and before 1983.

[*See main edition for text of* (*g*)]

(h) Report of earnings to Secretary

(1)(A) If an individual is entitled to any monthly insurance benefit under section 402 of this title during any taxable year in which he has earnings or wages, as computed pursuant to paragraph (5) of subsection (f) of this section, in excess of the product of the applicable exempt amount as determined under subsection (f)(8) of this section times the number of months in such year, such individual (or the individual who is in receipt of such benefit on his behalf) shall make a report to the Secretary of his earnings (or wages) for such taxable year. Such report shall be made on or before the fifteenth day of the fourth month following the close of such year, and shall contain such information and be made in such manner as the Secretary may by regulations prescribe. Such report need not be made for any taxable year (i) beginning with or after the month in which such individual attained the age of 72, or (ii) if benefit payments for all months (in such taxable year) in which such individual is under age 72 have been suspended under the provisions of the first sentence of paragraph (3) of this subsection. The Secretary may grant a reasonable extension of time for making the report of earnings required in this paragraph if he finds that there is valid reason for a delay, but in no case may the period be extended more than three months.

[*See main edition for text of* (*B*), (*2*) *and* (*3*); (*i*) *to* (*l*)]

(As amended Dec. 20, 1977, Pub. L. 95-216, title II, §§ 202, 204(e), title III, §§ 301(a), (b), (c)(1), (d), 303(a), 353(a), 91 Stat. 1524, 1528, 1530, 1531, 1552.)

AMENDMENT OF SUBSECTIONS (c)(1), (d)(1), (f)(1)(B), (f)(3), (h)(1)(A), AND (j) APPLICABLE ONLY WITH RESPECT TO TAXABLE YEARS ENDING AFTER DECEMBER 31, 1981

Section 302 of Pub. L. 95-216 provided that, effective with respect to taxable years ending after Dec. 31, 1981, the following

enumerated subsections of this section are amended as follows:

Subsec. (c)(1) is amended by substituting "seventy" for "seventy-two".

Subsec. (d)(1) is amended by substituting "seventy" for "seventy-two".

Subsec. (f)(1)(B) is amended by substituting "seventy" for "seventy-two".

Subsec. (f)(3) is amended by substituting "70" for "72".

Subsec. (h)(1)(A) is amended by substituting "age 70" for "the age of 72" and "age 72", respectively.

Subsec. (j) is amended by substituting "seventy years" for "seventy-two years".

REFERENCES IN TEXT

The amendments made by section 204 of the Social Security Amendments of 1977, referred to in subsec. (a)(8), means the amendments made by section 204 of Pub. L. 95-216, which enacted subsec. (a)(8) of this section and amended section 402(e)(2)(A), (e)(2)(B)(i), (f)(3)(A), and (f)(3)(B)(i) of this title.

AMENDMENTS

1977—Subsecs. (a)(1) to (7). Pub. L. 95-216, § 202, generally restated the provisions of existing pars. (1) to (5) with changes to take into account the revised system for computing primary insurance amounts based on wage-indexed earnings and redistributed those existing provisions as thus restated into pars. (1) to (7).

Subsec. (a)(8). Pub. L. 95-216, § 204(e), added par. (8).

Subsec. (f)(1)(E). Pub. L. 95-216, §§ 301(d), 303(a), substituted "the applicable exempt amount" for "$200 or the exempt amount" and added ", if such month is in the taxable year in which occurs the first month that is both (i) a month for which the individual is entitled to benefits under subsection (a), (b), (c), (d), (e), (f), (g), or (h) of section 402 of this title (without having been entitled for the preceding month to a benefit under any other of such subsections), and (ii) a month in which the individual did not engage in self-employment and did not render services for wages (determined as provided in paragraph (5)) of more than the applicable exempt amount as determined under paragraph (8)" following "as determined under paragraph (8)".

Subsec. (f)(3). Pub. L. 95-216, § 301(d), substituted "the applicable exempt amount" for "$200 or the exempt amount".

Subsec. (f)(4)(B). Pub. L. 95-216, § 301(d), substituted "the applicable exempt amount" for "$200 or the exempt amount".

Subsec. (f)(8)(A). Pub. L. 95-216, § 301(a), substituted "the new exempt amounts (separately stated for individuals described in subparagraph (D) and for other individuals) which are to be applicable (unless prevented from becoming effective by subparagraph (C) with respect to taxable years ending in (or with the close of) the calendar year after the calendar year" for "a new exempt amount which shall be effective (unless such new exempt amount is prevented from becoming effective by subparagraph (C) of this paragraph) with respect to any individual's taxable year which ends after the calendar year".

Subsec. (f)(8)(B). Pub. L. 95-216, §§ 301(b), 353(a), applicable with respect to taxable years ending after Dec. 1977, substituted "Except as otherwise provided in subparagraph (D), the exempt amount which is applicable to individuals described in such subparagraph and the exempt amount which is applicable to other individuals for each month of a particular taxable year, shall each be" for "The exempt amount for each month of a particular taxable year shall be" in the provisions preceding cl. (i), substituted "the corresponding exempt amount" for "the exempt amount" in cl. (i), and, in the provisions following cl. (ii), substituted "an exempt amount" for "the exempt amount", and effective Jan. 1, 1979, substituted "is" for "was" in cl. (i) and, in cl. (ii), substituted "(I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the calendar year in which the determination under subparagraph (A) is made to (II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before the most recent calendar year" for "(I) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year in which the determination under subparagraph (A) was made to (II) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973, or, if later, the calendar year preceding the most recent calendar year" and struck out reference to wages for calendar year 1978.

Subsec. (f)(8)(D). Pub. L. 95-216, § 301(c)(1), added subpar. (D).

Subsec. (h)(1)(A). Pub. L. 95-216, § 301(d), substituted "the applicable exempt amount" for "$200 or the exempt amount".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (a)(1) to (7) of this section by Pub. L. 95-216 effective only with respect to monthly benefits under this subchapter payable for months after Dec. 1978 and with respect to lump-sum death payments with respect to deaths occurring after such month, see section 206 of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 402 of this title.

Enactment of subsec. (a)(8) of this section by Pub. L. 95-216 effective only with respect to monthly benefits for months after May 1978, see section 206 of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 402 of this title.

Section 301(e) of Pub. L. 95-216 provided that: "The amendments made by this section [amending subsecs. (f)(1)(E), (f)(3), (f)(4)(B), (f)(8)(A), (f)(8)(B), and (h)(1)(A), and enacting subsec. (f)(8)(D) of this section] shall apply with respect to taxable years ending after December 1977."

Section 303(b) of Pub. L. 95-216 provided that: "The amendment made by subsection (a) [amending subsec. (f)(1)(E) of this section] shall apply only with respect to monthly benefits payable for months after December 1977."

Amendment by section 353(a) of Pub. L. 95-216 [substituting "is" for "was" in subsec. (f)(8)(B)(i) of this section and amending subsec. (f)(8)(B)(ii) of this section] to be effective Jan. 1, 1979, see section 353(g) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 418 of this title.

INCREASED EXEMPT AMOUNTS FOR INDIVIDUALS DESCRIBED IN SUBSEC. (f)(8)(D); NOTIFICATION IN 1977 TO 1981; INDIVIDUALS OTHER THAN THOSE DESCRIBED IN SUBSEC. (f)(8)(D)

Section 301(c)(2) of Pub. L. 95-216 provided that: "No notification with respect to an increased exempt amount for individuals described in section 203(f)(8)(D) of the Social Security Act [subsec. (f)(8)(D) of this section] (as added by paragraph (1) of this subsection) shall be required under the last sentence of section 203(f)(8)(B) of such Act [subsec. (f)(8)(B) of this section] in 1977, 1978, 1979, 1980, or 1981; and section 203(f)(8)(C) of such Act [subsec. (f)(8)(C) of this section] shall not prevent the new exempt amount determined and published under section 203(f)(8)(A) [subsec. (f)(8)(A) of this section] in 1977 from becoming effective to the extent that such new exempt amount applies to individuals other than those described in section 203(f)(8)(D) of such Act [subsec. (f)(8)(D) of this section] (as so added)."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 408, 415, 423, 424a, 1382a of this title; title 10 section 1451; title 26 section 1402; title 30 section 922; title 45 sections 231a, 231q.

§ 404. Overpayments and underpayments

(a) Procedure for adjustment or recovery

Whenever the Secretary finds that more or less than the correct amount of payment has been made to any person under this subchapter, proper adjustment or recovery shall be made, under regulations prescribed by the Secretary, as follows:

(1) With respect to payment to a person of more than the correct amount, the Secretary shall decrease any payment under this subchapter to which such overpaid person is entitled, or shall require such overpaid person or his estate to refund the amount in excess of the correct amount, or shall decrease any payment under this subchapter payable to his estate or to any other person on the basis of the wages and self-employment income which were the basis of the payments to such overpaid person, or shall apply any combination of the foregoing. A payment made under this subchapter on the basis of an erroneous report of death by the Department of Defense of an individual in the line of duty while he is a member of the uniformed services (as defined in section 410(m) of this title) on active duty (as defined in section 410(*l*) of this title) shall not be considered an incorrect payment for any month prior to the month such Department notifies the Secretary that such individual is alive.

[*See main edition for text of* (2); (*b*) *to* (*d*); *credits*]

CODIFICATION

Subsec. (a)(1) of this section is set out in this supplement to correct typographical error appearing in the main edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 405, 909 of this title; title 30 section 923.

§ 405. Evidence, procedure, and certification for payments

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Wage records

(1) For the purposes of this subsection—

(A) The term "year" means a calendar year when used with respect to wages and a taxable year when used with respect to self-employment income.

[*See main edition for text of* (*B*) *and* (*C*)]

(D) The term "period" when used with respect to self-employment income means a taxable year and when used with respect to wages means—

(i) a quarter if wages were reported or should have been reported on a quarterly basis on tax returns filed with the Secretary of the Treasury or his delegate under section 6011 of the Internal Revenue Code of 1954 or regulations thereunder (or on reports filed by a State under section 418(e) of this title or regulations thereunder),

(ii) a year if wages were reported or should have been reported on a yearly basis on such tax returns or reports, or

(iii) the half year beginning January 1 or July 1 in the case of wages which were reported or should have been reported for calendar year 1937.

[*See main edition for text of* (*2*) *to* (*8*); (*d*) *to* (*n*)]

(o) Crediting of compensation under Railroad Retirement Act

If there is no person who would be entitled upon application therefor, to an annuity under section 2 of the Railroad Retirement Act of 1974 [45 U.S.C. 231a] or to a lump-sum payment under section 6(b) of such Act [45 U.S.C. 231e(b)], with respect to the death of an employee (as defined in such Act), then, notwithstanding section 410(a)(10) of this title, compensation (as defined in such Railroad Retirement Act, but excluding compensation attributable as having been paid during any month on account of military service creditable under section 3(i) of such Act [45 U.S.C. 231b(i)] if wages are deemed to have been paid to such employee during such month under subsection (a) or (e) of section 417 of this title) of such employee shall constitute remuneration for employment for purposes of determining (A) entitlement to and the amount of any lump-sum death payment under this subchapter on the basis of such employee's wages and self-employment income and (B) entitlement to and the amount of any monthly benefit under this subchapter, for the month in which such employee died or for any month thereafter, on the basis of such wages and self-employment income. For such purposes, compensation (as so defined) paid in a calendar year before 1978 shall, in the absence of evidence to the contrary, be presumed to have been paid in equal proportions with respect to all months in the year in which the employee rendered services for such compensation.

(p) Special rules in case of federal service

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The provisions of paragraph (1) and (2) of this subsection shall be applicable in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Army and Air Force Exchange Service, Army and Air Force Motion Picture Service, Navy Exchanges, Marine Corps Exchanges, or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Defense, at installations of the Department of Defense for the comfort, pleasure, contentment, and mental and physical improvement of personnel of such Department; and for purposes of paragraphs (1) and (2) of this subsection the Secretary of Defense shall be deemed to be the head of such

instrumentality. The provisions of paragraphs (1) and (2) shall be applicable also in the case of service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard; and for purposes of paragraphs (1) and (2) the Secretary of Transportation shall be deemed to be the head of such instrumentality.

[*See main edition for text of* (*q*)]

(As amended Dec. 20, 1977, Pub. L. 95-216, title III, § 353(f)(2), 91 Stat. 1554; Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(j)(14)(B), 92 Stat. 2942.)

CODIFICATION

In subsec. (h), "sections 1331 or 1346 of title 28" was substituted for "section 24 of the Judicial Code of the United States" on authority of act June 25, 1948, ch. 646, 62 Stat. 869, section 1 of which enacted Title 28, Judiciary and Judicial Procedure. Prior to the enactment of Title 28, section 24 of the Judicial Code was classified to section 41 of Title 28. Jurisdictional provisions previously covered by section 41 of Title 28 are now covered by sections 1331 to 1348, 1350 to 1357, 1359, 1397, 1399, 2361, 2401, and 2402 of Title 28.

AMENDMENTS

1978—Subsec. (p)(3). Pub. L. 95-600 substituted "Secretary of Transportation" for "Secretary of the Treasury" in two places.

1977—Subsec. (c)(1)(A). Pub. L. 95-216, § 353(f)(2)(A), struck out "(as defined in section 411(e) of this title)" following "taxable year".

Subsec. (c)(1)(D). Pub. L. 95-216, § 353(f)(2)(B), added subpar. (D).

Subsec. (*o*). Pub. L. 95-216, § 353(f)(2)(C), added "before 1978" following "calendar year".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of Title 26, Internal Revenue Code.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-216 effective Jan. 1, 1978, see section 353(g) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 418 of this title.

CHANGE OF NAME

The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

§ 405a. Regulations pertaining to frequency or due dates of payments and reports under voluntary agreements covering state and local employees; effective date

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 407. Assignment

CROSS REFERENCES

Enforcement of legal obligations to provide child support and make alimony payments, see section 659 of this title.

§ 409. Definition of wages

For the purposes of this subchapter, the term "wages" means remuneration paid prior to 1951 which was wages for the purposes of this subchapter under the law applicable to the payment of such remuneration, and remuneration paid after 1950 for employment, including the cash value of all remuneration paid in any medium other than cash; except that, in the case of remuneration paid after 1950, such term shall not include—

[*See main edition for text of* (*a*) *to* (*f*)]

(g) [*See main edition for text of* (*1*) *and* (*2*)]

(3) Cash remuneration paid by an employer in any calendar year to an employee for service not in the course of the employer's trade or business, if the cash remuneration paid in such year by the employer to the employee for such service is less than $100. As used in this paragraph, the term "service not in the course of the employer's trade or business" does not include domestic service in a private home of the employer and does not include service described in section 410(f)(5) of this title;

[*See main edition for text of* (*h*) *and* (*i*)]

(j) Remuneration paid by an employer in any year to an employee for service described in section 410(j)(3)(C) of this title (relating to home workers), if the cash remuneration paid in such year by the employer to the employee for such service is less than $100;

[*See main edition for text of* (*k*) *to* (*m*)]

(n) Any payment made by an employer to a survivor or the estate of a former employee after the calendar year in which such employee died;

(*o*) Any payment made by an employer to an employee, if at the time such payment is made such employee is entitled to disability insurance benefits under section 423(a) of this title and such entitlement commenced prior to the calendar year in which such payment is made, and if such employee did not perform any services for such employer during the period for which such payment is made;

(p) Remuneration paid by an organization exempt from income tax under section 501 of the Internal Revenue Code of 1954 in any calendar year to an employee for service rendered in the employ of such organization, if the remuneration paid in such year by the organization to the employee for such service is less than $100.

(q) Any contribution, payment, or service, provided by an employer which may be excluded from the gross income of an employee, his spouse, or his dependents, under the provisions of section 120 of the Internal Revenue

Code of 1954 (relating to amounts received under qualified group legal services plans); or

(r) Any payment made, or benefit furnished, to or for the benefit of an employee if at the time of such payment or such furnishing it is reasonable to believe that the employee will be able to exclude such payment or benefit from income under section 127 of the Internal Revenue Code of 1954.

[*See main edition for text of closing paragraphs*]

(As amended Dec. 20, 1977, Pub. L. 95-216, title III, § 351(a)(1)-(3)(A), 91 Stat. 1549; Oct. 17, 1978, Pub. L. 95-472, § 3(c), 92 Stat. 1333; Nov. 6, 1978, Pub. L. 95-600, title I, § 164(b)(4), 92 Stat. 2814.)

Codification

Subsecs. (q) and (r) of this section which were designated as (p) and (q) in the original were editorially changed to reflect the probable intent of Congress.

Amendments

1978—Subsec. (q). Pub. L. 95-472 added a subsec. (q). See Codification note above.

Subsec. (r). Pub. L. 95-600 added subsec. (r). See Codification note above.

1977—Subsec. (g)(3). Pub. L. 95-216, § 351(a)(1), (2), substituted "year" for "quarter" wherever appearing therein and "$100" for "$50".

Subsec. (j). Pub. L. 95-216, § 351(a)(1), (2), substituted "year" for "quarter" wherever appearing therein and "$100" for "$50".

Subsec. (n). Pub. L. 95-216, § 351(a)(3)(A), struck out "or" following "such employee died".

Subsec. (o). Pub. L. 95-216, § 351(a)(3)(A), substituted "payment is made; or" for "payment is made.".

Subsec. (p). Pub. L. 95-216, § 351(a)(3)(A), added subsec. (p).

Effective Date of 1978 Amendment

Amendment by Pub. 95-600 applicable with respect to taxable years beginning after Dec. 31, 1978, see section 164(d) of Pub. L. 95-600, set out as an Effective Date note under section 127 of Title 26, Internal Revenue Code.

Amendment of section by Pub. L. 95-472 applicable with respect to taxable years beginning after Dec. 31, 1976, see section 3(d) of Pub. L. 95-472, set out as an Effective Date of 1978 Amendment note under section 3121 of Title 26.

Effective Date of 1977 Amendment

Section 351(d) of Pub. L. 95-216 provided that: "The amendments made by subsection (a) [amending subsecs. (g)(3), (j), and (n) to (p) of this section and section 410(a)(10), (17)(A), and (f)(4)(B) of this title] shall apply with respect to remuneration paid and services rendered after December 31, 1977. The amendments made by subsections (b) [amending section 412 of this title] and (c) [amending section 413(a)(2) of this title] shall be effective January 1, 1978."

Section Referred to in Other Sections

This section is referred to in sections 403, 405, 413, 415, 417, 418, 424a, 430 of this title; title 5 section 5901; title 29 section 206; title 45 sections 231, 231b, 231e.

§ 410. Definitions relating to employment

For the purposes of this subchapter—

(a) Employment

The term "employment" means any service performed after 1936 and prior to 1951 which was employment for the purposes of this subchapter under the law applicable to the period in which such service was performed, and any service, of whatever nature, performed after 1950 either (A) by an employee for the person employing him, irrespective of the citizenship or residence of either, (i) within the United States, or (ii) on or in connection with an American vessel or American aircraft under a contract of service which is entered into within the United States or during the performance of which and while the employee is employed on the vessel or aircraft it touches at a port in the United States, if the employee is employed on and in connection with such vessel or aircraft when outside the United States, or (B) outside the United States by a citizen of the United States as an employee (i) of an American employer (as defined in subsection (e) of this section), or (ii) of a foreign subsidiary (as defined in section 3121(*l*) of the Internal Revenue Code of 1954) of a domestic corporation (as determined in accordance with section 7701 of the Internal Revenue Code of 1954) during any period for which there is in effect an agreement, entered into pursuant to section 3121(*l*) of the Internal Revenue Code of 1954, with respect to such subsidiary; except that, in the case of service performed after 1950, such term shall not include—

[*See main edition for text of* (*1*) *to* (*5*)]

(6) [*See main edition for text of* (*A*)]

(B) Service performed by an individual in the employ of an instrumentality of the United States if such an instrumentality was exempt from the tax imposed by section 1410 of the Internal Revenue Code of 1939, on December 31, 1950, and if such service is covered by a retirement system established by such instrumentality; except that the provisions of this subparagraph shall not be applicable to—

[*See main edition for text of* (*i*) *to* (*iv*)]

(v) service performed by a civilian employee, not compensated from funds appropriated by the Congress, in the Coast Guard Exchanges or other activities, conducted by an instrumentality of the United States subject to the jurisdiction of the Secretary of Transportation, at installations of the Coast Guard for the comfort, pleasure, contentment, and mental and physical improvement of personnel of the Coast Guard;

[*See main edition for text of* (*C*); (*7*) *to* (*9*)]

(10) Service performed in the employ of—

(A) a school, college, or university, or

(B) an organization described in section 509(a)(3) of the Internal Revenue Code of 1954 if the organization is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of a school, college, or university and is operated, supervised, or controlled by or in connection with such school, college, or university, unless it is a school, college, or university of a State or a political subdivision thereof and the services in its employ performed by a student referred to in section 418(c)(5) of this title are covered under the agreement between the Secretary of Health, Education, and Welfare and such State entered into pursuant to section 418 of this title;

if such service is performed by a student who is enrolled and regularly attending classes at such school, college, or university;

[*See main edition for text of* (*11*) *to* (*16*)]

(17) Service in the employ of any organization which is performed (A) in any year during any part of which such organization is registered, or there is in effect a final order of the Subversive Activities Control Board requiring such organization to register, under the Internal Security Act of 1950, as amended [50 U.S.C. 781 et seq.], as a Communist-action organization, a Communist-front organization, or a Communist-infiltrated organization, and (B) after June 30, 1956;

[*See main edition for text of* (*18*) *to* (*20*); (*b*) *to* (*e*)]

(f) Agricultural labor

The term "agricultural labor" includes all service performed—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) [*See main edition for text of* (*A*)]

(B) In the employ of a group of operators of farms (other than a cooperative organization) in the performance of service described in subparagraph (A) of this paragraph, but only if such operators produced all of the commodity with respect to which such service is performed. For the purposes of this subparagraph, any unincorporated group of operators shall be deemed a cooperative organization if the number of operators comprising such group is more than twenty at any time during the calendar year in which such service is performed.

[*See main edition for text of* (*5*)]

The provisions of subparagraphs (A) and (B) of paragraph (4) of this subsection shall not be deemed to be applicable with respect to service performed in connection with commercial canning or commercial freezing or in connection with any agricultural or horticultural commodity after its delivery to a terminal market for distribution for consumption.

[*See main edition for text of* (*g*) *to* (*o*)]

(As amended Dec. 20, 1977, Pub. L. 95-216, title III, § 351(a)(1), (3)(B), 91 Stat. 1549; Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(j)(14)(C), 92 Stat. 2942.)

Amendments

1978—Subsec. (a)(6)(B)(v). Pub. L. 95-600 substituted "Secretary of Transportation" for "Secretary of the Treasury".

1977—Subsec. (a)(10). Pub. L. 95-216, § 351(a)(3)(B), struck out former subpar. (A), which related to service performed in the employ of any exempt organization under section 101 of the Internal Revenue Code of 1939, and designated existing provisions of former subpar. (B) as entire subsec. (a)(10) and, as so designated, redesignated cls. (i) and (ii) as subpars. (A) and (B).

Subsec. (a)(17)(A). Pub. L. 95-216, § 351(a)(1), substituted "year" for "quarter".

Subsec. (f)(4)(B). Pub. L. 95-216, § 351(a)(1), substituted "year" for "quarter".

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of Title 26, Internal Revenue Code.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-216 applicable with respect to remuneration paid and services rendered after Dec. 31, 1977, see section 351(d) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 409 of this title.

§ 411. Definitions relating to self-employment

For the purposes of this subchapter—

(a) Net earnings from self-employment

The term "net earnings from self-employment" means the gross income, as computed under chapter 1 of the Internal Revenue Code of 1939, derived by an individual from any trade or business carried on by such individual, less the deductions allowed under such chapter which are attributable to such trade or business, plus his distributive share (whether or not distributed) of the ordinary net income or loss, as computed under section 183 of the Internal Revenue Code of 1939, from any trade or business carried on by a partnership of which he is a member; except that in computing such gross income and deductions and such distributive share of partnership ordinary net income or loss—

[*See main edition for text of* (*1*)]

(2) There shall be excluded dividends on any share of stock, and interest on any bond, debenture, note, or certificate, or other evidence of indebtedness, issued with interest coupons or in registered form by any corporation (including one issued by a government or political subdivision thereof), unless such dividends and interest are received in the course of a trade or business as a dealer in stocks or securities;

[*See main edition for text of* (*3*) *to* (*8*)]

(9) There shall be excluded amounts received by a partner pursuant to a written plan of the partnership, which meets such requirements as are prescribed by the Secretary of the Treasury or his delegate, and which provides for payments on account of retirement, on a periodic basis, to partners generally or to a class or classes of partners, such payments to continue at least until such partner's death, if—

(A) such partner rendered no services with respect to any trade or business carried on by such partnership (or its successors) during the taxable year of such partnership (or its successors), ending within or with his taxable year, in which such amounts were received, and

(B) no obligation exists (as of the close of the partnership's taxable year referred to in subparagraph (A)) from the other partners to such partner except with respect to retirement payments under such plan, and

(C) such partner's share, if any, of the capital of the partnership has been paid to him in full before the close of the partnership's taxable year referred to in subparagraph (A);

(10) In the case of an individual who has been a resident of the United States during the entire taxable year, the exclusion from gross income provided by section 911(a)(2) of the Internal Revenue Code of 1954 shall not apply; and

(11) There shall be excluded the distributive share of any item of income or loss of a limited partner, as such, other than guaranteed payments described in section 707(c) of the Internal Revenue Code of 1954 to that partner for services actually rendered to or on behalf of the partnership to the extent that those payments are established to be in the nature of remuneration for those services.

If the taxable year of a partner is different from that of the partnership, the distributive share which he is required to include in computing his net earnings from self-employment shall be based upon the ordinary net income or loss of the partnership for any taxable year of the partnership (even though beginning prior to 1951) ending within or with his taxable year. In the case of any trade or business which is carried on by an individual or by a partnership and in which, if such trade or business were carried on exclusively by employees, the major portion of the services would constitute agricultural labor as defined in section 410(f) of this title—

(i) in the case of an individual, if the gross income derived by him from such trade or business is not more than $2,400, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be 66⅔ percent of such gross income; or

(ii) in the case of an individual, if the gross income derived by him from such trade or business is more than $2,400 and the net earnings from self-employment derived by him from such trade or business (computed under this subsection without regard to this sentence) are less than $1,600, the net earnings from self-employment derived by him from such trade or business may, at his option, be deemed to be $1,600; and

(iii) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1954, applies) is not more than $2,400, his distributive share of income described in section 702(a)(9) of the Internal Revenue Code of 1954, derived from such trade or business may, at his option, be deemed to be an amount equal to 66⅔ percent of his distributive share of such gross income (after such gross income has been so reduced); or

(iv) in the case of a member of a partnership, if his distributive share of the gross income of the partnership derived from such trade or business (after such gross income has been reduced by the sum of all payments to which section 707(c) of the Internal Revenue Code of 1954, applies) is more than $2,400 and his distributive share (whether or not distributed) of income described in section 702(a)(9) of such Code, derived from such trade or business (computed under this subsection without regard to this sentence) is less than $1,600, his distributive share of income described in such section 702(a)(9) derived from such trade or business may, at his option, be deemed to be $1,600.

For purposes of the preceding sentence, gross income means—

(v) in the case of any such trade or business in which the income is computed under a cash receipts and disbursements method, the gross receipts from such trade or business reduced by the cost or other basis of property which was purchased and sold in carrying on such trade or business, adjusted (after such reduction) in accordance with the provisions of paragraphs (1) through (6) and paragraph (8) of this subsection; and

(vi) in the case of any such trade or business in which the income is computed under an accrual method, the gross income from such trade or business, adjusted in accordance with the provisions of paragraph (1) through (6) and paragraph (8) of this subsection;

and, for purposes of such sentence, if an individual (including a member of a partnership) derives gross income from more than one such trade or business, such gross income (including his distributive share of the gross income of any partnership derived from any such trade or business) shall be deemed to have been derived from one trade or business.

The preceding sentence and clauses (i) through (iv) of the second preceding sentence shall also apply in the case of any trade or business (other than a trade or business specified in such second preceding sentence) which is carried on by an individual who is self-employed on a regular basis as defined in subsection (g) of this section, or by a partnership of which an individual is a member on a regular basis as defined in subsection (g) of this section, but only if such individual's net earnings from self-employment in the taxable year as determined without regard to this sentence are less than $1,600 and less than 66⅔ percent of the sum (in such taxable year) of such individual's gross income derived from all trades or businesses carried on by him and his distributive share of the income or loss from all trades or businesses carried on by all the partnerships of which he is a member; except that this sentence shall not apply to more than 5 taxable years in the case of any individual, and in no case in which an individual elects to determine the amount of his net earnings from self-employment for a taxable year under the provisions of the two preceding sentences with respect to a trade or business to which the second preceding sentence applies and with respect to a trade or business to which this sentence applies shall such net earnings for such year exceed $1,600.

[*See main edition for text of* (*b*)]

(c) Trade or business

The term "trade or business", when used with reference to self-employment income or net earnings from self-employment, shall have the same meaning as when used in section 23 of the Internal Revenue Code of 1939, except that such term shall not include—

[*See main edition for text of* (*1*) *to* (*5*)]

(6) The performance of service by an individual during the period for which an exemption under section 1402(g) of the Internal Revenue Code of 1954, is effective with respect to him.

The provisions of paragraph (4) or (5) shall not apply to service (other than service performed by a member of a religious order who has taken a vow of poverty as a member of such order) performed by an individual unless an exemption filed by him under section 1402(e) of the Internal Revenue Code of 1954, is effective with respect to him.

[*See main edition for text of* (*d*) *to* (*g*)]

(As amended Dec. 20, 1977, Pub. L. 95-216, title III, § 313(a), 91 Stat. 1535; Nov. 6, 1978, Pub. L. 95-600, title VII, § 703(j)(14)(D), (E), 92 Stat. 2942.)

References in Text

Sections 23 and 183 of the Internal Revenue Code of 1939, referred to in subsecs. (a), (a)(4), and (c), were a part of chapter 1 of the 1939 Code. See above.

Codification

Section 703(j)(14)(D) of Pub. L. 95-600 directed that "(other than interest described in section 35 of the Internal Revenue Code of 1954)" be deleted from subsec. (a)(2) of this section. Since this phrase did not appear in subsec. (a)(2) of this section, "(other than interest described in section 25(a) of the Internal Revenue Code of 1939)" has been deleted as the probable intent of Congress.

Amendments

1978—Subsec. (a)(2). Pub. L. 95-600, § 703(j)(14)(D), struck out "(other than interest described in section 35 of the Internal Revenue Code of 1954)". See Codification note above.

Subsec. (c)(6). Pub. L. 95-600, § 703(j)(14)(E), substituted "section 1402(g)" for "section 1402(h)".

1977—Subsec. (a)(11). Pub. L. 95-216 added par. (11).

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-600 effective Oct. 4, 1976, see section 703(r) of Pub. L. 95-600, set out as an Effective Date of 1978 Amendment note under section 46 of Title 26, Internal Revenue Code.

Effective Date of 1977 Amendment

Section 313(c) of Pub. L. 95-216 provided that: "The amendments made by this section [amending subsec. (a) of this section and section 1402 of Title 26, Internal Revenue Code] shall apply with respect to taxable years beginning after December 31, 1977."

Section Referred to in Other Sections

This section is referred to in sections 403, 424a, 430, 1382a of this title; title 45 sections 231b, 231e.

§ 412. Self-employment income credited to calendar years

(a) For the purposes of determining average monthly wage and quarters of coverage the amount of self-employment income derived during any taxable year which begins before 1978 shall—

(1) in the case of a taxable year which is a calendar year, be credited equally to each quarter of such calendar year; and

(2) in the case of any other taxable year, be credited equally to the calendar quarter in which such taxable year ends and to each of the next three or fewer preceding quarters any part of which is in such taxable year.

(b) For the purposes of determining average indexed monthly earnings, average monthly wage, and quarters of coverage the amount of self-employment income derived during any taxable year which begins after 1977 shall—

(1) in the case of a taxable year which is a calendar year or which begins with or during a calendar year and ends with or during such year, be credited to such calendar year; and

(2) in the case of any other taxable year, be allocated proportionately to the two calendar years, portions of which are included within such taxable year, on the basis of the number of months in each such calendar year which are included completely within the taxable year.

For purposes of clause (2), the calendar month in which a taxable year ends shall be treated as included completely within that taxable year.

(As amended Dec. 20, 1977, Pub. L. 95-216, title III, § 351(b), 91 Stat. 1549.)

Amendments

1977—Pub. L. 95-216 designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, substituted provisions relating to crediting of self-employment income to calendar years for provisions relating to crediting of self-employment income to calendar quarters, and added subsec. (b).

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-216 effective Jan. 1, 1978, see section 351(d) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 409 of this title.

§ 413. Quarter and quarter of coverage

(a) Definitions

For the purposes of this subchapter—

[*See main edition for text of* (*1*)]

(2)(A) The term "quarters of coverage" means—

(i) for calendar years before 1978, and subject to the provisions of subparagraph (B), a quarter in which an individual has been paid $50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited (as determined under section 412 of this title) with $100 or more of self-employment income; and

(ii) for calendar years after 1977, and subject to the provisions of subparagraph (B), each portion of the total of the wages paid and the self-employment income credited (pursuant to section 412 of this title) to an individual in a calendar year which equals the amount required for a quarter of coverage in that calendar year (as determined under subsection (d) of this section), with such quarter of coverage being assigned to a specific calendar quarter in such calendar year only if necessary in the case of any individual who has attained age 62 or died or is under a disability and the requirements for insured status in subsection (a) or (b) of section 414 of this title, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 416(i) of this title would not otherwise be met.

(B) Notwithstanding the provisions of subparagraph (A)—

(i) no quarter after the quarter in which an individual dies shall be a quarter of coverage, and no quarter any part of which is included in a period of disability (other than the initial quarter and the last quarter of such period) shall be a quarter of coverage;

(ii) if the wages paid to an individual in any calendar year equal to $3,000 in the case of a calendar year before 1951, or $3,600 in the case of a calendar year after 1950 and before 1955, or $4,200 in the case of a calendar year after 1954 and before 1959, or $4,800 in the case of a calendar year after 1958 and before 1966, or $6,600 in the case of a calendar year after 1965 and before 1968, or $7,800 in the case of a calendar year after 1967 and before 1972, or $9,000 in the case of the calendar year 1972, or $10,800 in the case of the calendar year 1973, or $13,200 in the case of the calendar year 1974, or an amount equal to the contribution and benefit base (as determined under section 430 of this title) in the case of any calendar year after 1974 and before 1978 with respect to which such contribution and benefit base is effective, each quarter of such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

(iii) if an individual has self-employment income for a taxable year, and if the sum of such income and the wages paid to him during such year equals $3,600 in the case of a taxable year beginning after 1950 and ending before 1955, or $4,200 in the case of a taxable year ending after 1954 and before 1959, or $4,800 in the case of a taxable year ending after 1958 and before 1966, or $6,600 in the case of a taxable year ending after 1965 and before 1968, or $7,800 in the case of a taxable year ending after 1967 and before 1972, or $9,000 in the case of a taxable year beginning after 1971 and before 1973, or $10,800 in the case of a taxable year beginning after 1972 and before 1974, or $13,200 in the case of a taxable year beginning after 1973 and before 1975, or an amount equal to the contribution and benefit base (as determined under section 430 of this title) which is effective for the calendar year in the case of any taxable year beginning in any calendar year after 1974 and before 1978, each quarter any part of which falls in such year shall (subject to clauses (i) and (v)) be a quarter of coverage;

(iv) if an individual is paid wages for agricultural labor in a calendar year after 1954 and before 1978, then, subject to clauses (i) and (v), (I) the last quarter of such year which can be but is not otherwise a quarter of coverage shall be a quarter of coverage if such wages equal or exceed $100 but are less than $200; (II) the last two quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $200 but are less than $300; (III) the last three quarters of such year which can be but are not otherwise quarters of coverage shall be quarters of coverage if such wages equal or exceed $300 but are less than $400; and (IV) each quarter of such year which is not otherwise a quarter of coverage shall be a quarter of coverage if such wages are $400 or more;

(v) no quarter shall be counted as a quarter of coverage prior to the beginning of such quarter;

(vi) not more than one quarter of coverage may be credited to a calendar quarter; and

(vii) no more than four quarters of coverage may be credited to any calendar year after 1977.

If in the case of an individual who has attained age 62 or died or is under a disability and who has been paid wages for agricultural labor in a calendar year after 1954 and before 1978, the requirements for insured status in subsection (a) or (b) of section 414 of this title, the requirements for entitlement to a computation or recomputation of his primary insurance amount, or the requirements of paragraph (3) of section 416(i) of this title are not met after assignment of quarters of coverage to quarters in such year as provided in clause (iv) of the preceding sentence, but would be met if such quarters of coverage were assigned to different quarters in such year, then such quarters of coverage shall instead be assigned, for purposes only of determining compliance with such requirements, to such different quarters. If, in the case of an individual who did not die prior to January 1, 1955, and who attained age 62 (if a woman) or age 65 (if a man) or died before July 1, 1957, the requirements for insured status in section 414(a)(3) of this title are not met because of his having too few quarters of coverage but would be met if his quarters of coverage in the first calendar year in which he had any covered employment had been determined on the basis of the period during which wages were earned rather than on the basis of the period during which wages were paid (any such wages paid that are reallocated on an earned basis shall not be used in determining quarters of coverage for subsequent calendar years), then upon application filed by the individual or his survivors and satisfactory proof of his record of wages earned being furnished by such individual or his survivors, the quarters of coverage in such calendar year may be determined on the basis of the periods during which wages were earned.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Amount required for a quarter of coverage

(1) The amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in any year under subsection (a)(2)(A)(ii) of this section shall be $250 in the calendar year 1978 and the amount determined under paragraph (2) of this subsection for years after 1978.

(2) The Secretary shall, on or before November 1 of 1978 and of every year thereafter, determine and publish in the Federal Register the amount of wages and self-employment income which an individual must have in order to be credited with a quarter of coverage in the succeeding calendar year. The amount required for a quarter of coverage shall be the larger of—

(A) the amount in effect in the calendar year in which the determination under this subsection is made, or

(B) the product of the amount prescribed in paragraph (1) which is required for a quarter of coverage in 1978 and the ratio of the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which the determination under this paragraph is made to the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for 1976 (as published in the Federal Register in accordance with section 415(a)(1)(D) of this title),

with such product, if not a multiple of $10, being rounded to the next higher multiple of $10 where such amount is a multiple of $5 but not of $10 and to the nearest multiple of $10 in any other case.

(As amended Dec. 20, 1977, Pub. L. 95-216, title III, §§ 351(c), 352(a), (b), 91 Stat. 1550, 1552.)

AMENDMENTS

1977—Subsec. (a)(2). Pub. L. 95-216, §§ 351(c), 352(a), substituted provisions relating to factors respecting definition of the term "quarters of coverage" for calendar years before 1978, subject to the provisions of subpar. (B) of this par., and for calendar years after 1977, subject to the provisions of subpar. (B) of this par., for provisions relating to factors respecting definition of the term "quarter of coverage" as a quarter in which the individual has been paid $50 or more in wages (except wages for agricultural labor paid after 1954) or for which he has been credited (as determined under section 412 of this title) with $100 or more of self-employment income.

Subsec. (d). Pub. L. 95-216, § 352(b), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (a)(2) by Pub. L. 95-216 effective Jan. 1, 1978, see section 351(d) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 409 of this title.

Section 352(c) of Pub. L. 95-216 provided that: "The amendments made by this section [amending subsec. (a)(2)(A)(ii), relating to determinations under subsec. (d) of this section of amounts for quarters of coverage, and adding subsec. (d) of this section] shall be effective January 1, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 430, 433, 607 of this title.

§ 414. Insured status for purposes of old-age and survivor's insurance benefits

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 413, 416, 423, 426-1, 427 of this title; title 38 section 412; title 45 section 231.

§ 415. Computation of primary insurance amount

For the purposes of this subchapter—

(a) Primary insurance amount

(1)(A) The primary insurance amount of an individual shall (except as otherwise provided in this section) be equal to the sum of—

(i) 90 percent of the individual's average indexed monthly earnings (determined under subsection (b) of this section) to the extent that such earnings do not exceed the amount established for purposes of this clause by subparagraph (B),

(ii) 32 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (i) but do not exceed the amount established for purposes of this clause by subparagraph (B), and

(iii) 15 percent of the individual's average indexed monthly earnings to the extent that such earnings exceed the amount established for purposes of clause (ii),

rounded in accordance with subsection (g) of this section, and thereafter increased as provided in subsection (i) of this section.

(B)(i) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible of such benefits), in the calendar year 1979, the amount established for purposes of clause (i) and (ii) of subparagraph (A) shall be $180 and $1,085, respectively.

(ii) For individuals who initially become eligible for old-age or disability insurance benefits, or who die (before becoming eligible for such benefits), in any calendar year after 1979, each of the amounts so established shall equal the product of the corresponding amount established with respect to the calendar year 1979 under clause (i) of this subparagraph and the quotient obtained by dividing—

(I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the second calendar year preceding the calendar year for which the determination is made, by

(II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year 1977.

(iii) Each amount established under clause (ii) for any calendar year shall be rounded to the nearest $1, except that any amounts so established which is a multiple of $0.50 but not of $1 shall be rounded to the next higher $1.

(C)(i) No primary insurance amount computed under subparagraph (A) may be less than—

(I) the dollar amount set forth on the first line of column IV in the table of benefits contained in (or deemed to be contained in) this subsection as in effect in December 1978, rounded (if not a multiple of $1) to the next higher multiple of $1, or

(II) an amount equal to $11.50 multiplied by the individual's years of coverage in excess of 10, or the increased amount determined for purposes of this subdivision under subsection (i),

whichever is greater. No increase under subsection (i) of this section except as provided in subsection (i)(2)(A) of this section shall apply to the dollar amount specified in subdivision (I) of this clause.

(ii) For purposes of clause (i)(II), the term "years of coverage" with respect to any individual means the number (not exceeding 30) equal to the sum of (I) the number (not exceeding 14 and disregarding any fraction) determined by dividing (a) the total of the wages credited to such individual (including wages deemed to be paid prior to 1951 to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 [45 U.S.C. 228a et seq.] prior to 1951 which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid prior to 1951 to such individual under section 431 of this title) for years after 1936 and before 1951 by (b) $900, plus (II) the number equal to the number of years after 1950 each of which is a computation base year (within the meaning of subsection (b)(2)(B)(ii) of this section) and in each of which he is credited with wages (including wages deemed to be paid to such individual under section 417 of this title, compensation under the Railroad Retirement Act of 1937 or 1974 [45 U.S.C. 228a et seq., 231 et seq.] which is creditable to such individual pursuant to this subchapter, and wages deemed to be paid to such individual under section 429 of this title) and self-employment income of not less than 25 percent of the maximum amount which, pursuant to subsection (e) of this section, may be counted for such year, or of not less than 25 percent of the maximum amount which could be so counted for such year (in the case of a year after 1977) if section 430 of this title as in effect immediately prior to December 20, 1977, had remained in effect without change.

(D) In each calendar year after 1978 the Secretary shall publish in the Federal Register, on or before November 1, the formula for computing benefits under this paragraph and for adjusting wages and self-employment income under subsection (b)(3) of this section in the case of an individual who becomes eligible for an old-age insurance benefit, or (if earlier) becomes eligible for a disability insurance benefit or dies, in the following year, and the average of the total wages (as described in subparagraph (B)(ii)(I)) on which that formula is based. With the initial publication required by this subparagraph, the Secretary shall also publish in the Federal Register the average of the total wages (as so described) for each calendar year after 1950.

(2)(A) A year shall not be counted as the year of an individual's death or eligibility for purposes of this subsection or subsection (i) of this section in any case where such individual was entitled to a disability insurance benefit for any of the 12 months immediately preceding the month of such death or eligibility (but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit or benefits to which he was entitled during such 12 months).

(B) In the case of an individual who was entitled to a disability insurance benefit for any of the 12 months before the month in which he became entitled to an old-age insurance benefit, became reentitled to a disability insurance benefit, or died, the primary insurance amount for determining any benefit attributable to that entitlement, reentitlement, or death is the greater of—

(i) the primary insurance amount upon which such disability insurance benefit was based, increased by the amount of each general benefit increase (as defined in subsection (i)(3) of this section), and each increase provided under subsection (i)(2) of this section, that would have applied to such primary insurance amount had the individual remained entitled to such disability insurance benefit until the month in which he became so entitled or reentitled or died, or

(ii) the amount computed under paragraph (1)(C).

(C) In the case of an individual who was entitled to a disability insurance benefit for any month, and with respect to whom a primary insurance amount is required to be computed at any time after the close of the period of the individual's disability (whether because of such individual's subsequent entitlement to old-age insurance benefits or to a disability insurance benefit based upon a subsequent period of disability, or because of such individual's death), the primary insurance amount so computed may in no case be less than the primary insurance amount with respect to which such former disability insurance benefit was most recently determined.

(3)(A) Paragraph (1) applies only to an individual who was not eligible for an old-age insurance benefit prior to January 1979 and who in that or any succeeding month—

(i) becomes eligible for such a benefit,

(ii) becomes eligible for a disability insurance benefit, or

(iii) dies,

and (except for subparagraph (C)(i)(II) thereof) it applies to every such individual except to the extent otherwise provided by paragraph (4).

(B) For purposes of this subchapter, an individual is deemed to be eligible—

(i) for old-age insurance benefits, for months beginning with the month in which he attains age 62, or

(ii) for disability insurance benefits, for months beginning with the month in which his period of disability began as provided under section 416(i)(2)(C) of this title,

except as provided in paragraph (2)(A) in cases where fewer than 12 months have elapsed since the termination of a prior period of disability.

(4) Paragraph (1) (except for subparagraph (C)(i)(II) thereof) does not apply to the computation or recomputation of a primary insurance amount for—

(A) an individual who was eligible for a disability insurance benefit for a month prior to January 1979 unless, prior to the month in which occurs the event described in clause (i), (ii), or (iii) of paragraph (3)(A), there occurs a period of at least 12 consecutive months for which he was not entitled to a disability insurance benefit, or

(B) an individual who had wages or self-employment income credited for one or more years prior to 1979, and who was not eligible for an old-age or disability insurance benefit, and did not die, prior to January 1979, if in the year for which the computation or recommendation would be made the individual's primary insurance amount would be greater if computed or recomputed—

(i) under this subsection as in effect in December 1978, for purposes of old-age insurance benefits in the case of an individual who becomes eligible for such benefits prior to 1984, or

(ii) as provided by subsection (d) of this section, in the case of an individual to whom such section applies.

In determining whether an individual's primary insurance amount would be greater if computed or recomputed as provided in subparagraph (B), (I) the table of benefits in effect in December 1978 shall be applied without regard to any increases in that table which may become effective (in accordance with subsection (i)(4) of this section) for years after 1978 (subject to clause (iii) of subsection (i)(2)(A) of this section but without regard to clauses (iv) and (v) thereof) and (II) such individual's average monthly wage shall be computed as provided by subsection (b)(4) of this section.

(5) For purposes of computing the primary insurance amount (after December 1978) of an individual to whom paragraph (1) does not apply (other than an individual described in paragraph (4)(B)), this section as in effect in December 1978 shall remain in effect, except that, effective for January 1979, the dollar amount specified in paragraph (3) of this subsection shall be increased to $11.50. The table for determining primary insurance amounts and maximum family benefits contained in this section in December 1978 shall be revised as provided by subsection (i) of this section for each year after 1978.

(b) Average indexed monthly earnings; average monthly wage

(1) An individual's average indexed monthly earnings shall be equal to the quotient obtained by dividing—

(A) the total (after adjustment under paragraph (3)) of his wages paid in and self-employment income credited to his benefit computation years (determined under paragraph (2)), by

(B) the number of months in those years.

(2)(A) The number of an individual's benefit computation years equals the number of elapsed years, reduced by five, except that the number of an individual's benefit computation years may not be less than two.

(B) For purposes of this subsection with respect to any individual—

(i) the term "benefit computation years" means those computation base years, equal in number to the number determined under subparagraph (A), for which the total of such individual's wages and self-employment income, after adjustment under paragraph (3), is the largest;

(ii) the term "computation base years" means the calendar years after 1950 and before—

(I) in the case of an individual entitled to old-age insurance benefits, the year in which occurred (whether by reason of section 402(j)(1) of this title or otherwise) the first month of that entitlement; or

(II) in the case of an individual who has died (without having become entitled to old-age insurance benefits), the year succeeding the year of his death;

except that such term excludes any calendar year entirely included in a period of disability; and

(iii) the term "number of elapsed years" means (except as otherwise provided by section 104(j)(2) of the Social Security Amendments of 1972) the number of calendar years after 1950 (or, if later, the year in which the individual attained age 21) and before the year in which the individual died, or, if it occurred earlier (but after 1960), the year in which he attained age 62; except that such term excludes any calendar year any part of which is included in a period of disability.

(3)(A) Except as provided by subparagraph (B), the wages paid in and self-employment income credited to each of an individual's computation base years for purposes of the selection therefrom of benefit computation years under paragraph (2) shall be deemed to be equal to the product of—

(i) the wages and self-employment income paid in or credited to such year (as determined without regard to this subparagraph), and

(ii) the quotient obtained by dividing—

(I) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the second calendar year (after 1976) preceding the earliest of the year of the individual's death, eligibility for an old-age insurance benefit, or eligibility for a disability insurance benefit (except that the year in which the individual dies, or becomes eligible, shall not be considered as such year if the individual was entitled to disability insurance benefits for any month in the 12-month period immediately preceding such death or eligibility, but there shall be counted instead the year of the individual's eligibility for the disability insurance benefit to which he was entitled in such 12-month period), by

(II) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the computation base year for which the determination is made.

(B) Wages paid in or self-employment income credited to an individual's computation base year which—

(i) occurs after the second calendar year specified in subparagraph (A)(ii)(I), or

(ii) is a year treated under subsection (f)(2)(C) of this section as though it were the last year of the period specified in paragraph (2)(B)(ii),

shall be available for use in determining an individual's benefit computation years, but without applying subparagraph (A) of this paragraph.

(4) For purposes of determining the average monthly wage of an individual whose primary insurance amount is computed (after 1978) under subsection (a) or (d) of this section as in effect (except with respect to the table contained therein) in December 1978, by reason of subsection (a)(4)(B) of this section, this subsection as in effect in December 1978 shall remain in effect, except that paragraph (2)(C) (as then in effect) shall be deemed to provide that "computation base years" include only calendar years in the period after 1950 (or 1936, if applicable) and prior to the year in which occurred the first month for which the individual was eligible (as defined in subsection (a)(3)(B) of this section as in effect in January 1979) for an old-age or disability insurance benefit, or, if earlier, the year in which he died. Any calendar year all of which is included in a period of disability shall not be included as a computation base year for such purposes.

(c) Application of prior provisions in certain cases

This subsection as in effect in December 1978 shall remain in effect with respect to an individual to whom subsection (a)(1) of this section does not apply by reason of the individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979.

(d) Primary insurance amount under 1939 Act

(1) For purposes of column I of the table appearing in subsection (a) of this section, as that subsection was in effect in December 1977, an individual's primary insurance benefit shall be computed as follows:

(A) The individual's average monthly wage shall be determined as provided in subsection (b) of this section, as in effect in December 1977 (but without regard to paragraph (4) thereof), except that for purposes of paragraphs (2)(C) and (3) of that subsection (as so in effect) 1936 shall be used instead of 1950.

(B) For purposes of subparagraphs (B) and (C) of subsection (b)(2) of this section (as so in effect)—

(i) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1936 and prior to 1950 shall be divided by the number of years (hereinafter in this subparagraph referred to as the "divisor") elapsing after the year in which the individual attained age 20 and prior to 1951; and

(ii) the total wages prior to 1951 (as defined in subparagraph (C) of this paragraph) of an individual who attained age 21 after 1949 shall be divided by the number of years (hereinafter in this subparagraph referred to as the "divisor") elapsing after 1949 and prior to 1951.

The quotient so obtained shall be deemed to be the individual's wages credited to each of the years which were used in computing the amount of the divisor, except that—

(iii) if the quotient exceeds $3,000, only $3,000 shall be deemed to be the individual's wages for each of the years which were used in computing the amount of the divisor, and the remainder of the individual's total wages prior to 1951 (I) if less than $3,000, shall be deemed credited to the year immediately preceding the earliest year used in computing the amount of the divisor, or (II) if $3,000 or more, shall be deemed credited, in $3,000 increments, to the year immediately preceding the earliest year used in computing the amount of the divisor and to each year consecutively preceding that year, with any remainder less than $3,000 being credited to the year immediately preceding the earliest year to which a full $3,000 increment was credited; and

(iv) no more than $42,000 may be taken into account, for purposes of this subparagraph, as total wages after 1936 and prior to 1951.

[*See main edition for text of* (C)]

(D) The individual's primary insurance benefit shall be 40 percent of the first $50 of his average monthly wage as computed under this subsection, plus 10 percent of the next $200 of his average monthly wage, increased by 1 percent for each increment year. The number of increment years is the number, not more than 14 nor less than 4, that is equal to the individual's total wages prior to 1951 divided by $1,650 (disregarding any fraction).

[*See main edition for text of* (2)]

(3) The provisions of this subsection as in effect prior to January 2, 1968, shall be applicable in the case of an individual who had a period of disability which began prior to 1951, but only if the primary insurance amount resulting therefrom is higher than the primary

insurance amount resulting from the application of this section (as amended by the Social Security Amendments of 1967) and section 420 of this title.

(4) The provisions of this subsection as in effect in December 1977 shall be applicable to individuals who become eligible for old-age or disability insurance benefits or die prior to 1978.

(e) Certain wages and self-employment income not to be counted

For the purposes of subsections (b) and (d) of this section—

(1) in computing an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage, there shall not be counted the excess over $3,600 in the case of any calendar year after 1950 and before 1955, the excess over $4,200 in the case of any calendar year after 1954 and before 1959, the excess over $4,800 in the case of any calendar year after 1958 and before 1966, the excess over $6,600 in the case of any calendar year after 1965 and before 1968, and the excess over $7,800 in the case of any calendar year after 1967 and before 1972, the excess over $9,000 in the case of any calendar year after 1971 and before 1973, the excess over $10,800 in the case of any calendar year after 1972 and before 1974, the excess over $13,200 in the case of any calendar year after 1973 and before 1975, and the excess over an amount equal to the contribution and benefit base (as determined under section 430 of this title) in the case of any calendar year after 1974 with respect to which such contribution and benefit base is effective (before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A) of this section) of (A) the wages paid to him in such year, plus (B) the self-employment income credited to such year (as determined under section 412 of this title);

(2) if an individual's average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage, computed under subsection (b) of this section or for the purposes of subsection (d) of this section is not a multiple of $1, it shall be reduced to the next lower multiple of $1.

(f) Recomputation of benefits

[*See main edition for text of* (*1*)]

(2)(A) If an individual has wages or self-employment income for a year after 1978 for any part of which he is entitled to old-age or disability insurance benefits, the Secretary shall, at such time or times and within such period as he may by regulation prescribe, recompute the individual's primary insurance account for that year.

(B) For the purpose of applying subparagraph (A) of subsection (a)(1) of this section to the average indexed monthly earnings of an individual to whom that subsection applies and who receives a recomputation under this paragraph, there shall be used, in lieu of the amounts established by subsection (a)(1)(B) of this section for purposes of clauses (i) and (ii) of subsection (a)(1)(A) of this section, the amounts so established that were (or, in the case of an individual described in subsection (a)(4)(B) of this section, would have been) used in the computation of such individual's primary insurance amount prior to the application of this subsection.

(C) A recomputation of any individual's primary insurance amount under this paragraph shall be made as provided in subsection (a)(1) of this section as though the year with respect to which it is made is the last year of the period specified in subsection (b)(2)(B)(ii) of this section; and subsection (b)(3)(A) of this section shall apply with respect to any such recomputation as it applied in the computation of such individual's primary insurance amount prior to the application of this subsection.

(D) A recomputation under this paragraph with respect to any year shall be effective—

(i) in the case of an individual who did not die in that year, for monthly benefits beginning with benefits for January of the following year; or

(ii) in the case of an individual who died in that year, for monthly benefits beginning with benefits for the month in which he died.

(3) Repealed. Pub. L. 95-216, title II, § 201(f)(2), Dec. 20, 1977, 91 Stat. 1521.

(4) A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least $1.

[*See main edition for text of* (*5*) *and* (*6*)]

(7) This subsection as in effect in December 1978 shall continue to apply to the recomputation of a primary insurance amount computed under subsection (a) or (d) of this section as in effect (without regard to the table in subsection (a) of this section) in that month, and, where appropriate, under subsection (d) as in effect in December 1977. For purposes of recomputing a primary insurance amount determined under subsection (a) or (d) of this section (as so in effect) in the case of an individual to whom those subsections apply by reason of subsection (a)(4)(B) of this section as in effect after December 1978, no remuneration shall be taken into account for the year in which the individual initially became eligible for an old-age or disability insurance benefit or died, or for any year thereafter.

(8) The Secretary shall recompute the primary insurance amounts applicable to beneficiaries whose benefits are based on a primary insurance amount which was computed under subsection (a)(3) of this section effective prior to January 1979, or would have been so computed if the dollar amount specified therein were $11.50. Such recomputation shall be effective January 1979, and shall include the effect of the increase in the dollar amount provided by subsection (a)(1)(C)(i)(II) of this section. Such primary insurance amount shall be deemed to be provided under such section for purposes of subsection (i) of this section.

[*See main edition for text of* (*g*)]

(h) Election of benefits by Public Health Service Reserve Officers

(1) Notwithstanding the provisions of subchapter III of chapter 83 of title 5, remuneration paid for service to which the provisions of section 410(*l*)(1) of this title are applicable and which is performed by an individual as a commissioned officer of the Reserve Corps of the Public Health Service prior to July 1, 1960, shall not be included in computing entitlement to or the amount of any monthly benefit under this subchapter, on the basis of his wages and self-employment income, for any month after June 1960, and prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Secretary that, by reason of a waiver filed as provided in paragraph (2), no further annuity will be paid to him, his wife, and his children, or, if he has died, to his widow and children, under subchapter III of chapter 83 of title 5 on the basis of such service.

[*See main edition for text of* (*2*)]

(i) Cost-of-living increases in benefits

[*See main edition for text of* (*1*)]

(2)(A)(i) The Secretary shall determine each year beginning with 1975 (subject to the limitation in paragraph (1)(B)) whether the base quarter (as defined in paragraph (1)(A)(i)) in such year is a cost-of-living computation quarter.

(ii) If the Secretary determines that the base quarter in any year is a cost-of-living computation quarter, he shall, effective with the month of June of that year as provided in subparagraph (B), increase—

(I) the benefit amount to which individuals are entitled for that month under section 427 or 428 of this title,

(II) the primary insurance amount of each other individual on which benefit entitlement is based under this subchapter (including a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, but subject to the provisions of such subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph), and

(III) the amount of total monthly benefits based on any primary insurance amount which is permitted under section 403 of this title (and such total shall be increased, unless otherwise so increased under another provision of this subchapter, at the same time as such primary insurance amount) or, in the case of a primary insurance amount computed under subsection (a) of this section as in effect (without regard to the table contained therein) prior to January 1979, the amount to which the beneficiaries may be entitled under section 403 of this title as in effect in December 1978, except as provided by section 403(a)(6) and (7) of this title as in effect after December 1978.

The increase shall be derived by multiplying each of the amounts described in subdivisions (I), (II), and (III) (including each of those amounts as previously increased under this subparagraph) by the same percentage (rounded to the nearest one-tenth of 1 percent) as the percentage by which the Consumer Price Index for that cost-of-living computation quarter exceeds such index for the most recent prior calendar quarter which was a base quarter under paragraph (1)(A)(ii) or, if later, the most recent cost-of-living computation quarter under paragraph (1)(B); and any amount so increased that is not a multiple of $0.10 shall be increased to the next higher multiple of $0.10. Any increase under this subsection in a primary insurance amount determined under subparagraph (C)(i)(II) of subsection (a)(1) of this section shall be applied after the initial determination of such primary insurance amount under that subparagraph (with the amount of such increase, in the case of an individual who becomes eligible for old-age or disability insurance benefits or dies in a calendar year after 1979, being determined from the range of possible primary insurance amounts published by the Secretary under the last sentence of subparagraph (D)).

(iii) In the case of an individual who becomes eligible for an old-age or disability insurance benefit, or who dies prior to becoming so eligible, in a year in which there occurs an increase provided under clause (ii), the individual's primary insurance amount (without regard to the time of entitlement to that benefit) shall be increased (unless otherwise so increased under another provision of this subchapter and, with respect to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, subject to the provisions of subsection (a)(1)(C)(i) of this section and clauses (iv) and (v) of this subparagraph) by the amount of that increase and subsequent applicable increases, but only with respect to benefits payable for months after May of that year.

(iv)(I) In the case of an individual who is entitled to an old-age insurance benefit that is based on a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, such primary insurance amount shall not be increased under this subsection for any year before the year in which occurs the first month with respect to which there is payable to such individual all or some part of such benefit after application of the provisions of section 403 of this title relating to deductions on account of work, or, if earlier, the year in which he attains age 65.

(II) In the case of an individual who is entitled to an insurance benefit under subsection (e) or (f) of section 402 of this title that is based on a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, such primary insurance amount shall not be increased under this subsection for any year (except as provided in subdivision (III)) before the year in which occurs the first month with respect to which there is payable to such individual all or some part of such benefit after application of the provisions of section 403 of this title relating to deductions on account of work, or, if earlier, the year in which he attains age 65.

(III) Any increase under this subsection which would otherwise be applied to a primary insurance amount except for the provisions of subdivision (II) of this clause, shall apply to such primary insurance amount if, during any month of the year in which the increase occurs, any individual is entitled to a benefit under subsection (d), (g), or (h) of section 402 of this title based on such primary insurance amount, and such primary insurance amount is based upon the wages and self-employment income of a deceased individual.

(IV) No primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section shall be increased under this subsection for any year during which no individual was entitled to any benefit based thereon under section 402 or 423 of this title for any month of such year.

(V) In any case in which an increase under this subsection which occurs during any year applies to a primary insurance amount determined under subsection (a)(1)(C)(i)(I) of this section, and such an increase occurring in a later year does not apply to such primary insurance amount on account of the provisions of this clause, any such increase which occurs in a later year which is applicable to such primary insurance amount shall be based upon such primary insurance amount as previously increased under this subsection.

(v) Notwithstanding clause (iv), no primary insurance amount shall be less than that provided under subsection (a)(1) of this section without regard to subparagraph (C)(i)(I) thereof, as subsequently increased by applicable increases under this section.

[*See main edition for text of (B) and (C)*]

(D) If the Secretary determines that a base quarter in a calendar year is also a cost-of-living computation quarter, he shall publish in the Federal Register within 45 days after the close of such quarter a determination that a benefit increase is resultantly required and the percentage thereof. He shall also publish in the Federal Register at that time (i) a revision of the range of the primary insurance amounts which are possible after the application of this subsection based on the dollar amount specified in subparagraph (C)(i)(II) of subsection (a)(1) of this section (with such revised primary insurance amounts constituting the increased amounts determined for purposes of such subparagraph (C)(i)(II) under this subsection), or specified in subsection (a)(3) of this section as in effect prior to 1979, and (ii) a revision of the range of maximum family benefits which correspond to such primary insurance amounts (with such maximum benefits being effective notwithstanding section 403(a) of this title except for paragraph (3)(B) thereof (or paragraph (2) thereof as in effect prior to 1979)).

[*See main edition for text of (3)*]

(4) This subsection as in effect in December 1978 shall continue to apply to subsections (a) and (d) of this section, as then in effect, for purposes of computing the primary insurance amount of an individual to whom subsection (a) of this section, as in effect after December 1978, does not apply (including an individual to whom subsection (a) of this section does not apply in any year by reason of paragraph (4)(B) of that subsection (but the application of this subsection in such cases shall be modified by the application of subdivision (I) in the last sentence of paragraph (4) of that subsection)). For purposes of computing primary insurance amounts and maximum family benefits (other than primary insurance amounts and maximum family benefits for individuals to whom such paragraph (4)(B) applies), the Secretary shall publish in the Federal Register revisions of the table of benefits contained in subsection (a) of this section, as in effect in December 1978, as required by paragraph (2)(D) of this subsection as then in effect.

(As amended Dec. 20, 1977, Pub. L. 95-216, title I, § 103(d), title II, § 201, 91 Stat. 1514, 1519; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

REFERENCES IN TEXT

Section 104(j)(2) of the Social Security Amendments of 1972, referred to in subsec. (b)(2)(B)(iii), is section 104(j)(2) of Pub. L. 92-603, title I, Oct. 30, 1972, 86 Stat. 1341, which is set out as a note under section 414 of this title.

The Social Security Amendments of 1967, referred to in subsec. (d)(3), means Pub. L. 90-248, Jan. 2, 1968, 81 Stat. 821. For complete classification of this Act to the Code, see Short Title of 1968 Amendment note set out under section 1305 of this title and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-216, § 201(a), completely revamped the provisions under which the primary insurance amount of an individual is determined by substituting provisions which employ a formula using percentages of different portions of the individual's average indexed monthly earnings for provisions under which the primary insurance amount of an insured individual was determined through references to a five-column table covering primary insurance amounts and maximum family benefits.

Subsec. (b). Pub. L. 95-216, § 201(b), substituted provisions setting up a formula for determining an individual's average indexed monthly earnings using benefit computation years, computation base years, and elapsed years as factors in the determination, for provisions that had set a formula for determining an individual's average monthly wage.

Subsec. (c). Pub. L. 95-216, § 201(c), substituted provisions that this subsection as in effect in Dec. 1978, will remain in effect with respect to an individual to whom subsec. (a)(1) of this section does not apply by reason of the individual's eligibility for an old-age or disability insurance benefit, or the individual's death, prior to 1979, for provisions under which, for the purposes of column II of the latest table that had appeared in (or was deemed to have appeared in) subsec. (a) of this section, an individual's primary insurance amount was to be computed on the basis of the law in effect prior to the month in which the latest such table had become effective, but with a limitation that this subsection was to be applicable only in the case of an individual who had become entitled to benefits under section 402(a) or section 423 of this title, or who had died, before such effective month.

Subsec. (d)(1)(A). Pub. L. 95-216, § 201(d)(1), added provisions in subsec. (d)(1)(A) and the preceding introductory provision directing that the existing references to subsecs. (a) and (b) of this section be deemed reference to such subsecs. (a) and (b) as they were in effect in Dec. 1977.

Subsec. (d)(1)(B). Pub. L. 95-216, § 201(d)(1), made a parenthetical insertion which limited the existing references to subpars. (B) and (C) of subsec. (b)(2) of this section to those provisions as they had been in effect in Dec. 1977, and introduced a simplified method, using the concept of a divisor and a quotient, for computing the primary insurance amounts of workers age 21 after 1936 and before 1951 when wages before 1951 are included in the computations.

Subsec. (d)(1)(D). Pub. L. 95-216, § 201(d)(2), substituted "40 percent" for "45.6 per centum" and "plus 10 percent of the next $200 of his average monthly wage, increased by 1 percent for each increment year" for "plus 11.4 per centum of the next $200 of such average monthly wage" in the existing provisions and added provisions that the number of increment years in the number, not more than 14 nor less than 4, that is equal to the individual's total wages prior to 1951 divided by $1,650 (disregarding any fraction).

Subsec. (d)(3). Pub. L. 95-216, § 201(d)(3), struck out requirement that when wages prior to 1951 are included in computing the average monthly wages of an individual who attains age 21 after 1936 and prior to 1951, the present law computation provisions in effect before the Social Security Amendments of 1967 must be used.

Subsec. (d)(4). Pub. L. 95-216, § 201(d)(4), added par. (4).

Subsec. (e)(1). Pub. L. 95-216, § 201(e), substituted "average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage" for "average monthly wage" and "(before the application, in the case of average indexed monthly earnings, of subsection (b)(3)(A) of this section) of (A) the wages paid to him in such year" for "of (A) the wages paid to him in such year".

Subsec. (e)(2). Pub. L. 95-216, § 201(e), substituted "average indexed monthly earnings or, in the case of an individual whose primary insurance amount is computed under subsection (a) of this section as in effect prior to January 1979, average monthly wage".

Subsec. (f)(2). Pub. L. 95-216, § 201(f)(1), generally expanded the provisions for recomputing primary insurance amounts for individuals with wages or self-employment income for years after 1978 for any part of which the individuals are entitled to old-age or disability insurance benefits.

Subsec. (f)(3). Pub. L. 95-216, § 201(f)(2), struck out subsec. (f)(3) which had provided for the recomputation of primary insurance amounts for workers who had self-employment income in 1952 and who had applied for benefits or died prior to 1961.

Subsec. (f)(4). Pub. L. 95-216, § 201(f)(3), substituted "A recomputation shall be effective under this subsection only if it increases the primary insurance amount by at least $1" for "Any recomputation under this subsection shall be effective only if such recomputation results in a higher primary insurance amount".

Subsec. (f)(7), (8). Pub. L. 95-216, § 201(f)(4), added pars. (7) and (8).

Subsec. (i)(2)(A)(ii). Pub. L. 95-216, § 201(g)(1), specified that an automatic benefit increase effective for June of a year in which the Secretary determines that a cost-of-living computation quarter, which triggers such an increase, has occurred will apply to benefits of those entitled to special payments under sections 427 and 428 of this title, to the primary insurance amounts on which beneficiaries are entitled including the frozen minimum primary insurance amounts and special minimum primary insurance amounts, and to the maximum family benefits at the same time as the primary insurance amounts on which they are based, where a primary insurance amount was computed under the law in effect in December 1978 will be increased at the same time as the primary insurance amounts, except as provided in section 403(a)(7) and (7) of this title.

Subsec. (i)(2)(A)(iii)-(v). Pub. L. 95-216, § 201(g)(2), added cls. (iii), (iv), and (v).

Subsec. (i)(2)(D). Pub. L. 95-216, § 201(g)(3), substituted provisions directing publication in the Federal Register of revisions of the range of primary insurance amounts and of the range of maximum family benefits for provisions that had directed publication of the revision of the table of benefits formerly set out in subsec. (a) and had set out the method of determining the revision of the table.

Subsec. (i)(2)(D)(v). Pub. L. 95-216, § 103(d), substituted in cl. (v) "is equal to, or exceeds by less than $5, one-twelfth of the new contribution and benefit base" for "is equal to one-twelfth of the new contribution and benefit base" and "plus 20 percent of the excess of the second figure in the last line of column III as extended under the preceding sentence over such second figure for the calendar year in which the table of benefits is revised" for "plus 20 percent of one-twelfth of the excess of the new contribution and benefit base for the calendar year following the calendar year in which such table of benefits is revised (as determined under section 430 of this title) over such base for the calendar year in which the table of benefits is revised" in the third sentence.

Subsec. (i)(4). Pub. L. 95-216, § 201(g)(4), added par. (4).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsecs. (a) to (c), (e), (f), (i)(2)(A), and (i)(4) of this section by Pub. L. 95-216 effective only with respect to monthly benefits under this subchapter payable for months after Dec. 1978 and with respect to lump-sum death payments with respect to deaths occurring after Dec. 1978, see section 206 of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 402 of this title.

Section 206 of Pub. L. 95-216 provided in part that the amendments made by section 201(d) of Pub. L. 95-216 [amending subsec. (d) of this section] shall be effective with respect to monthly benefits of an individual who becomes eligible for an old-age or disability insurance benefit, or dies after Dec. 1977.

Amendment of subsec. (i)(2)(D) by section 103(d) of Pub. L. 95-216 [which amended the second and third sentences of cl. (v) of subsec. (i)(2)(D)] to be applicable with respect to remuneration paid or received, and taxable years beginning after 1977, see section 104 of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 1401 of Title 26, Internal Revenue Code.

Amendment of subsec. (i)(2)(D) by section 201(g)(3) of Pub. L. 95-216 [which amended subsec. (i)(2)(D) by replacing everything after the first sentence thereof including former cls. (i), (ii), (iii), (iv), and (v)] effective with respect to monthly benefits under this subchapter payable for months after Dec. 1978 and with respect to lump-sum death payments with respect to deaths occurring after Dec. 1978, see section 206 of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 402 of this title.

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Section Referred to in Other Sections

This section is referred to in sections 402, 403, 413, 417, 423, 424a, 427, 428, 430, 431, 433, 1382f, 1395r of this title; title 26 section 415; title 38 section 3112; title 45 sections 231b, 231c.

§ 416. Additional definitions

For purposes of this subchapter—

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Divorced wives; divorce

(1) The term "divorced wife" means a woman divorced from an individual, but only if she had been married to such individual for a period of 10 years immediately before the date the divorce became effective.

(2) The term "surviving divorced wife" means woman divorced from an individual who has died, but only if she had been married to the individual for a period of 10 years immediately before the date the divorce became effective.

[*See main edition for text of* (*3*) *and* (*4*); (*e*) *to* (*k*)]

(As amended Dec. 20, 1977, Pub. L. 95-216, title III, § 337(a), 91 Stat. 1548.)

Amendments

1977—Subsec. (d)(1), (2). Pub. L. 95-216 substituted "10" for "20" wherever appearing therein.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-216 effective with respect to monthly benefits after Dec., 1978, and applications filed on or after Jan. 1, 1979, see section 337(c) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 402 of this title.

Section Referred to in Other Sections

This section is referred to in sections 402, 413, 414, 415, 417, 421, 422, 423, 428, 429, 431, 1382c, 1395ii of this title; title 5 section 8311; title 30 section 902; title 45 sections 231a, 231b, 231e, 231q.

§ 417. Benefits for veterans

[*See main edition for text of* (*a*)]

(b) Determination of insurance status

(1) Any World War II veteran who died during the period of three years immediately following his separation from the active military or naval service of the United States shall be deemed to have died a fully insured individual whose primary insurance amount is the amount determined under section 415(c) of this title as in effect in December 1978. Notwithstanding section 415(d) of this title as in effect in December 1978, the primary insurance benefit (for purposes of section 415(c) of this title as in effect in December 1978) of such veteran shall be determined as provided in this subchapter as in effect prior to August 28, 1950, except that the 1 per centum addition provided for in section 409(e)(2) of this title as in effect prior to August 28, 1950 shall be applicable only with respect to calendar years prior to 1951. This subsection shall not be applicable in the case of any monthly benefit or lump-sum death payment if—

[*See main edition for text of* (*A*) *to* (*D*), (*2*); (*c*) *to* (*e*)]

(f) Right to annuity; waiver

(1) In any case where a World War II veteran (as defined in subsection (d)(2) of this section) or a veteran (as defined in subsection (e)(4) of this section) has died or shall hereafter die, and his widow or child is entitled under subchapter III of chapter 83 of title 5; to an annuity in the computation of which his active military or naval service was included, clause (B) of subsection (a)(1) of this section or clause (B) of subsection (e)(1) of this section shall not operate (solely by reason of such annuity) to make such subsection inapplicable in the case of any monthly benefit under section 402 of this title which is based on his wages and self-employment income; except that no such widow or child shall be entitled under section 402 of this title to any monthly benefit in the computation of which such service is included by reason of this subsection (A) unless such widow or child after December 1956 waives his or her right to receive such annuity, or (B) for any month prior to the first month with respect to which the Director of the Office of Personnel Management certifies to the Secretary of Health, Education, and Welfare that (by reason of such waiver) no further annuity will be paid to such widow or child under such subchapter III, on the basis of such veteran's military or civilian service. Any such waiver shall be irrevocable.

[*See main edition for text of* (*2*); (*g*) *and* (*h*)]

(As amended Dec. 20, 1977, Pub. L. 95-216, title II, 205(c), 91 Stat. 1529; 1978 Reorg. Plan No. 2, § 102, eff. Jan 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

Amendments

1977—Subsec. (b)(1). Pub. L. 95-216 substituted "section 415(c) of this title as in effect in December 1978" for "section 415(c) of this title" in two places and "section 415(d) of this title as in effect in December 1978" for "section 415(d) of this title".

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-216 effective with respect to monthly benefits and lump-sum death payments for deaths occurring after Dec., 1978, see section 206 of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 402 of this title.

Transfer of Functions

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 418. Voluntary agreements for coverage of State and local employees

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Services covered

[*See main edition for text of* (*1*) *to* (*7*)]

(8) Notwithstanding any other provision of this section, the agreement with any State entered into under this section may at the option of the State be modified on or after January 1, 1968, to exclude service performed by election officials or election workers if the remuneration paid in a calendar year for such service is less than $100. Any modification of an agreement pursuant to this paragraph shall be effective with respect to services performed after an effective date, specified in such modification, which shall not be earlier than the last day of the calendar quarter in which the modification is mailed or delivered by other means to the Secretary.

(d) Positions covered by retirement systems

[*See main edition for text of* (*1*) *to* (*5*)]

(6) [*See main edition for text of* (*A*) *and* (*B*)]

(C) For the purposes of this subsection, any retirement system established by the State of Alaska, California, Connecticut, Florida, Georgia, Illinois, Massachusetts, Minnesota, Nevada, New Jersey, New Mexico, New York, North Dakota, Pennsylvania, Rhode Island, Tennessee, Texas, Vermont, Washington, Wisconsin, or Hawaii, or any political subdivision of any such State, which, on, before, or after August 1, 1956, is divided into two divisions or parts, one of which is composed of positions of members of such system who desire coverage under an agreement under this section and the other of which is composed of positions of members of such system who do not desire such coverage, shall, if the State so desires and if it is provided that there shall be included in such division or part composed of members desiring such coverage the positions of individuals who become members of such system after such coverage is extended, be deemed to be a separate retirement system with respect to each such division or part. If, in the case of a separate retirement system which is deemed to exist by reason of subparagraph (A) and which has been divided into two divisions or parts pursuant to the first sentence of this subparagraph, individuals become members of such system by reason of action taken by a political subdivision after coverage under an agreement under this section has been extended to the division or part thereof composed of positions of individuals who desire such coverage, the positions of such individuals who become members of such retirement system by reason of the action so taken shall be included in the division or part of such system composed of positions of members who do not desire such coverage if (i) such individuals, on the day before becoming such members, were in the division or part of another separate retirement system (deemed to exist by reason of subparagraph (A)) composed of positions of members of such system who do not desire coverage under an agreement under this section, and (ii) all of the positions in the separate retirement system of which such individuals so become members and all of the positions in the separate retirement system referred to in clause (i) would have been covered by a single retirement system if the State had not taken action to provide for separate retirement systems under this paragraph.

[*See main edition for text of* (*D*) *to* (*G*), (*7*) *and* (*8*); (*e*) *and* (*f*)]

(g) Termination of agreement

(1) Upon giving at least two years' advance notice in writing to the Secretary of Health, Education, and Welfare, a State may terminate, effective at the end of a calendar year specified in the notice, its agreement with the Secretary of Health, Education, and Welfare either—

[*See main edition for text of* (*A*) *and* (*B*), (*2*) *and* (*3*); (*h*) *to* (*l*)]

(m) Wisconsin retirement fund

(1) Notwithstanding paragraph (1) of subsection (d) of this section, the agreement with the State of Wisconsin may, subject to the provisions of this subsection, be modified so as to apply to service performed by employees in positions covered by the Wisconsin retirement fund or any successor system.

[*See main edition for text of* (*2*) *to* (*4*); (*n*) *and* (*o*)]

(p) Policemen and firemen in certain States

(1) Any agreement with the State of Alabama, California, Florida, Georgia, Hawaii, Idaho, Kansas, Maine, Maryland, Mississippi, Montana, New York, North Carolina, North Dakota, Oregon, Puerto Rico, South Carolina, South Dakota, Tennessee, Texas, Vermont, Virginia, or Washington entered into pursuant to this section prior to August 1, 1956, may, notwithstanding the provisions of subsection (d)(5)(A) of this section and the references thereto in subsections (d)(1) and (d)(3) of this section, be modified pursuant to subsection (c)(4) of this section to apply to service performed by employees of such State or any political subdivision thereof in any policeman's or fireman's position covered by a retirement system in effect on or after August 1, 1956, but only upon compliance with the requirements of subsection (d)(3) of this section. For the purposes of the preceding sentence, a retirement system which covers positions of policemen or firemen, or both, and other positions shall, if the State concerned so desire, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, or both, as the case may be.

[*See main edition for text of* (*2*)]

(q) Time limitation on assessments

[*See main edition for text of* (*1*) *to* (*3*)]

(4) An assessment of an amount due made by the Secretary after the expiration of the period specified in paragraph (2) of this subsection shall nevertheless be deemed to have been made within such period if—

[*See main edition for text of* (*A*)]

(B) within the 365 days immediately preceding the expiration of such period (or extended period) the State pays to the Secretary of the Treasury less than the correct amount due under an agreement pursuant to this section with respect to wages paid to individuals in a calendar year as members of a coverage group, and the Secretary of Health, Education, and Welfare makes the assessment, adjusted to take into account the amount paid by the State, no later than the 365th day after the day the State made payment to the Secretary of the Treasury; but the Secretary of Health, Education, and Welfare shall make such assessment only with respect to the wages paid to such individuals in such calendar year as members of such coverage group; or

[*See main edition for text of* (*C*), (*5*)]

(6) The Secretary shall accept wage reports filed by a State under an agreement pursuant to this section or regulations of the Secretary thereunder, after the expiration of the period specified in paragraph (2) of this subsection or such period as extended pursuant to paragraph (4) of this subsection, with respect to wages which are paid to individuals performing services as employees in a coverage group included in the agreement and for payment in connection with which the State is not liable by reason of paragraph (2) of this subsection, only if the State—

[*See main edition for text of* (*A*)]

(B) agrees in writing with the Secretary of Health, Education, and Welfare to an extension of the period specified in paragraph (2) of this subsection with respect to wages paid to all individuals performing services as employees in such coverage group in the period or periods designated by the state in such wage reports as the period or periods in which such wages were paid. If the State so agrees, the period specified in paragraph (2) of this subsection, or such period as extended pursuant to paragraph (4) of this subsection, shall be extended until such time as the Secretary notifies the State that such wage reports have been accepted.

[*See main edition for text of* (*7*)]

(r) Time limitation on credits and refunds

(1) No credit or refund of an overpayment by a State under an agreement pursuant to this section with respect to wages paid or alleged to have been paid to an individual as a member of a coverage group in a calendar year shall be allowed after the expiration of the latest of the following periods—

(A) three years, three months, and fifteen days after the year in which such wages were paid or alleged to have been paid, or

(B) three years after the date the payment which included such overpayment became due under such agreement with respect to the wages paid or alleged to have been paid to such individual as a member of such coverage group in such calendar year, or

[*See main edition for text of* (*C*) *and* (*D*)]

unless prior to the expiration of such period a claim for such credit or refund is filed with the Secretary of Health, Education, and Welfare by the State.

[*See main edition for text of* (*2*); (*s*) *to* (*u*)]

(As amended Dec. 20, 1977, Pub. L. 95-216, title III, §§ 319-321, 353(b), 91 Stat. 1541, 1553.)

AMENDMENTS

1977—Subsec. (c)(8). Pub. L. 95-216, § 353(b)(1), substituted "year" for "quarter" and "$100" for "$50".

Subsec. (d)(6)(C). Pub. L. 95-216, § 320, added reference to New Jersey.

Subsec. (g)(1). Pub. L. 95-216, § 353(b)(2), substituted "year" for "quarter".

Subsec. (m)(1). Pub. L. 95-216, § 321, added "or any successor system" following "Wisconsin retirement fund".

Subsec. (p)(1). Pub. L. 95-216, § 319, added reference to Mississippi.

Subsec. (q)(4)(B). Pub. L. 95-216, § 353(b)(3), substituted references to calendar years for references to calendar quarters wherever appearing therein.

Subsec. (q)(6)(B). Pub. L. 95-216, § 353(b)(4), substituted "period or periods designated by the State in such wage reports as the period or" for "calendar quarters designated by the State in such wage reports as the".

Subsec. (r)(1). Pub. L. 95-216, § 353(b)(5), in material preceding cl. (A) and in cl. (B) substituted "year" for "quarter", and in cl. (A) struck out "in which occurred the calendar quarter" following "year".

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 353(g) of Pub. L. 95-216 provided that: "The amendments made by subsection (b) of this section [amending subsecs. (c)(8), (q)(4)(B), (6)(B) and (r)(1) of this section] shall apply with respect to remuneration paid after December 31, 1977, except that the amendment made by subsection (b)(2) [amending subsec. (g)(1) of this section] shall apply with respect to notices submitted by the States to the Secretary after the date of the enactment of this Act [Dec. 20, 1977]. The amendments made by subsections (d) [amending section 429(a) of this title] and (f)(2) [amending section 405(c)(1) of this title] shall be effective January 1, 1978. Except as otherwise specifically provided, the remaining amendments made by this section [amending sections 403(f)(8)(B)(i), (ii), 424a(f)(2), and 430(b) of this title] shall be effective January 1, 1979."

MODIFICATION OF AGREEMENT WITH ILLINOIS TO PROVIDE COVERAGE FOR CERTAIN POLICEMEN AND FIREMEN

Section 318 of Pub. L. 95-216 provided that:

"(a) Notwithstanding the provisions of subsection (d)(5)(A) of section 218 of the Social Security Act [subsec. (d)(5)(A) of this section] and the references thereto in subsections (d)(1) and (d)(3) of such section 218 [subsec. (d)(1) and (3) of this section, respectively], the agreement with the State of Illinois heretofore entered into pursuant to such section 218 [this section] may, at any time prior to January 1, 1979, be modified pursuant to subsection (c)(4) of such section 218 [subsec. (c)(4) of this section] so as to apply to services performed in policemen's or firemen's positions covered by the Illinois Municipal Retirement Fund on the date of the enactment of this Act [Dec. 20, 1977] if the State of Illinois has at any time prior to the date of the enactment of this Act [Dec. 20, 1977] paid to the Secretary of the Treasury, with respect to any of the services performed in such positions, the sums prescribed pursuant to subsection (e)(1) of such section 218 [subsec. (e)(1) of this section]. For purposes of this section, a retirement system which covers positions of policemen or firemen shall, if the State of Illinois so desires, be deemed to be a separate retirement system with respect to the positions of such policemen or firemen, as the case may be.

"(b) Notwithstanding the provisions of subsection (f) of section 218 of the Social Security Act [subsec. (f) of this section], any modification in the agreement with the State of Illinois under subsection (a) of this section, to the extent that it involves services performed by a policeman or fireman in positions covered under the Illinois Municipal Retirement Fund, shall be made effective with respect to—

"(1) all services performed by policemen or firemen, in positions to which the modification relates, on or after the date of the enactment of this Act [Dec. 20, 1977]; and

"(2) all services performed by such individuals in such positions before such date of enactment [Dec. 20, 1977] with respect to which the State of Illinois has paid to the Secretary of the Treasury the sums prescribed pursuant to subsection (e)(1) of such section 218 [subsec. (2)(1) of this section] at the time or times established pursuant to such subsection (e)(1), if and to the extent that—

"(A) no refund of the sums so paid has been obtained, or

"(B) a refund of part or all of the sums so paid has been obtained but the State of Illinois repays to the Secretary of the Treasury the amount of such refund within 90 days after the date that the modification is agreed to by the State and the Secretary of Health, Education, and Welfare."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 405, 405a, 409, 410, 411 of this title; title 26 sections 1402, 3121, 6413, 6511.

§ 421. Disability determinations

TRAVEL EXPENSES FOR MEDICAL EXAMINATIONS, RECONSIDERATION INTERVIEWS, AND PROCEEDINGS BEFORE ADMINISTRATIVE LAW JUDGES

Pub. L. 95-480, title II, § 200, Oct. 18, 1978, 92 Stat. 1582, provided in part that: "Such amounts as are required shall be available to pay travel expenses either on an actual cost or commuted basis, to an individual for travel incident to medical examinations, and to parties, their representatives and all reasonably necessary witnesses for travel within the United States, Puerto Rico, and the Virgin Islands, to reconsider interviews and to proceedings before administrative law judges under title II, XVI, and XVIII of the Social Security Act [subchapters II, XVI, and XVIII of this chapter]."

Similar provisions were contained in the following act:

Pub. L. 94-439, title II, § 200, Sept. 30, 1976, 90 Stat. 1430.

§ 422. Rehabilitation services

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 402, 403, 423, 424a of this title; title 20 section 3441; title 26 section 1402; title 29 section 762a.

§ 423. Disability insurance benefit payments

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Disability

[*See main edition for text of* (*1*) *to* (*3*)]

(4) The Secretary shall by regulations prescribe the criteria for determining when services performed or earnings derived from services demonstrate an individual's ability to engage in substantial gainful activity. No individual who is blind shall be regarded as having demonstrated an ability to engage in substantial gainful activity on the basis of earnings that do not exceed the exempt amount under section 403(f)(8) of this title which is applicable to individuals described in subparagraph (D) thereof. Notwithstanding the provisions of paragraph (2), an individual whose services or earnings meet such criteria shall, except for purposes of section 422(c) of this title, be found not to be disabled.

[*See main edition for text of* (*5*)]

(As amended Dec. 20, 1977, Pub. L. 95-216, title III, § 335, 91 Stat. 1547.)

AMENDMENTS

1977—Subsec. (d)(4). Pub. L. 95-216 added provisions relating to activities of blind individuals.

§ 424a. Reduction of disability benefits through receipt of workmen's compensation

(a) Conditions for reduction; computation

If for any month prior to the month in which an individual attains the age of 62—

(1) such individual is entitled to benefits under section 423 of this title, and

(2) such individual is entitled for such month, under a workmen's compensation law or plan of the United States or a State, to periodic benefits for a total or partial disability (whether or not permanent) and the Secretary has, in a prior month, received notice of such entitlement for such month,

the total of his benefits under section 423 of this title for such month and of any benefits under section 402 of this title for such month based on his wages and self-employment income shall be reduced (but not below zero) by the amount by which the sum of—

(3) such total of benefits under sections 423 and 402 of this title for such month, and

(4) such periodic benefits payable (and actually paid) for such month to such individual under the workmen's compensation law or plan,

exceeds the higher of—

(5) 80 percentum of his "average current earnings", or

(6) the total of such individual's disability insurance benefits under section 423 of this title for such month and of any monthly insurance benefits under section 402 of this title for such month based on his wages and self-employment income, prior to reduction under this section.

In no case shall the reduction in the total of such benefits under sections 423 and 402 of this title for a month (in a continuous period of months) reduce such total below the sum of—

(7) the total of the benefits under sections 423 and 402 of this title, after reduction under this section, with respect to all persons entitled to benefits on the basis of such indi-

vidual's wages and self-employment income for such month which were determined for such individual and such persons for the first month for which reduction under this section was made (or which would have been so determined if all of them had been so entitled in such first month), and

(8) any increase in such benefits with respect to such individual and such persons, before reduction under this section, which is made effective for months after the first month for which reduction under this section is made.

For purposes of clause (5), an individual's average current earnings means the largest of (A) the average monthly wage (determined under section 415(b) of this title as in effect prior to January 1979) used for purposes of computing his benefits under section 423 of this title, (B) one-sixtieth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a) and 411(b)(1) of this title) for the five consecutive calendar years after 1950 for which such wages and self-employment income were highest, or (C) one-twelfth of the total of his wages and self-employment income (computed without regard to the limitations specified in sections 409(a) and 411(b)(1) of this title) for the calendar year in which he had the highest such wages and income during the period consisting of the calendar year in which he became disabled (as defined in section 423(d) of this title) and the five years preceding that year.

[*See main edition for text of* (*b*) *to* (*e*)]

(f) Redetermination of reduction

[*See main edition for text of* (*1*)]

(2) In making the redetermination required by paragraph (1), the individual's average current earnings (as defined in subsection (a) of this section) shall be deemed to be the product of—

(A) his average current earnings as initially determined under subsection (a) of this section;

(B) the ratio of (i) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which such redetermination is made to (ii) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability); and

(C) in any case in which the reduction was first computed before 1978, the ratio of (i) the average of the taxable wages reported to the Secretary for the first calendar quarter of 1977 to (ii) the average of the taxable wages reported to the Secretary for the first calendar quarter of the calendar year before the year in which the reduction was first computed (but not counting any reduction made in benefits for a previous period of disability).

Any amount determined under this paragraph which is not a multiple of $1 shall be reduced to the next lower multiple of $1.

[*See main edition for text of* (*g*)]

(As amended Dec. 20, 1977, Pub. L. 95-216, title II, § 205(d), title III, 353(c), 91 Stat. 1529, 1553.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-216, §§ 205(d), 353(c)(1), struck out provisions following par. (8) under which the Secretary, in cases where an individual's wages and self-employment income reported to the Secretary for a calendar year reached the limitations specified in sections 409(a) and 411(b)(1) of this title, was required to estimate the total of such wages and self-employment income on the basis of such information as might be available to him indicating the extent (if any) by which the wages and self-employment income exceeded limitations, and, effective with respect to monthly benefits under this subchapter payable for months after Dec. 1978, and with respect to lump-sum death payments with respect to death occurring after Dec. 1978, added "(determined under section 415(b) of this title as in effect prior to January 1979)" following "(A) the average monthly wage" in the provisions following par. (8).

Subsec. (f)(2). Pub. L. 95-216, § 353(c)(2), divided existing provisions into subpars. (A) and (B), added subpar. (C), and in subpar. (B) as so redesignated substituted "(i) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the year in which such redetermination is made to (ii) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for calendar year 1977 or, if later, the calendar year before the year" for "(i) the average of the taxable wages of all persons for whom taxable wages were reported to the Secretary for the first calendar quarter of the calendar year before the calendar year in which the redetermination is made, to (ii) the average of the taxable wages of such persons reported to the Secretary for the first calendar quarter of the taxable year before the calendar year".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 205(d) of Pub. L. 95-216 [adding "(determined under section 415(b) of this title as in effect prior to January 1979)" following "(A) the average monthly wage" in the provisions following par. (8) of subsec. (a) of this section] effective with respect to monthly benefits under this subchapter payable for months after Dec. 1978 and with respect to lump-sum death payments with respect to deaths occurring after Dec. 1978, see section 206 of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 402 of this title.

Section 353(c)(1) of Pub. L. 95-216 provided in part that the amendment by section 353(c)(1) of Pub. L. 95-216 [which struck out requirement in the provisions following par. (8) of subsec. (a) of this section that the Secretary estimate the total of wages and self-employment income in those cases where an individual's reported wages and self-employment income for the calendar year reached the limitations specified in sections 409(a) and 411(b)(1) of this title] is effective with respect to the estimates for calendar years beginning after Dec. 31, 1977.

Amendment of subsec. (f)(2) of this section by Pub. L. 95-216 effective Jan. 1, 1979, see section 353(g) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 418 of this title.

§ 426. Entitlement to hospital insurance benefits

(a) Individuals over 65 years

Every individual who—

(1) has attained age 65, and

(2) is entitled to monthly insurance benefits under section 402 of this title or is a qualified railroad retirement beneficiary,

shall be entitled to hospital insurance benefits under part A of subchapter XVIII of this chapter for each month for which he meets the condition specified in paragraph (1), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2).

[*See main edition for text of* (*b*) *to* (*d*)]

(e) Benefits for widows and widowers

(1) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of widows and widowers described in paragraph (2)(A)(iii) thereof—

(A) the term "age 60" in sections 402(e)(1)(B)(ii), 402(e)(5) of this title, 402(f)(1)(B)(ii) and 402(f)(6) of this title shall be deemed to read "age 65"; and

(B) the phrase "before she attained age 60" in the matter following subparagraph (F) of section 402(e)(1) of this title and the phrase "before he attained age 60" in the matter following subparagraph (F) of section 402(f)(1) of this title shall each be deemed to read "based on a disability".

(2) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of an individual under age 65 who is entitled to benefits under section 402 of this title, and who was entitled to widow's insurance benefits or widower's insurance benefits based on disability for the month before the first month in which such individual was so entitled to old-age insurance benefits (but ceased to be entitled to such widow's or widower's insurance benefits upon becoming entitled to such old-age insurance benefits), such individuals shall be deemed to have continued to be entitled to such widow's insurance benefits or widower's insurance benefits for and after such first month.

(3) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section any disabled widow age 50 or older who is entitled to mother's insurance benefits (and who would have been entitled to widow's insurance benefits by reason of disability if she had filed for such widow's benefits) shall, upon application, for such hospital insurance benefits be deemed to have filed for such widow's benefits and shall, upon furnishing proof of such disability prior to July 1, 1974, under such procedures as the Secretary may prescribe, be deemed to have been entitled to such widow's benefits as of the time she would have been entitled to such widow's benefits if she had filed a timely application therefor.

(4) For purposes of determining entitlement to hospital insurance benefits under subsection (b) of this section in the case of an individual described in clause (iii) of subsection (b)(2)(A) of this section, the entitlement of such individual to widow's or widower's insurance benefits under section 402(e) or (f) of this title by reason of a disability shall be deemed to be the entitlement to such benefits that would result if such entitlement were determined without regard to the provisions of section 402(j)(4) of this title.

(f) Certain uninsured individuals

For entitlement to hospital insurance benefits in the case of certain uninsured individuals, see section 426a of this title.

(g) Repealed. Pub. L. 95-292, § 1(b)(1), June 13, 1978, 92 Stat. 308

(h), (i) Redesignated (e) and (f)

(As amended Dec. 20, 1977, Pub. L. 95-216, title III, §§ 332(a)(3), 334(d)(4)(B), 91 Stat. 1543, 1546; June 13, 1978, Pub. L. 95-292, §§ 1(b), 3, 92 Stat. 308, 315.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-292, § 3(a), substituted "condition specified in paragraph (1), beginning with the first month after June 1966 for which he meets the conditions specified in paragraphs (1) and (2)" for "conditions specified in subparagraph (B), beginning with the first month after June 1966 for which he meets the conditions specified in subparagraphs (A) and (B)".

Subsec. (e). Pub. L. 95-292, §§ 1(b)(1), (2), 3(b), redesignated former subsec. (h) as (e) and, in subsec. (e) as so redesignated, corrected a technical error resulting from the 1973 amendment of pars. (2) and (3) by Pub. L. 93-233 under which a reference to subsec. (b) of this section had been inserted without the required parentheses. Former subsec. (e), relating to Medicare eligibility of persons medically determined to have chronic renal disease requiring hemodialysis or renal transplantation, was struck out. See section 426-1 of this title.

Subsec. (f). Pub. L. 95-292, § 1(b)(1), (2), redesignated former subsec. (i) as (f). Former subsec. (f), relating to the duration of Medicare coverage of persons medically determined to have chronic renal disease requiring hemodialysis or renal transplantation, was struck out. See section 426-1 of this title.

Subsec. (g). Pub. L. 95-292, § 1(b)(1), struck out subsec. (g) which related to reimbursement for kidney transplant and kidney treatment. See section 1395rr of this title.

Subsecs. (h), (i). Pub. L. 95-292, § 1(b)(2), redesignated subsecs. (h) and (i) as (e) and (f), respectively.

1977—Subsec. (h)(1)(B). Pub. L. 95-216, § 334(d)(4)(B), substituted "subparagraph (F) of section 402(f)(1)" for "subparagraph (G) of section 402(f)(1)".

Subsec. (h)(4). Pub. L. 95-216, § 332(a)(3), added par. (4).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 6 of Pub. L. 95-292 provided that: "The amendments made by the preceding sections of this Act [enacting sections 426-1 and 1395rr of this title and amending sections 426, 1395c, 1395i, 1395*l*, 1395t, 1395x, 1395cc, and 1395mm of this title] shall become effective with respect to services, supplies, and equipment furnished after the third calendar month which begins after the date of the enactment of this Act, [June 13, 1978], except that those amendments providing for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers shall become effective with respect to a facility's or provider's first accounting period which begins after the last day of the twelfth month following the month of the enactment of this Act [June 1978], and those amendments providing for reimbursement rates for home dialysis shall become effective on April 1, 1979."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (h)(4) by Pub. L. 95-216 effective with respect to monthly insurance benefits under this subchapter to which an individual becomes entitled on the basis of an application filed on or after Jan. 1, 1978, see section 332(b) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 402 of this title.

Amendment of subsec. (h)(1)(B) by Pub. L. 95-216 applicable with respect to monthly insurance benefits payable under this subchapter for months beginning with Dec., 1977, on the basis of applications filed in or after Dec., 1977, see section 334(f) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 402 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 401, 426, 426-1, 426a, 433, 1320b-1, 1395c, 1395e, 1395f, 1395h, 1395i-1, 1395i-2, 1395p, 1395u, 1395ff of this title; title 45 sections 231f, 231r.

§ 426-1. End stage renal disease program

(a) Entitlement to benefits

Notwithstanding any provision to the contrary in section 426 of this title or subchapter XVIII of this chapter, every individual who—

(1)(A) is fully or currently insured (as such terms are defined in section 414 of this title) or would be fully or currently insured if his service as an employee (as defined in the Railroad Retirement Act of 1974) after December 31, 1936, were included in the term "employment" as defined in this chapter, or (B) is entitled to monthly insurance benefits under this subchapter or an annuity under the Railroad Retirement Act of 1974 [45 U.S.C. 231 et seq.], or (C) is the spouse or dependent child (as defined in regulations) of an individual who is fully or currently insured or would be fully or currently insured if his service as an employee (as defined in the Railroad Retirement Act of 1974) after December 31, 1936, were included in the term "employment" as defined in this chapter, or (D) is the spouse or dependent child (as defined in regulations) of an individual entitled to monthly insurance benefits under this subchapter or an annuity under the Railroad Retirement Act of 1974;

(2) is medically determined to have end stage renal disease; and

(3) has filed an application for benefits under this section;

shall, in accordance with the succeeding provisions of this section, be entitled to benefits under part A and eligible to enroll under part B of subchapter XVIII of this chapter, subject to the deductible, premium, and coinsurance provisions of that subchapter.

(b) Duration of period of entitlement

Subject to subsection (c) of this section, entitlement of an individual to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter by reasons of this section on the basis of end stage renal disease—

(1) shall begin with—

(A) the third month after the month in which a regular course of renal dialysis is initiated, or

(B) the month in which such individual receives a kidney transplant, or (if earlier) the first month in which such individual is admitted as an inpatient to an institution which is a hospital meeting the requirements of section 1395x(e) of this title (and such additional requirements as the Secretary may prescribe under section 1395rr(b) of this title for such institutions) in preparation for or anticipation of kidney transplantation, but only if such transplantation occurs in that month or in either of the next two months,

whichever first occurs (but no earlier than one year preceding the month of the filing of an application for benefits under this section); and

(2) shall end, in the case of an individual who receives a kidney transplant, with the thirty-sixth month after the month in which such individual receives such transplant or, in the case of an individual who has not received a kidney transplant and no longer requires a regular course of dialysis, with the twelfth month after the month in which such course of dialysis is terminated.

(c) Individuals participating in self-care dialysis training programs; kidney transplant failures; resumption of previously terminated regular course of dialysis

Notwithstanding the provisions of subsection (b) of this section—

(1) in the case of any individual who participates in a self-care dialysis training program prior to the third month after the month in which such individual initiates a regular course of renal dialysis in a renal dialysis facility or provider of services meeting the requirements of section 1395rr(b) of this title, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such regular course of renal dialysis is initiated;

(2) in any case in which a kidney transplant fails (whether during or after the thirty-six-month period specified in subsection (b)(2) of this section) and as a result the individual who received such transplant initiates or resumes a regular course of renal dialysis, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such course is initiated or resumed; and

(3) in any case in which a regular course of renal dialysis is resumed subsequent to the termination of an earlier course, entitlement to benefits under part A and eligibility to enroll under part B of subchapter XVIII of this chapter shall begin with the month in which such regular course of renal dialysis is resumed.

(Aug. 14, 1935, ch. 531, title II, § 226A, as added June 13, 1978, Pub. L. 95-292, § 1(a), 92 Stat. 307.)

References in Text

The Railroad Retirement Act of 1974, referred to in subsec. (a)(1)(A), is title I of Pub. L. 93-445, Oct. 16, 1974, 88 Stat. 1305, and is classified generally to subchapter IV (§ 231 et seq.) of chapter 9 of Title 45, Railroads. Such title I completely amended and revised the Railroad Retirement Act of 1937 (approved June 24, 1937, ch. 382, 50 Stat. 307), and as thus amended and revised, the 1937 Act was redesignated the Railroad Retirement Act of 1974. Previously, the 1937 Act had completely amended and revised the Railroad Retirement Act of 1935 (approved Aug. 29, 1935, ch. 812, 49 Stat. 967). Section 201 of the 1937 Act provided that the 1935 Act, as in force prior to amendment by the 1937 Act, may be cited as the Railroad Retirement Act of 1935; and that the 1935 Act, as amended by the 1937 Act may be cited as the Railroad Retirement Act of 1937. The Railroad Retirement Acts of 1935 and 1937 were classified to subchapter II (§ 215 et seq.) and subchapter III (§ 228a et seq.), respectively, of chapter 9 of Title 45.

Effective Date

Section effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95-292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1395c, 1395rr of this title.

§ 428. Benefits at age 72 for certain uninsured individuals

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

Application to Northern Mariana Islands

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as set forth in Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, eff. Jan. 9, 1978, pursuant to Proc. No. 4534, Oct. 24, 1977, 42 F.R. 56593, set out as notes under section 1681 of Title 48, Territories and Insular Possessions.

Section Referred to in Other Sections

This section is referred to in sections 405, 415, 662, 1320b-1 of this title; title 48 section 1421q.

§ 429. Benefits in case of members of the uniformed services

(a) For purposes of determining entitlement to and the amount of any monthly benefit for any month after December 1972, or entitlement to and the amount of any lump-sum death payment in case of a death after such month, payable under this subchapter on the basis of the wages and self-employment income of any individual, and for purposes of section 416(i)(3) of this title, such individual, if he was paid wages for service as a member of a uniformed service (as defined in section 410(m) of this title) which was included in the term "employment" as defined in section 410(a) of this title as a result of the provisions of section 410(*l*) of this title, shall be deemed to have been paid—

(1) in each calendar quarter occurring after 1956 and before 1978 in which he was paid such wages, additional wages of $300, and

(2) in each calendar year occurring after 1977 in which he was paid such wages, additional wages of $100 for each $300 of such wages, up to a maximum of $1,200 of additional wages for any calendar year.

[*See main edition for text of* (*b*)]

(As amended Dec. 20, 1977, Pub. L. 95-216, title III, § 353(d), 91 Stat. 1554.)

Amendments

1977—Subsec. (a). Pub. L. 95-216 substituted provisions relating to applicability of benefits for wages deemed to have been paid in each calendar quarter occurring after 1956 and before 1978 and provisions relating to applicability of benefits for wages deemed to have been paid in each calendar quarter occurring after 1977, for provisions relating to applicability of benefits for wages deemed to have been paid in each calendar quarter occurring after 1956.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-216 effective Jan. 1, 1978, see section 353(g) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 418 of this title.

§ 430. Adjustment of the contribution and benefit base

(a) Determination and publication by Secretary in Federal Register subsequent to cost-of-living benefit increase; effective date

Whenever the Secretary pursuant to section 415(i) of this title increases benefits effective with the June following a cost-of-living computation quarter, he shall also determine and publish in the Federal Register on or before November 1 of the calendar year in which such quarter occurs the contribution and benefit base determined under subsection (b) or (c) of this section which shall be effective with respect to remuneration paid after the calendar year in which such quarter occurs and taxable years beginning after such year.

(b) Determination of amount

The amount of such contribution and benefit base shall (subject to subsection (c) of this section) be the amount of the contribution and benefit base in effect in the year in which the determination is made or, if larger, the product of—

(1) the contribution and benefit base which is in effect with respect to remuneration paid in (and taxable years beginning in) the calendar year in which the determination under subsection (a) of this section is made, and

(2) the ratio of (A) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year before the calendar year in which the deter-

mination under subsection (a) of this section is made to (B) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before the most recent calendar year in which an increase in the contribution and benefit base was enacted or a determination resulting in such an increase was made under subsection (a) of this section,

with such product, if not a multiple of $300, being rounded to the next higher multiple of $300 where such product is a multiple of $150 but not of $300 and to the nearest multiple of $300 in any other case.

(c) Amount of base for period prior to initial cost-of-living benefit increase

For purposes of this section, and for purposes of determining wages and self-employment income under sections 409, 411, 413, and 415 of this title and sections 1402, 3121, 3122, 3125, 6413, and 6654 of the Internal Revenue Code of 1954, (1) the "contribution and benefit base" with respect to remuneration paid in (and taxable years beginning in) any calendar year after 1973 and prior to the calendar year with the June of which the first increase in benefits pursuant to section 415(i) of this title becomes effective shall be $13,200 or (if applicable) such other amount as may be specified in a law enacted subsequent to the law which added this section, and (2) the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning)—

(A) in 1978 shall be $17,700,
(B) in 1979 shall be $22,900,
(C) in 1980 shall be $25,900, and
(D) in 1981 shall be $29,700.

For purposes of determining under subsection (b) of this section the "contribution and benefit base" with respect to remuneration paid (and taxable years beginning) in 1982 and subsequent years, the dollar amounts specified in clause (2) of the preceding sentence shall be considered to have resulted from the application of such subsection (b) of this section and to be the amount determined (with respect to the years involved) under that subsection. For purposes of determining employer tax liability under section 3221(a) of the Internal Revenue Code of 1954, for purposes of determining the portion of the employee representative tax liability under section 3211(a) of such Code which results from the application of the 9.5 percent rate specified therein, and for purposes of computing average monthly compensation under section 231b(j) of title 45, except with respect to annuity amounts determined under section 231b(a) or (f)(3) of title 45, clause (2) and the preceding sentence of this subsection shall be disregarded.

(d) Determinations for calendar years after 1976 for purposes of retirement benefit plans

Notwithstanding any other provision of law, the contribution and benefit base determined under this section for any calendar year after 1976 for purposes of section 1322(b)(3)(B) of title 29, with respect to any plan, shall be the contribution and benefit base that would have been determined for such year if this section as in effect immediately prior to the enactment of the Social Security Amendments of 1977 had remained in effect without change.

(As amended Dec. 20, 1977, Pub. L. 95-216, title I, § 103(a)-(c)(1), title III, § 353(e), 91 Stat. 1513, 1514, 1554.)

REFERENCES IN TEXT

This section "as in effect immediately prior to the enactment of the Social Security Amendments of 1977", referred to in subsec. (d), means this section as in effect prior to the enactment of Pub. L. 95-216 which was approved Dec. 20, 1977.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-216 § 103(a)(1), substituted "determined under subsection (b) or (c) of this section" for "determined under subsection (b) of this section".

Subsec. (b). Pub. L. 95-216, § 103(a)(2), in the provisions preceding par. (1), substituted "shall (subject to subsection (c) of this section) be the amount" for "shall be the amount".

Subsec. (b)(1). Pub. L. 95-216, § 353(e)(2), substituted "determination under subsection (a) of this section is made" for "determination under subsection (a) of this section with respect to such particular calendar year was made".

Subsec. (b)(2). Pub. L. 95-216, § 353(e)(3), substituted "(A) the average of the total wages (as defined in regulations of the Secretary and computed without regard to the limitations specified in section 409(a) of this title) reported to the Secretary of the Treasury or his delegate for the calendar year in which the determination under subsection (a) of this section is made to (B) the average of the total wages (as so defined and computed) reported to the Secretary of the Treasury or his delegate for the calendar year before" for "(A) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year preceding the calendar year in which the determination under subsection (a) of this section with respect to such particular calendar years was made to (B) the average of the wages of all employees as reported to the Secretary of the Treasury for the calendar year 1973 or, if later, the calendar year preceding".

Subsec. (b). Pub. L. 95-216, § 353(e)(1), in the provisions following par. (2), struck out directive that, for purposes of this subsection, the average of the wages for the calendar year 1978 (or any prior calendar year), in the case of determinations made under subsection (a) of this section prior to December 31, 1979, be deemed to be an amount equal to 400 per centum of the amount of the average of the taxable wages of all employees as reported to the Secretary for the first calendar quarter of such calendar year.

Subsec. (c). Pub. L. 95-216, § 103(b), designated existing provisions as introductory material and cl. (1) and added cl. (2) and closing material.

Subsec. (d). Pub. L. 95-216, § 103(c)(1), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 103(a) and (b) of Pub. L. 95-216 [amending subsecs. (a), (c), and the provisions preceding par. (1) of subsec. (b) of this section] applicable with respect to remunerations paid or received, and taxable years beginning, after 1977, see section 104 of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 1401 of Title 26, Internal Revenue Code.

Amendment by section 353(e) of Pub. L. 95-216 [amending pars. (1) and (2) of subsec. (b) and the provisions following par. (2) of subsec. (b) of this section] effective Jan. 1, 1979, see section 353(g) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 418 of this title.

Section 103(c)(2) of Pub. L. 95-216 provided that: "The amendment made by paragraph (1) [adding subsec. (d) of this section] shall apply with respect to plan terminations occurring after the date of the enactment of this Act [Dec. 20, 1977]."

SOCIAL SECURITY CONTRIBUTION AND BENEFIT BASE FOR 1978

By notice of the Secretary of Health, Education, and Welfare, Oct. 31, 1977, 42 F.R. 57754, it was determined and announced that, pursuant to authority contained in this section, the contribution and benefit base with respect to remuneration paid in, and taxable years beginning in, 1978 would be $17,700.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 403, 409, 411, 413, 415 of this title; title 26 section 1402, 6413, 6654; title 29 section 1322.

§ 431. Benefits for certain individuals interned by United States during World War II

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 433. International agreements

(a) Purpose of agreement

The President is authorized (subject to the succeeding provisions of this section) to enter into agreements establishing totalization arrangements between the social security system established by this subchapter and the social security system of any foreign country, for the purposes of establishing entitlement to and the amount of old-age, survivors, disability, or derivative benefits based on a combination of an individual's periods of coverage under the social security system established by this subchapter and the social security system of such foreign country.

(b) Definitions

For the purposes of this section—

(1) the term "social security system" means, with respect to a foreign country, a social insurance or pension system which is of general application in the country and under which periodic benefits, or the actuarial equivalent thereof, are paid on account of old age, death, or disability; and

(2) the term "period of coverage" means a period of payment of contributions or a period of earnings based on wages for employment or on self-employment income, or any similar period recognized as equivalent thereto under this subchapter or under the social security system of a country which is a party to an agreement entered into under this section.

(c) Crediting periods of coverage; conditions of payment of benefits

(1) Any agreement establishing a totalization arrangement pursuant to this section shall provide—

(A) that in the case of an individual who has at least 6 quarters of coverage as defined in section 413 of this title and periods of coverage under the social security system of a foreign country which is a party to such agreement, periods of coverage of such individual under such social security system of such foreign country may be combined with periods of coverage under this subchapter and otherwise considered for the purposes of establishing entitlement to and the amount of old-age, survivors, and disability insurance benefits under this subchapter;

(B)(i) that employment or self-employment, or any service which is recognized as equivalent to employment or self-employment under this subchapter or the social security system of a foreign country which is a party to such agreement, shall, on or after the effective date of such agreement, result in a period of coverage under the system established under this subchapter or under the system established under the laws of such foreign country, but not under both, and (ii) the methods and conditions for determining under which system employment, self-employment, or other service shall result in a period of coverage; and

(C) that where an individual's periods of coverage are combined, the benefit amount payable under this subchapter shall be based on the proportion of such individual's periods of coverage which was completed under this subchapter.

(2) Any such agreement may provide that—

(A) an individual who is entitled to cash benefits under this subchapter shall, notwithstanding the provisions of section 402(t) of this title receive such benefits while he resides in a foreign country which is a party to such agreement; and

(B) the benefit paid by the United States to an individual who legally resides in the United States shall, if less when added to the benefit paid by such foreign country than the benefit amount which would be payable to an entitled individual based on the first figure in (or deemed to be in) column IV of the table in section 415(a) of this title in the case of an individual becoming eligible for such benefit before January 1, 1979, or based on a primary insurance amount determined under section 415(a)(1)(c)(i)(I) of this title in the case of an individual becoming eligible for such benefit on or after that date, be increased so that the total of the two benefits is equal to the benefit amount which would be so payable.

(3) Section 426 of this title shall not apply in the case of any individual to whom it would not be applicable but for this section or any agreement or regulation under this section.

(4) Any such agreement may contain other provisions which are not inconsistent with the other provisions of this subchapter and which the President deems appropriate to carry out the purposes of this section.

(d) Regulations

The Secretary of Health, Education, and Welfare shall make rules and regulations and establish procedures which are reasonable and necessary to implement and administer any agreement which has been entered into in accordance with this section.

(e) Reports to Congress; effective date of agreements

(1) Any agreement to establish a totalization arrangement entered into pursuant to this sec-

tion shall be transmitted by the President to the Congress together with a report on the estimated number of individuals who will be affected by the agreement and the effect of the agreement on the estimated income and expenditures of the programs established by this chapter.

(2) Such an agreement shall become effective on any date, provided in the agreement, which occurs after the expiration of the period (following the date on which the agreement is transmitted in accordance with paragraph (1)) during which each House of the Congress has been in session on each of 90 days; except that such agreement shall not become effective if, during such period, either House of the Congress adopts a resolution of disapproval of the agreement.

(Aug. 14, 1935, c. 531, title II, § 233, as added Dec. 20, 1977, Pub. L. 95-216, title III, § 317(a), 91 Stat. 1538.)

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 26 sections 1401, 3101, 3111.

SUBCHAPTER III—GRANTS TO STATES FOR UNEMPLOYMENT COMPENSATION ADMINISTRATION

§ 503. State laws

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SUBCHAPTER IV—GRANTS TO STATES FOR AID AND SERVICES TO NEEDY FAMILIES WITH CHILDREN AND FOR CHILD-WELFARE SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1301, 1306a, 3020d, 6862 of this title; title 7 section 2015; title 20 sections 2711, 2712; title 29 section 802; title 31 section 665.

PART A—AID TO FAMILIES WITH DEPENDENT CHILDREN

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 405, 428, 603a, 622, 644, 652, 653, 654, 657, 1306, 1309, 1311, 1315, 1316, 1318, 1319, 1395v, 1396a, 1396b, 1396d, 1397a, 1397b, 1397c, 2928b, 3195, 5103 of this title; title 7 section 2020; title 26 sections 50B, 3304; title 29 sections 49b, 858, 953, 967.

§ 602. State plans for aid and services to needy families with children

(a) Contents

A State plan for aid and services to needy families with children must

[See main edition for text of (1) to (26)]

(27) provide, that the State has in effect a plan approved under part D of this subchapter and operate a child support program in conformity with such plan; (28) provide that, in determining the amount of aid to which an eligible family is entitled, any portion of the amounts collected in any particular month as child support pursuant to a plan approved under part D of this subchapter, and retained by the State under section 657 of this title, which (under the State plan approved under this part as in effect both during July 1975 and during that particular month) would not have caused a reduction in the amount of aid paid to the family if such amounts had been paid directly to the family, shall be added to the amount of aid otherwise payable to such family under the State plan approved under this part; and (29) effective October 1, 1979, provided that wage information available from the Social Security Administration under the provisions of section 611 of this title, and wage information available (under the provisions of section 3304(a)(16) of title 26) from agencies administering State unemployment compensation laws, shall be requested and utilized to the extent permitted under the provisions of such sections; except that the State shall not be required to request such information from the Social Security Administration where such information is available from the agency administering the State unemployment compensation laws.

[See main edition for text of (b) and (c)]

(As amended Dec. 20, 1977, Pub. L. 95-216, title IV, § 403(c), 91 Stat. 1561.)

AMENDMENTS

1977—Subsec. (a)(29). Pub. L. 95-216 added cl. (29).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 403(d) of Pub. L. 95-216 provided that: "The amendments made by this section [enacting section 611 of this title, and amending subsec. (a) of this section and section 3304(a)(16) and (17) of Title 26, Internal Revenue Code] shall be effective on the date of the enactment of this Act [Dec. 20, 1977]."

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

DISREGARD OF MATCHING FUNDS REQUIREMENTS IN USE OF FUNDS APPROPRIATED PURSUANT TO TAX REDUCTION AND SIMPLIFICATION ACT OF 1977

Pub. L. 95-30, title IV, § 401(a), May 23, 1977, 91 Stat. 154, provided that: "The Secretary of Health, Education, and Welfare and the Secretary of Labor are authorized to carry out the work incentive program under title IV of the Social Security Act [this subchapter] from the sums appropriated pursuant to this Act [Pub. L. 95-30] without regard to the requirements for non-Federal matching funds contained in sections 402(a)(19)(C) [subsec. (a)(19)(C) of this section], 402(a)(19)(G) [subsec. (a)(19)(G) of this section], 403(a)(3)(A) [section 603(a)(3)(A) of this title], 403(d) [section 603(d) of this title], and 435 [section 635 of this title] of the Social Security Act."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 604, 606, 607, 608, 609, 622, 631, 632, 633, 636, 643, 644, 652, 654, 656, 658, 1202, 1308, 1315, 1352, 4728 of this title; title 20 section 2712; title 25 sections 683, 686, 689, 996.

§ 603. Payments to States

(a) Computation of amounts

From the sums appropriated therefor, the Secretary of the Treasury shall pay to each State which has an approved plan for aid and services to needy families with children, for each quarter, beginning with the quarter commencing October 1, 1958—

[*See main edition for text of (1) to (5)*]

The number of individuals with respect to whom payments described in section 606(b)(2) of this title are made for any month, who may be included as recipients of aid to families with dependent children for purposes of paragraph (1) or (2), may not exceed 20 per centum of the number of other recipients of aid to families with dependent children for such month. In computing such 20 percent, there shall not be taken into account individuals with respect to whom such payments are made for any month in accordance with section 602(a)(19)(F) or section 602(a)(26) of this title.

In the case of calendar quarters beginning after September 30, 1977, and prior to April 1, 1978, the amount to be paid to each State (as determined under the preceding provisions of this subsection or section 1318 of this title, as the case may be) shall be increased in accordance with the provisions of subsection (i) of this section.

[*See main edition for text of (b) to (h)*]

(i) Increases in amount

(1) In the case of any calendar quarter which begins after September 30, 1977, and prior to April 1, 1978, the amount payable (as determined under subsection (a) of this section or section 1318 of this title as the case may be) to each State which has a State plan approved under this part shall (subject to the succeeding paragraphs of this subsection) be increased by an amount equal to the sum of the following:

(A) an amount which bears the same ratio to $46,750,000 as the amount expended as aid to families with dependent children under the State plan of such State during the month of December 1976 bears to the amount expended as aid to families with dependent children under the State plans of all States during such month, and

(B)(i) in the case of Puerto Rico, Guam, and the Virgin Islands, an amount equal to the amount determined under subparagraph (A) with respect to such State, or

(ii) in the case of any other State, an amount which bears the same ratio to $46,750,000, minus the amounts determined under clause (i) of this subparagraph, as the amount allocated to such State under section 1225 of title 31, for the most recent entitlement period for which allocations have been made under such section prior to December 20, 1977, bears to the total of the amounts allocated to all States under section 1225 of title 31 for such period.

(2) As a condition of any State receiving an increase, by reason of the application of the foregoing provisions of this subsection, in the amount determined for such State pursuant to subsection (a) of this section or under section 1318 of this title (as the case may be), such State must agree to pay to any political subdivision thereof which participates in the cost of the State's plan approved under this part, during any calendar quarter with respect to which such increase applies, so much of such increase as does not exceed 100 per centum of such political subdivision's financial contribution to the State's plan for such quarter.

(3) Notwithstanding any other provision of this part, the amount payable to any State by reason of the preceding provisions of this subsection for calendar quarters prior to April 1, 1978, shall be made in a single installment, which shall be payable as shortly after October 1, 1977, as is administratively feasible.

(j) Incentive adjustments; "dollar error rate of aid"

If the dollar error rate of aid furnished by a State under its State plan approved under this part with respect to any six-month period, as based on samples and evaluations thereof, is—

(1) at least 4 per centum, the amount of the Federal financial participation in the expenditures made by the State in carrying out such plan during such period shall be determined without regard to the provisions of this subsection; or

(2) less than 4 per centum, the amount of the Federal financial participation in the expenditures made by the State in carrying out such plan during such period shall be the amount determined without regard to this subsection, plus, of the amount by which such expenditures are less than they would have been if the erroneous excess payments of aid had been at a rate of 4 per centum—

(A) 10 per centum of the Federal share of such amount, in case such rate is not less than 3.5 per centum,

(B) 20 per centum of the Federal share of such amount, in case such rate is at least 3.0 per centum but less than 3.5 per centum,

(C) 30 per centum of the Federal share of such amount, in case such rate is at least 2.5 per centum but less than 3.0 per centum,

(D) 40 per centum of the Federal share of such amount, in case such rate is at least 2.0 per centum but less than 2.5 per centum,

(E) 50 per centum of the Federal share of such amount, in case such rate is less than 2.0 per centum.

For purposes of this subsection (i) the term "dollar error rate of aid" means the total of the dollar error rates of aid for (I) payments to ineligible families receiving assistance; (II) overpayments to eligible families receiving assistance; (III) underpayments to eligible families receiving assistance; and (IV) nonpayments to eligible families not receiving assistance due to erroneous terminations or denials, and (ii) the term "erroneous excess payments," means the total of (I) erroneous payments to ineligible families receiving assistance, and (II) overpayments to eligible families receiving assistance.

(As amended Nov. 12, 1977, Pub. L. 95-171, § 3(a)(1), 91 Stat. 1354; Dec. 20, 1977, Pub. L. 95-216, title IV, §§ 401, 402(a), 91 Stat. 1559, 1560.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-216, § 401(1), added last par. relating to calendar quarters beginning after Sept. 30, 1977, and before Apr. 1, 1978.

Pub. L. 95-171, § 3(a)(1), substituted in material following par. (5) "20" for "10" percent.

Subsec. (i). Pub. L. 95-216, § 401(2), added subsec. (i).

Subsec. (j). Pub. L. 95-216, § 402(a), added subsec. (j).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENTS

Section 402(b) of Pub. L. 95-216 provided that: "Payments may be made under the amendment made by subsection (a) [adding subsec. (j) of this section] only in the case of periods commencing on or after January 1, 1978."

Section 3(a)(3) of Pub. L. 95-171 provided that: "The amendments made by this subsection [amending subsec. (a) of this section and section 606(b) of this title] shall apply with respect to payments of aid to families with dependent children made for months beginning on or after October 1, 1977."

DISREGARD OF MATCHING FUNDS REQUIREMENTS IN USE OF FUNDS APPROPRIATED PURSUANT TO TAX REDUCTION AND SIMPLIFICATION ACT OF 1977

Secretary of Health, Education, and Welfare and Secretary of Labor authorized to carry out the work incentive program under this subchapter from the sums appropriated pursuant to the Tax Reduction and Simplification Act of 1977 (Pub. L. 95-30, May 23, 1977, 91 Stat. 126) without regard to the requirements for non-Federal matching funds contained in subsecs. (a)(3)(A) and (d) of this section, see section 401(a) of Pub. L. 95-30, set out as a note under section 602 of this title.

§ 606. Definitions

When used in this part—

[*See main edition for text of* (*a*)]

(b) The term "aid to families with dependent children" means money payments with respect to, or (if provided in or after the third month before the month in which the recipient makes application for aid) medical care in behalf of or any type of remedial care recognized under State law in behalf of, a dependent child or dependent children, and includes (1) money payments or medical care or any type of remedial care recognized under State law to meet the needs of the relative with whom any dependent child is living (and the spouse of such relative if living with him and if such relative is the child's parents and the child is a dependent child by reason of the physical or mental incapacity of a parent or is a dependent child under section 607 of this title), and (2) payments with respect to any dependent child (including payments to meet the needs of the relative, and the relative's spouse, with whom such child is living, and the needs of any other individual living in the same home if such needs are taken into account in making the determination under section 602(a)(7) of this title) which do not meet the preceding requirements of this subsection, but which would meet such requirements except that such payments are made to another individual who (as determined in accordance with standards prescribed by the Secretary) is interested in or concerned with the welfare of such child or relative, or are made on behalf of such child or relative directly to a person furnishing food, living accommodations, or other goods, services, or items to or for such child, relative, or other individual, but only with respect to a State whose State plan approved under section 602 of this title includes provision for—

[*See main edition for text of* (*A*) *to* (*D*)]

(E) opportunity for a fair hearing before the State agency on the determination referred to in clause (A) for any individual with respect to whom it is made.

Payments with respect to a dependent child which are intended to enable the recipient to pay for specific goods, services, or items recognized by the State agency as a part of the child's need under the State plan may (in the discretion of the State or local agency administering the plan in the political subdivision) be made, pursuant to a determination referred to in clause (2)(A), in the form of checks drawn jointly to the order of the recipient and the person furnishing such goods, services, or items and negotiable only upon endorsement by both such recipient and such person; and payments so made shall be considered for all of the purposes of this part to be payments described in clause (2). Whenever payments with respect to a dependent child are made in the manner described in clause (2) (including payments described in the preceding sentence), a statement of the specific reasons for making such payments in that manner (on which the determination under clause (2)(A) was based) shall be placed in the file maintained with respect to such child by the State or local agency administering the State plan in the political subdivision.

[*See main edition for text of* (*c*) *to* (*f*)]

(As amended Nov. 12, 1977, Pub. L. 95-171, § 3(a)(2), 91 Stat. 1354.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-171 substituted a period for the semicolon at end of cl. (2)(E) and added provisions after such cl. (2)(E) authorizing payments in form of checks drawn jointly to the order of the recipient and the person furnishing goods, services, or items to the needy child and negotiable only upon endorsement by both and requiring placement of statement of specific reasons for the payments in the file of the child maintained by the State or local agency administering the State plan.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (b) by Pub. L. 95-171 applicable with respect to payments of aid to families with dependent children made for months beginning on or after Oct. 1, 1977, see section 3(a)(3) of Pub. L. 95-171, set out as an Effective Date of 1977 Amendment note under section 603 of this title.

Federal Financial Participation in State Aid Plans

Section 3(b) of Pub. L. 95-171 provided that: "Notwithstanding any other provision of law, Federal financial participation in aid to families with dependent children under a State plan approved under section 402 of the Social Security Act [section 602 of this title], for quarters (with respect to which expenditure reports were timely filed by the State) during the period beginning with the calendar quarter in which Public Law 90-248 was enacted [Jan. 2, 1968] and ending with the first calendar quarter of 1977, shall not be denied, on or after October 1, 1977, by reason of the provision of goods, services, or items in the form of a check which is drawn jointly to the order of the recipient and the person furnishing such goods, services, or items and which shows the purpose for which the check is drawn, or by reason of the failure of the State to meet the requirement of the last two sentences of section 403(a) of such Act [subsec. (a) of section 603 of this title] or the failure of the State (or any political subdivision thereof) to carry out the functions and duties prescribed in clauses (A), (B), (C), and (E) of section 406(b)(2) of such Act [subsec. (b)(2) of this section], regardless of the form in which the aid involved was paid, if (and to the extent that) the amount of such aid was correct and the payment of the aid in that form did not result in assistance in cases or in amounts not authorized by or under part A of title IV of such Act [this part]."

§ 607. Dependent children of unemployed fathers

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

Section Referred to in Other Sections

This section is referred to in sections 606, 608, 1315 of this title.

§ 611. Availability of wage information to States and political subdivisions; procedural safeguards

(a) Notwithstanding any other provision of law, the Secretary shall make available to States and political subdivisions thereof wage information contained in the records of the Social Security Administration which is necessary (as determined by the Secretary in regulations) for purposes of determining an individual's eligibility for aid or services, or the amount of such aid or services, under a State plan for aid and services to needy families with children approved under this part, and which is specifically requested by such State or political subdivision for such purposes.

(b) The Secretary shall establish such safeguards as are necessary (as determined by the Secretary under regulations) to insure that information made available under the provisions of this section is used only for the purposes authorized by this section.

(Aug. 14, 1935, ch. 531, title IV, § 411, as added Dec. 20, 1977, Pub. L. 95-216, title IV, § 403(a), 91 Stat. 1561.)

Effective Date

Section effective Dec. 20, 1977, see section 403(d) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 602 of this title.

Section Referred to in Other Sections

This section is referred to in section 602 of this title.

Part B—Child-Welfare Services

Part Referred to in Other Sections

This part is referred to in sections 1397b, 1397c, 3195, 5103 of this title; title 25 section 1931.

Part C—Work Incentive Program for Recipients of Aid Under State Plan Approved Under Part A

Part Referred to in Other Sections

This part is referred to in sections 602, 607, 644 of this title; title 29 sections 881, 953.

§ 631. Authorization of appropriations

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 635. Federal assistance

Disregard of Matching Funds Requirements in Use of Funds Appropriated Pursuant to Tax Reduction and Simplification Act of 1977

Secretary of Health, Education, and Welfare and Secretary of Labor authorized to carry out the work incentive program under this subchapter from the sums appropriated pursuant to the Tax Reduction and Simplification Act of 1977 (Pub. L. 95-30, May 23, 1977, 91 Stat. 126) without regard to the requirements for non-Federal matching funds contained in this section, see section 401(a) of Pub. L. 95-30, set out as a note under section 602 of this title.

§ 636. Period of enrollment

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 639. Rules and regulations

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 641. Evaluation and research

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§§ 643, 644

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

Part D—Child Support and Establishment of Paternity

§ 652. Duties of Secretary

(a) Establishment of separate organizational unit; duties

The Secretary shall establish, within the Department of Health, Education, and Welfare a separate organizational unit, under the direction of a designee of the Secretary, who shall report directly to the Secretary and who shall—

[*See main edition for text of* (*1*) *to* (*9*)]

(10) not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following:

(A) total program costs and collections set forth in sufficient detail to show the cost to the States and the Federal Government, the distribution of collections to families, State and local governmental units, and the Federal Government; and an identification of the financial impact of the provisions of this part;

(B) costs and staff associated with the Office of Child Support Enforcement;

(C) the number of child support cases in each State during each quarter of the fiscal year last ending before the report is submitted and during each quarter of the preceding fiscal year (including the transitional period beginning July 1, 1976, and ending September 30, 1976, in the case of the first report to which this subparagraph applies), and the disposition of such cases;

(D) the status of all State plans under this part as of the end of the fiscal year last ending before the report is submitted, together with an explanation of any problems which are delaying or preventing approval of State plans under this part;

(E) data, by State, on the use of the Federal Parent Locator Service, and the number of locate requests submitted without the absent parent's social security account number;

(F) the number of cases, by State, in which an applicant for or recipient of aid under a State plan approved under part A has refused to cooperate in identifying and locating the absent parent and the number of cases in which refusal so to cooperate is based on good cause (as determined in accordance with the standards referred to in section 602(a)(26)(B)(ii) of this title);

(G) data, by State, on the use of Federal courts and on use of the Internal Revenue Service for collections, the number of court orders on which collections were made, the number of paternity determinations made and the number of parents located, in sufficient detail to show the cost and benefits to the States and to the Federal Government; and

(H) the major problems encountered which have delayed or prevented implementation of the provisions of this part during the fiscal year last ending prior to the submission of such report.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended May 23, 1977, Pub. L. 95-30, title V, § 504(a), 91 Stat. 163.)

AMENDMENTS

1977—Subsec. (a)(10). Pub. L. 95-30 substituted "not later than three months after the end of each fiscal year, beginning with the year 1977, submit to the Congress a full and complete report on all activities undertaken pursuant to the provisions of this part, which report shall include, but not be limited to, the following" for "not later than June 30 of each year beginning after December 31, 1975, submit to the Congress a report on all activities undertaken pursuant to the provisions of this part", substituted a colon for a period at the end of the provisions thus substituted, and added subpars. (A) to (H).

CHANGE OF NAME

The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 504(b) of Pub. L. 95-30 provided that: "The amendment made by subsection (a) [amending this section] shall be effective in the case of reports, submitted by the Secretary of Health, Education, and Welfare after 1976."

SUPPLEMENTAL REPORT TO BE SUBMITTED TO CONGRESS NOT LATER THAN JUNE 30, 1977

Section 504(c) of Pub. L. 95-30, which provided that the Secretary of Health, Education, and Welfare submit to the Congress not later than June 30, 1977, a special supplementary report with respect to activities undertaken pursuant to this part, was omitted from the Code as executed.

§ 653. Parent Locator Service

CHANGE OF NAME

The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

§ 654. State plan for child support

A State plan for child support must—

[*See main edition for text of* (*1*) *to* (*11*)]

(12) provide that any payment required to be made under section 656 or 657 of this title to a family shall be made to the resident parent, legal guardian, or caretaker relative having custody of or responsibility for the child or children;

(13) provide that the State will comply with such other requirements and standards as the Secretary determines to be necessary to the establishment of an effective program for locating absent parents, establishing paternity, obtaining support orders, and collecting support payments;

(14) comply with such bonding requirements, for employees who receive, disburse, handle, or have access to, cash, as the Secretary shall by regulations prescribe; and

(15) maintain methods of administration which are designed to assure that persons responsible for handling cash receipts shall not participate in accounting or operating functions which would permit them to conceal in the accounting records the misuse of cash receipts (except that the Secretary shall by regulations provide for exceptions to this requirement in the case of sparsely populated areas where the hiring of unreasonable additional staff would otherwise be necessary).

(As amended May 23, 1977, Pub. L. 95-30, title V, § 502(a), 91 Stat. 162.)

AMENDMENTS

1977—Cls. (14), (15). Pub. L. 95-30 added cls. (14) and (15).

CHANGE OF NAME

The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 502(b) of Pub. L. 95-30 provided that: "The amendments made by this section [amending this section] shall take effect on the first day of the first calendar month which begins after the date of enactment of this Act [May 23, 1977]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 655, 1396k of this title.

§ 655. Payments to States

(a) From the sums appropriated therefor, the Secretary shall pay to each State for each quarter, beginning with the quarter commencing July 1, 1975, an amount—

(1) equal to 75 percent of the total amounts expended by such State during such quarter for the operation of the plan approved under section 654 of this title, and

(2) equal to 50 percent of the total amounts expended by such State during such quarter for the operation of a plan which meets the conditions of section 654 of this title except as is provided by a waiver by the Secretary which is granted pursuant to specific authority set forth in the law.

[*See main edition for text of* (*b*)]

(As amended June 30, 1977, Pub. L. 95-59, § 4, 91 Stat. 255; Jan. 2, 1980, Pub. L. 96-178, § 2(a), 93 Stat. 1295.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-178 struck out provisions following par. (2) prohibiting payment to any State on account of furnishing child support collection or paternity determination services (other than the parent locator services) to individuals under section 654(6) of this title during any period beginning after Sept. 30, 1978.

1977—Subsec. (a). Pub. L. 95-59 substituted "September 30, 1978" for "June 30, 1977" in the provisions following par. (2).

EFFECTIVE DATE OF 1980 AMENDMENT

Section 2(b) of Pub. L. 96-178 provided that: "This section [amending subsec. (a) of this section] shall become effective on the date of the enactment of this Act [Jan. 2, 1980], and shall apply with respect to services furnished during the period beginning October 1, 1978, and ending March 31, 1980."

§ 656. Support obligation as obligation to State; amount

[*See main edition for text of* (*a*)]

(b) Repealed. Pub. L. 95-598, title III, § 328, Nov. 6, 1978, 92 Stat. 2679.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 328, 92 Stat. 2679.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-598 repealed provision declaring a debt which is a child support obligation assigned to a State under section 602(a)(26) of this title as not released by a discharge in bankruptcy under the Bankruptcy Act.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Nov. 6, 1978, see section 402(d) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 657. Distribution of proceeds

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Collection after termination of assistance; distribution of child support proceeds

Whenever a family for whom child support payments have been collected and distributed under the plan ceases to receive assistance under part A of this subchapter, the State may—

(1) continue to collect amounts of child support payments which represent monthly support payments from the absent parent for a period of not to exceed three months from the month following the month in which such family ceased to receive assistance under part A of this subchapter, and pay all amounts so collected, which represent monthly support payments, to the family; and

(2) at the end of such three-month period, if the State is authorized to do so by the individual on whose behalf the collection will be made, continue to collect amounts of child support payments which represent monthly support payments from the absent parent and pay the net amount of any amount so collected, which represents monthly support payments, to the family after deducting any costs incurred in making the collection from the amount of any recovery made, and so much of any amounts of child support so collected as are in excess of the payments required to be made in paragraph (1) shall be distributed in the manner provided by subsection (b)(3)(A) and (B) of this section with respect to excess amounts described in subsection (b) of this section.

(As amended Nov. 12, 1977, Pub. L. 95-171, § 11, 91 Stat. 1357.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-171, § 11(a) to (c), in par. (1), substituted "amounts of child support payments which represent monthly support payments" for "such support payments" and inserted ", which represent monthly support payments," following "amounts so collected"; in par. (2), substituted "amounts of child support payments which represent monthly support payments" for "such support payments" and inserted ", which represents monthly support payments," following "amount so collected"; changed to a period the semicolon at end of par. (2); and added provision for distribution of child support proceeds.

§ 658. Incentive payments to State or political subdivision for enforcement and collection of support rights; allocation among jurisdictions

(a) When a political subdivision of a State makes, for the State of which it is a political subdivision, or one State makes, for another State, the enforcement and collection of the support rights assigned under section 602(a)(26) of this title (either within or outside of such State), there shall be paid to such political subdivision or such other State from amounts which would otherwise represent the Federal share of assistance to the family of the absent parent an amount equal to 15 per centum of any amount collected and required to be distributed as provided in section 657 of this title to reduce or repay assistance payments.

(b) Where more than one jurisdiction is involved in such enforcement or collection, the amount of the incentive payment determined under subsection (a) of this section shall be allocated among the jurisdictions in a manner to be prescribed by the Secretary.

(As amended May 23, 1977, Pub. L. 95-30, title V, § 503(a), 91 Stat. 162.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-30, § 503(a)(1), altered the formula for arriving at the amount to be paid for the enforcement and collection of assigned support rights by substituting a formula calling for an amount equal to 15 per centum of any amount collected and required to be distributed as provided in section 657 of this title to reduce or repay assistance payments for a formula calling for an amount equal to 25 per centum of any amount collected (and required to be distributed as provided in section 657 of this title to reduce or repay assistance payments) attributable to the support obligation owed for 12 months and an amount equal to 10 per centum of any amount collected (and required to be distributed as provided in section 657 of this title to reduce or repay assistance payments) attributable to the support obligation owed for any month after the first twelve months for which such collections were made.

Subsec. (b). Pub. L. 95-30, § 503(a)(2), substituted "determined under subsection (a) of this section" for "determined under paragraphs (1) and (2) of subsection (a) of this section".

EFFECTIVE DATE OF 1977 AMENDMENT

Section 503(b) of Pub. L. 95-30 provided that: "The amendments made by subsection (a) [amending this section] shall be applicable with respect to amounts collected on and after October 1, 1977."

§ 659. Enforcement of individual's legal obligations to provide child support or make alimony payments

(a) United States and District of Columbia to be subject to legal process

Notwithstanding any other provision of law, effective January 1, 1975, moneys (the entitlement to which is based upon remuneration for employment) due from, or payable by, the United States or the District of Columbia (including any agency, subdivision, or instrumentality thereof) to an individual, including members of the armed services, shall be subject, in like manner and to the same extent as if the United States or the District of Columbia were a private person, to legal process brought for the enforcement, against such individual of his legal obligations to provide child support or make alimony payments.

(b) Methods of service of legal process

Service of legal process brought for the enforcement of an individual's obligation to provide child support or make alimony payments shall be accomplished by certified or registered mail, return receipt requested, or by personal service, upon the appropriate agent designated for receipt of such service of process pursuant to regulations promulgated pursuant to section 661 of this title (or, if no agent has been designated for the governmental entity having payment responsibility for the moneys involved, then upon the head of such governmental entity). Such process shall be accompanied by sufficient data to permit prompt identification of the individual and the moneys involved.

(c) Disclosure of information in answering interrogatories; disciplinary action or civil or criminal liability or penalty prohibited

No Federal employee whose duties include responding to interrogatories pursuant to requirements imposed by section 661(b)(3) of this title shall be subject under any law to any disciplinary action or civil or criminal liability or penalty for, or on account of, any disclosure of information made by him in connection with the carrying out of any of his duties which pertain (directly or indirectly) to the answering of any such interrogatory.

(d) Notice

Whenever any person, who is designated by law or regulation to accept service of process to which the United States is subject under this section, is effectively served with any such process or with interrogatories relating to an individual's child support or alimony payment obligations, such person shall respond thereto within thirty days (or within such longer period as may be prescribed by applicable State law) after the date effective service thereof is made, and shall, as soon as possible but not later than fifteen days after the date effective service is so made of any such process, send written notice that such process has been so served (together with a copy thereof) to the individual whose moneys are affected thereby at his duty station or last-known home address.

(e) Variance in normal pay and disbursement cycles not required

Governmental entities affected by legal processes served for the enforcement of an individual's child support or alimony payment obligations shall not be required to vary their normal pay and disbursement cycles in order to comply with any such legal process.

(f) Non-liability of United States, disbursing officers, and governmental entities with respect to payments

Neither the United States, any disbursing officer, nor governmental entity shall be liable with respect to any payment made from moneys due or payable from the United States to any individual pursuant to legal process regular on its face, if such payment is made in accordance with this section and the regulations issued to carry out this section.

(As amended May 23, 1977, Pub. L. 95-30, title V, § 501(a), (b), 91 Stat. 157.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-30, § 501(a), (b)(1), designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, substituted "or the District of Columbia (including any agency, subdivision, or instrumentality thereof)" for "(including any agency or instrumentality thereof and any wholly owned Federal Corporation)" and "as if the United States or the District of Columbia were a private person" for "as if the United States were a private person".

Subsecs. (b) to (f). Pub. L. 95-30, § 501(b)(2), added subsecs. (b) to (f).

DELEGATION OF AUTHORITY TO PROMULGATE REGULATIONS FOR IMPLEMENTATION OF SECTION

For provisions relating to the delegation of authority to promulgate regulations for the implementation of the provisions of this section, see Ex. Ord. No. 12105, Dec. 19, 1978, 43 F.R. 59465, set out as a note under section 661 of this title.

EXECUTIVE ORDER NO. 11881

Ex. Ord. No. 11881, Oct. 3, 1975, 40 F.R. 46291, which related to the delegation of authority to issue regulations for the implementation of the provisions of this section, was revoked by Ex. Ord. No. 12105, Dec. 19, 1978, 43 F.R. 59465, set out as a note under section 661 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 661, 662 of this title.

§ 660. Civil action to enforce child support obligations; jurisdiction of district courts

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 661. Regulations pertaining to garnishments

(a) Authority to promulgate

Authority to promulgate regulations for the implementation of the provisions of section 659 of this title shall, insofar as the provisions of such section are applicable to moneys due from (or payable by)—

(1) the executive branch of the Government (including in such branch, for the purposes of this subsection, the territories and possessions of the United States, the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, and the government of the District of Columbia), be vested in the President (or his designee),

(2) the legislative branch of the Government, be vested jointly in the President pro tempore of the Senate and the Speaker of the House of Representatives (or their designees), and

(3) the judicial branch of the Government, be vested in the Chief Justice of the United States (or his designee).

(b) Requisite content of promulgated regulations

Regulations promulgated pursuant to this section shall—

(1) in the case of those promulgated by the executive branch of the Government, include a requirement that the head of each agency thereof shall cause to be published, in the appendix of the regulations so promulgated, (A) his designation of an agent or agents to accept service of process, identified by title of position, mailing address, and telephone number, and (B) an indication of the data reasonably required in order for the agency promptly to identify the individual with respect to whose moneys the legal process is brought,

(2) in the case of regulations promulgated for the legislative and judicial branches of the Government set forth, in the appendix to the regulations so promulgated, (A) the name, position, address, and telephone number of the agent or agents who have been designated for service of process, and (B) an indication of the data reasonably required in order for such entity promptly to identify the individual with respect to whose moneys the legal process is brought, and

(3) provide that (A) in the case of regulations promulgated by the executive branch of the Government, each head of a governmental entity (or his designee) shall respond to relevant interrogatories, if authorized by the law of the State in which legal process will issue, prior to formal issuance of such process, upon a showing of the applicant's entitlement to child support or alimony payments, and (B) in the case of regulations promulgated for the legislative and judicial branches of the Government, the person or persons designated as agents for service of process in accordance with paragraph (2) shall respond to relevant interrogatories if authorized by the law of the State in which legal process will issue, prior to formal issuance of legal process, upon a showing of the applicant's entitlement to child support or alimony payments.

(c) Priority of processes

In the event that a governmental entity, which is authorized under this section or regulations issued to carry out this section to accept service of process, pursuant to the provisions of subsection (a) of this section, is served with more than one legal process with respect to the same moneys due or payable to any individual, then such moneys shall be available to satisfy such processes on a first-come, first-served basis, with any such process being satisfied out of such moneys as remain after the satisfaction of all such processes which have been previously served.

(Aug. 14, 1935, ch. 531, title IV, § 461, as added May 23, 1977, Pub. L. 95-30, title V, § 501(c), 91 Stat. 158.)

EX. ORD. NO. 12105. DELEGATION OF AUTHORITY TO PROMULGATE REGULATIONS

Ex. Ord. No. 12105, Dec. 19, 1978, 43 F.R. 59465, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me by Section 461(a)(1) of the Social Security Act, as added by Section 501(c) of the Tax Reduction and Simplification Act of 1977 (Public Law 95-30, 91 Stat. 158, 42 U.S.C. 661(a)(1)), and Section 301 of Title 3 of the United States Code, and as President of the United States of America, in order to provide for the enforcement of legal obligations to provide child support or make alimony payments incurred by employees of the Executive branch, it is hereby ordered as follows:

1-1. DELEGATION OF AUTHORITY

1-101. The Office of Personnel Management, in consultation with the Attorney General, the Secretary of

Defense with respect to members of the armed forces, and the Mayor of the District of Columbia with respect to employees of the Government thereof, is authorized to promulgate regulations for the uniform implementation of Section 459 of the Social Security Act, as amended (42 U.S.C. 659), hereinafter referred to as the Act.

1-102. The regulations promulgated by the Office of Personnel Management pursuant to this Order shall:

(a) Be applicable to the Executive branch of the Government as defined in Section 461(a)(1) of the Act (42 U.S.C. 661(a)(1)).

(b) Require the appropriate officials of the Executive branch of the Government to take the actions prescribed by Sections 461(b)(1), 461(b)(3)(A) and 461(c) of the Act (42 U.S.C. 661(b)(1), 661(b)(3)(A) and 661(c)).

(c) Require the appropriate officials of the Executive branch of the Government to issue such rules, regulations and directives as are necessary to implement the regulations of the Office of Personnel Management.

1-2. REVOCATIONS

1-201. Executive Order No. 11881 of October 3, 1975 is revoked.

1-202. All regulations, directives, or actions taken by the Office of Personnel Management pursuant to Executive Order No. 11881 of October 3, 1975 shall remain in effect until modified, superseded or revoked by the Office of Personnel Management pursuant to this Order.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 659 of this title.

§ 662. Definitions

For purposes of section 659 of this title—

(a) The term "United States" means the Federal Government of the United States, consisting of the legislative branch, the judicial branch, and the executive branch thereof, and each and every department, agency, or instrumentality of any such branch, including the United States Postal Service, the Postal Rate Commission, any wholly owned Federal corporation created by an Act of Congress, any office, commission, bureau, or other administrative subdivision or creature thereof, and the governments of the territories and possessions of the United States.

(b) The term "child support", when used in reference to the legal obligations of an individual to provide such support, means periodic payments of funds for the support and maintenance of a child or children with respect to which such individual has such an obligation, and (subject to and in accordance with State law) includes but is not limited to, payments to provide for health care, education, recreation, clothing, or to meet other specific needs of such a child or children; such term also includes attorney's fees, interest, and court costs, when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction.

(c) The term "alimony", when used in reference to the legal obligations of an individual to provide the same, means periodic payments of funds for the support and maintenance of the spouse (or former spouse) of such individual, and (subject to and in accordance with State law) includes but is not limited to, separate maintenance, alimony pendente lite, maintenance, and spousal support; such term also includes attorney's fees, interest, and court costs when and to the extent that the same are expressly made recoverable as such pursuant to a decree, order, or judgment issued in accordance with applicable State law by a court of competent jurisdiction. Such term does not include any payment or transfer of property or its value by an individual to his spouse or former spouse in compliance with any community property settlement, equitable distribution of property, or other division of property between spouses or former spouses.

(d) The term "private person" means a person who does not have sovereign or other special immunity or privilege which causes such person not to be subject to legal process.

(e) The term "legal process" means any writ, order, summons, or other similar process in the nature of garnishment, which—

(1) is issued by (A) a court of competent jurisdiction within any State, territory, or possession of the United States, (B) a court of competent jurisdiction in any foreign country with which the United States has entered into an agreement which requires the United States to honor such process, or (C) an authorized official pursuant to an order of such a court of competent jurisdiction or pursuant to State or local law, and

(2) is directed to, and the purpose of which is to compel, a governmental entity, which holds moneys which are otherwise payable to an individual, to make a payment from such moneys to another party in order to satisfy a legal obligation of such individual to provide child support or make alimony payments.

(f) Entitlement of an individual to any money shall be deemed to be "based upon remuneration for employment", if such money consists of—

(1) compensation paid or payable for personal services of such individual, whether such compensation is denominated as wages, salary, commission, bonus, pay, or otherwise, and includes but is not limited to, severance pay, sick pay, and incentive pay, but does not include awards for making suggestions, or

(2) periodic benefits (including a periodic benefit as defined in section 428(h)(3) of this title) or other payments to such individual under the insurance system established by subchapter II of this chapter or any other system or fund established by the United States (as defined in subsection (a) of this section) which provides for the payment of pensions, retirement or retired pay, annuities, dependents or survivors' benefits, or similar amounts payable on account of personal services performed by himself or any other individual (not including any payment as compensation for death under any Federal program, any payment under any Federal program established to provide "black lung" benefits, any payment by the Veterans' Administration as pension, or any payments by the Veterans' Administration as compensation for a service-connected disability or

death, except any compensation paid by the Veterans' Administration to a former member of the Armed Forces who is in receipt of retired or retainer pay if such former member has waived a portion of his retired pay in order to receive such compensation), and does not consist of amounts paid, by way of reimbursement or otherwise, to such individual by his employer to defray expenses incurred by such individual in carrying out duties associated with his employment.

(g) In determining the amount of any moneys due from, or payable by, the United States to any individual, there shall be excluded amounts which—

(1) are owed by such individual to the United States,

(2) are required by law to be, and are, deducted from the remuneration or other payment involved, including but not limited to, Federal employment taxes, and fines and forfeitures ordered by court-martial,

(3) are properly withheld for Federal, State, or local income tax purposes, if the withholding of such amounts is authorized or required by law and if amounts withheld are not greater than would be the case if such individual claimed all dependents to which he was entitled (the withholding of additional amounts pursuant to section 3402(i) of the Internal Revenue Code of 1954 may be permitted only when such individual presents evidence of a tax obligation which supports the additional withholding),

(4) are deducted as health insurance premiums,

(5) are deducted as normal retirement contributions (not including amounts deducted for supplementary coverage), or

(6) are deducted as normal life insurance premiums from salary or other remuneration for employment (not including amounts deducted for supplementary coverage).

(Aug. 14, 1935, ch. 531, title IV, § 462, as added May 23, 1977, Pub. L. 95-30, title V, § 501(d), 91 Stat. 159.)

REFERENCES IN TEXT

Section 3402(i) of the Internal Revenue Code of 1954, referred to in subsec. (g)(3), is classified to section 3402(i) of Title 26, Internal Revenue Code.

SUBCHAPTER V—MATERNAL AND CHILD HEALTH AND CRIPPLED CHILDREN'S SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 289h, 300a-26, 300b, 1301, 1320a-1, 1320a-3, 1320c-7, 1320c-8, 1320c-21, 1382d, 1395b-1, 1395x of this title; title 7 section 3178.

§ 701. Authorization of appropriations

For the purpose of enabling each State to extend and improve (especially in rural areas and in areas suffering from severe economic distress), as far as practicable under the conditions in such State,

(1) services for reducing infant mortality and otherwise promoting the health of mothers and children; and

(2) services for locating, and for medical, surgical, corrective, and other services and care for and facilities for diagnosis, hospitalization, and aftercare for, children who are crippled or who are suffering from conditions leading to crippling,

there are authorized to be appropriated $250,000,000 for the fiscal year ending June 30, 1969, $275,000,000 for the fiscal year ending June 30, 1970, $300,000,000 for the fiscal year ending June 30, 1971, $325,000,000 for the fiscal year ending June 30, 1972, $350,000,000 for the fiscal year ending June 30, 1973, and for each of the next four fiscal years, and $399,864,200 for the fiscal year ending September 30, 1978, and for each fiscal year thereafter.

(As amended Aug. 1, 1977, Pub. L. 95-83, title III, § 309(a), 91 Stat. 396.)

AMENDMENTS

1977—Pub. L. 95-83 substituted appropriations authorization of $350,000,000 for the fiscal year ending June 30, 1973 and for each of the next four fiscal years, and $399,864,200 for the fiscal year ending Sept. 30, 1978, and for each fiscal year thereafter for prior appropriations authorization of $350,000,000 for the fiscal year ending June 30, 1973, and each fiscal year thereafter.

§ 705. State plans; contents; approval by Secretary

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 713. Administration

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER VII—ADMINISTRATION

§ 902. Duties of Secretary of Health, Education, and Welfare and the Secretary of Labor

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

UNIVERSAL COVERAGE OF SOCIAL SECURITY PROGRAMS; STUDY AND REPORT TO PRESIDENT AND CONGRESS RESPECTING SCOPE, ALTERNATIVES, ETC.; CONSULTATION BY SECRETARY

Pub. L. 95-216, title III, § 311, Dec. 20, 1977, 91 Stat. 1531, as amended by 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783, which directed the Secretary of Health, Education, and Welfare to undertake as soon as possible after Dec. 20, 1977, a thorough study with respect to the extent of the coverage under the old-age, survivors, and disability insurance programs and under the programs established by subchapter XVIII of this chapter and the Secretary submit a report on the findings of such study not later than 2 years after Dec. 20, 1977, was omitted from the Code as executed.

PROPOSALS FOR ELIMINATION OF DEPENDENCY AND SEX DISCRIMINATION UNDER SOCIAL SECURITY PROGRAM; STUDY AND REPORT TO CONGRESS

Pub. L. 95-216, title III, § 341, Dec. 20, 1977, 91 Stat. 1548, which provided that the Secretary of Health, Education, and Welfare, in consultation with the Task Force on Sex Discrimination, make a detailed study of proposals to eliminate dependency as a factor in the determination of entitlement to spouse's benefits under the program established under subchapter II of this chapter and of proposals to bring about equal treatment for men and women in any and all respects under such program and submit a report to Congress within 6 months of Dec. 20, 1977, was omitted from the Code as executed.

§§ 905, 905a. Transferred

CODIFICATION

Section 905, act July 5, 1952, ch. 575, title II, § 201, 66 Stat. 369, as amended, was transferred to section 3513 of this title.

Section 905a, act Aug. 10, 1971, Pub. L. 92-80, title II, § 200, 85 Stat. 297, was transferred to section 3513b of this title.

§ 907. Advisory Council on Social Security

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

FILING DATE OF REPORT REQUIRED IN 1979

Pub. L. 95-216, title III, § 372, Dec. 20, 1977, 91 Stat. 1559, provided that: "Notwithstanding the provisions of section 706(d) of the Social Security Act [subsec. (d) of this section], the report of the Advisory Council on Social Security which is due not later than January 1, 1979, may be filed at any date prior to October 1, 1979."

§ 907a. National Commission on Social Security

(a) Establishment; membership; Chairman and Vice Chairman; quorum; terms of office; vacancies; per diem and expense reimbursement; meetings

(1) There is established a commission to be known as the National Commission on Social Security (hereinafter referred to as the "Commission").

(2)(A) The Commission shall consist of—

(i) five members to be appointed by the President, by and with the advice and consent of the Senate, one of whom shall, at the time of appointment, be designated as Chairman of the Commission;

(ii) two members to be appointed by the Speaker of the House of Representatives; and

(iii) two members to be appointed by the President pro tempore of the Senate.

(B) At no time shall more than three of the members appointed by the President, one of the members appointed by the Speaker of the House of Representatives, or one of the members appointed by the President pro tempore of the Senate be members of the same political party.

(C) The membership of the Commission shall consist of individuals who are of recognized standing and distinction and who possess the demonstrated capacity to discharge the duties imposed on the Commission, and shall include representatives of the private insurance industry and of recipients and potential recipients of benefits under the programs involved as well as individuals whose capacity is based on a special knowledge or expertise in those programs. No individual who is otherwise an officer or full-time employee of the United States shall serve as a member of the Commission.

(D) The Chairman of the Commission shall designate a member of the Commission to act as Vice Chairman of the Commission.

(E) A majority of the members of the Commission shall constitute a quorum, but a lesser number may conduct hearings.

(F) Members of the Commission shall be appointed for a term of two years.

(G) A vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as that herein provided for the appointment of the member first appointed to the vacant position.

(3) Members of the Commission shall receive $138 per diem while engaged in the actual performance of the duties vested in the Commission, plus reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

(4) The Commission shall meet at the call of the Chairman, or at the call of a majority of the members of the Commission; but meetings of the Commission shall be held not less frequently than once in each calendar month which begins after a majority of the authorized membership of the Commission has first been appointed.

(b) Continuing study, investigation, and review of social security program; scope of study, etc., and public participation

(1) It shall be the duty and function of the Commission to conduct a continuing study, investigation, and review of—

(A) the Federal old-age, survivors, and disability insurance program established by title II of the Social Security Act [42 U.S.C. 401 et seq.]; and

(B) the health insurance programs established by title XVIII of such Act [42 U.S.C. 1395 et seq.].

(2) Such study, investigation, and review of such programs shall include (but not be limited to)—

(A) the fiscal status of the trust funds established for the financing of such programs and the adequacy of such trust funds to meet the immediate and long-range financing needs of such programs;

(B) the scope of coverage, the adequacy of benefits including the measurement of an adequate retirement income, and the conditions of qualification for benefits provided by such programs including the application of the retirment income test to unearned as well as earned income;

(C) the impact of such programs on, and their relation to, public assistance programs, nongovernmental retirement and annuity programs, medical service delivery systems, and national employment practices;

(D) any inequities (whether attributable to provisions of law relating to the establishment and operation of such programs, to rules and regulations promulgated in connection with the administration of such programs, or to administrative practices and procedures employed in the carrying out of such programs) which affect substantial numbers of individuals who are insured or otherwise eligible for benefits under such programs, including inequities and inequalities arising out of marital status, sex, or similar classifications or categories;

(E) possible alternatives to the current Federal programs or particular aspects thereof, including but not limited to (i) a phasing out of the payroll tax with the financing of such programs being accomplished in some other manner (including general revenue funding and the retirement bond), (ii) the establishment of a system providing for mandatory participation in any or all of the Federal programs, (iii) the integration of such current Federal programs with private retirement programs, and (iv) the establishment of a system permitting covered individuals a choice of public or private programs or both;

(F) the need to develop a special Consumer Price Index for the elderly, including the financial impact that such an index would have on the costs of the programs established under the Social Security Act [42 U.S.C. 301 et seq.]; and

(G) methods for effectively implementing the recommendations of the Commission.

(3) In order to provide an effective opportunity for the general public to participate fully in the study, investigation, and review under this section, the Commission, in conducting such study, investigation, and review, shall hold public hearings in as many different geographical areas of the country as possible. The residents of each area where such a hearing is to be held shall be given reasonable advance notice of the hearing and an adequate opportunity to appear and express their views on the matters under consideration.

(c) Special, annual, and final reports to President and Congress concerning implementation, etc., of study, investigation, and review responsibilities; termination of Commission

(1) No later than four months after the date on which a majority of the authorized membership of the Commission is initially appointed, the Commission shall submit to the President and the Congress a special report describing the Commission's plans for conducting the study, investigation, and review under subsection (b) of this section, with particular reference to the scope of such study, investigation, and review and the methods proposed to be used in conducting it.

(2) At or before the close of each of the first two years after the date on which a majority of the authorized membership of the Commission is initially appointed, the Commission shall submit to the President and the Congress an annual report on the study, investigation, and review under subsection (b) of this section, together with its recommendations with respect to the programs involved. The second such report shall constitute the final report of the Commission on such study, investigation, and review, and shall include its final recommendations; and upon the submission of such final report the Commission shall cease to exist.

(d) Executive Director and additional personnel; appointment and compensation

(1) The Commission shall appoint an Executive Director of the Commission who shall be compensated at a rate fixed by the Commission, but which shall not exceed the rate established for level V of the Executive Schedule by title 5.

(2) In addition to the Executive Director, the Commission shall have the power to appoint and fix the compensation of such personnel as it deems advisable, in accordance with the provisions of title 5 governing appointments to the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title, relating to classification and General Schedule pay rates.

(e) Administrative procedures

In carrying out its duties under this section, the Commission, or any duly authorized committee thereof, is authorized to hold such hearings, sit and act at such times and places, and take such testimony, with respect to matters with respect to which it has a responsibility under this section, as the Commission or such committee may deem advisable. The Chairman of the Commission or any member authorized by him may administer oaths or affirmations to witnesses appearing before the Commission or before any committee thereof.

(f) Data and information from other Federal departments and agencies

The Commission may secure directly from any department or agency of the United States such data and information as may be necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Commission, any such department or agency shall furnish any such data or information to the Commission.

(g) Administrative support services from General Services Administration; reimbursement

The General Services Administration shall provide to the Commission, on a reimbursable basis such administrative support services as the Commission may request.

(h) Authorization of appropriations

There are authorized to be appropriated such sums as may be necessary to carry out this section.

(i) Notice of and attendance at meetings of Health Insurance Benefits Advisory Council

It shall be the duty of the Health Insurance Benefits Advisory Council (established by section 1867 of the Social Security Act [42 U.S.C. 1395dd]) to provide timely notice to the Commission of any meeting, and the Chairman of the Commission (or his delegate) shall be entitled to attend any such meeting.

(Pub. L. 95-216, title III, § 361, Dec. 20, 1977, 91 Stat. 1556.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (b)(1)(A), (B), (2)(F), is act Aug. 14, 1935, ch. 531, 49

Stat. 620, as amended, which is classified generally to this chapter (§ 301 et seq.). Titles II and XVIII of the Social Security Act are classified generally to subchapters II (§ 401 et seq.) and XVIII (§ 1395 et seq.) of this chapter. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Level V of the Executive Schedule, referred to in subsec. (d)(1), is set out in section 5316 of Title 5, Government Officers and Employees.

The provisions of title 5 governing appointments to the competitive service, referred to in subsec. (d)(2), are classified to section 3301 et seq. of Title 5.

CODIFICATION

Section was enacted as part of the Social Security Amendments of 1977, and not as part of the Social Security Act which comprises this chapter.

TERMINATION OF ADVISORY COUNCILS

Advisory Councils in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a Council established by the President or an officer of the Federal Government, such Council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a Council established by the Congress, its duration is otherwise provided for by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 909. Delivery of benefit checks; recovery of overpayments

(a) If the day regularly designated for the delivery of benefit checks under subchapter II or XVI of this chapter falls on a Saturday, Sunday, or legal public holiday (as defined in section 6103 of title 5 in any month, the benefit checks which would otherwise be delivered on such day shall be mailed for delivery on the first day preceding such day which is not a Saturday, Sunday, or legal public holiday (as so defined), without regard to whether the delivery of such checks would as a result have to be made before the end of the month for which such checks are issued.

(b) If more than the correct amount of payment under subchapter II or XVI of this chapter is made to any individual as a result of the receipt of a benefit check pursuant to subsection (a) of this section before the end of the month for which such check is issued, no action shall be taken (under section 404 or 1383(b) of this title or otherwise) to recover such payment or the incorrect portion thereof.

(Aug. 14, 1935, ch. 531, title VII, § 708, as added Dec. 20, 1977, Pub. L. 95-216, title III, § 333(a), 91 Stat. 1543.)

EFFECTIVE DATE

Section 333(b) of Pub. L. 95-216 provided that: "The amendment made by subsection (a) of this section [enacting this section] shall apply with respect to benefit checks the regularly designated day for delivery of which occurs on or after the thirtieth day after the date of the enactment of this Act [Dec. 20, 1977]."

SUBCHAPTER IX—EMPLOYMENT SECURITY ADMINISTRATIVE FINANCING

§ 1104. Unemployment Trust Fund

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER X—GRANTS TO STATES FOR AID TO THE BLIND

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 428, 602, 1301, 1306a, 1308, 1309, 1311, 1315, 1316, 1318, 1319, 1382, 1382c, 1395v, 1396a, 1396b, 1396d, 1397b of this title; title 29 section 802, title 31 section 665.

§ 1201. Authorization of appropriations

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 1202. State plans for aid to blind

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§§ 1203, 1204

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER XI—GENERAL PROVISIONS AND PROFESSIONAL STANDARDS REVIEW

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 432, 1320c-21 of this title.

PART A—GENERAL PROVISIONS

§ 1301. Definitions

(a) When used in this chapter—

(1) The term "State", except where otherwise provided, includes the District of Columbia and the Commonwealth of Puerto Rico, and when used in subchapters IV, V, VII, XI, and XIX of this chapter includes the Virgin Islands and Guam. Such term when used in subchapters III, IX, and XII of this chapter also includes the Virgin Islands. Such term when used in subchapter V and in part B of this subchapter of this chapter also includes American Samoa and the Trust Territory of the Pacific Islands. In the case of Puerto Rico, the Virgin Islands, and Guam, subchapters I, X, and XIV, and subchapter XVI of this chapter (as in effect without regard to the amendment made by section 301 of the Social Security Amendments of 1972) shall continue to apply, and the term "State" when used in such subchapters (but not in subchapter XVI of this chapter as in effect pursuant to such amendment after December 31, 1973) includes Puerto Rico, the Virgin Islands, and Guam.

[*See main edition for text of (2) to (8)*]

(9) The term "shared health facility" means any arrangement whereby—

(A) two or more health care practitioners practice their professions at a common physical location;

(B) such practitioners share (i) common waiting areas, examining rooms, treatment rooms, or other space, (ii) the services of supporting staff, or (iii) equipment;

(C) such practitioners have a person (who may himself be a practitioner)—

(i) who is in charge of, controls, manages, or supervises substantial aspects of the arrangement or operation for the delivery of health or medical services at such common physical location, other than the direct furnishing of professional health care services by the practitioners to their patients; or

(ii) who makes available to such practitioners the services of supporting staff who are not employees of such practitioners;

and who is compensated in whole or in part, for the use of such common physical location or support services pertaining thereto, on a basis related to amounts charged or collected for the services rendered or ordered at such location or on any basis clearly unrelated to the value of the services provided by the person; and

(D) at least one of such practitioners received payments on a fee-for-service basis under subchapters V, XVIII, and XIX of this chapter in an amount exceeding $5,000 for any one month during the preceding 12 months or in an aggregate amount exceeding $40,000 during the preceding 12 months;

except that such term does not include a provider of services (as defined in section 1395x(u) of this title, a health maintenance organization (as defined in section 300e(a) of this title), a hospital cooperative shared services organization meeting the requirements of section 501(e) of the Internal Revenue Code of 1954, or any public entity.

[*See main edition for text of* (b) *to* (d)]

(As amended Oct. 25, 1977, Pub. L. 95-142, § 5(c)(2), (*l*)(2), 91 Stat. 1184, 1191.)

REFERENCES IN TEXT

Section 501(e) of the Internal Revenue Code of 1954, referred to in subsec. (a)(9), is classified to section 501(e) of Title 26, Internal Revenue Code.

CODIFICATION

Amendment by section 5(*l*)(2) of Pub. L. 95-142 has not been executed to the second sentence of subsec. (a)(1) of this section as provided for in the directory language of section 5(*l*)(2) of Pub. L. 95-142 but to the third sentence of such subsec. (a)(1) as the probable intent of Congress.

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-142, § 5(*l*)(2), added provision that the term "State" when used in part B of this subchapter also includes American Samoa and the Trust Territory of the Pacific Islands.

Subsec. (a)(9). Pub. L. 95-142, § 5(c)(2), added par. (9).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 1302. Rules and regulations

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 1305. Short title of chapter

SHORT TITLE OF 1977 AMENDMENTS

Pub. L. 95-216, § 1, Dec. 20, 1977, 91 Stat. 1509, provided in part that Pub. L. 95-216 [enacting sections 433, 611, 907a, and 909 of this title, amending sections 401, 402, 403, 405, 409, 410, 411 to 413, 415 to 418, 423, 424a, 426, 429, 430, 602, 603, 1315, 1395r, 1395u, and 1395x of this title, section 441i of Title 2, The Congress, sections 1401, 1402, 3101, 3102, 3111, 3121, 3304, 3306, and 6051 of Title 26, Internal Revenue Code, and section 231b of Title 45, Railroads, and enacting provisions set out as notes under sections 402, 403, 409, 411, 413, 418, 424a, 430, 602, 603, 902, 907, 909, 1383, and 1395x of this title, section 441i of Title 2, sections 1401, 1402, 3102, 3111, and 3121 of Title 26, and section 231b of Title 45] may be cited as the "Social Security Amendments of 1977".

Pub. L. 95-142, § 1, Oct. 25, 1977, 91 Stat. 1175, provided that: "This Act [which enacted sections 1320a, 1320a-3 to 1320a-5, 1320c-20 to 1320c-22, and 1396k of this title, amended sections 254e, 1301, 1320c-1, 1320c-3, 1320c-4, 1320c-6, 1320c-7, 1320c-9, 1320c-12, 1320c-15 to 1320c-17, 1395b-1, 1395f, 1395g, 1395h, 1395*l*, 1395u, 1395x, 1395y, 1395cc, 1395nn, 1396a, 1396b, 1396h, 1397a, 1397b, and 3524 of this title, and enacted provisions set out as notes under sections 254e, 1320a, 1320a-3, 1320a-5, 1320c-6, 1320c-7, 1395f, 1395g, 1395h, 1395*l*, 1395x, 1395cc, 1395*ll*, 1395nn, 1396a, and 1396b of this title] may be cited as the 'Medicare-Medicaid Anti-Fraud and Abuse Amendments'."

§ 1306. Disclosure of information in possession of Department of Health, Education, and Welfare or Department of Labor

CHANGE OF NAME

The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

§ 1306a. Public access to State disbursement records

No State or any agency or political subdivision thereof shall be deprived of any grant-in-aid or other payment to which it otherwise is or has become entitled pursuant to subchapter I (other than section 303(a)(3) thereof), IV, X, XIV, or XVI (other than section 1383(a)(3) thereof) of this chapter, by reason of the enactment or enforcement by such State of any legislation prescribing any conditions under which public access may be had to records of the disbursement of any such funds or payments within such State, if such legislation prohibits the use of any list or names obtained through such access to such records for commercial or political purposes.

(Oct. 20, 1951, ch. 521, title VI, § 618, 65 Stat. 569; Sept. 13, 1960, Pub. L. 86-778, title VI, § 603(a), 74 Stat. 992; July 25, 1962, Pub. L. 87-543, title I, § 141(e), 76 Stat. 205.)

REFERENCES IN TEXT

Section 1383(a)(3), referred to in text, was in the original a reference to section 1603(a)(3) of the Social Security Act as added July 25, 1962, Pub. L. 87-543, title I, § 141(a), 76 Stat. 200, and amended. That section was amended generally by Pub. L. 92-603, § 301, Oct. 30, 1972, 86 Stat. 1478. However, the amendment by Pub. L. 92-603 was inapplicable to Puerto Rico, Guam, and the Virgin Islands, so that the prior section (which is set out as a note under section 1383 of this title) continues in effect for Puerto Rico, Guam, and the Virgin Islands.

CODIFICATION

Section was enacted as part of act Oct. 20, 1951, popularly known as the Revenue Act of 1951, and not as part of the Social Security Act which comprises this chapter.

AMENDMENTS

1962—Pub. L. 87-543 substituted "XIV, or XVI (other than section 1383(a)(3) thereof)" for "or XIV".

1960—Pub. L. 86-778 inserted "(other than section 303(a)(3) thereof)" following "pursuant to subchapter I".

EFFECTIVE DATE OF 1960 AMENDMENT

Section 603(b) of Pub. L. 86-778 provided that: "The amendment made by subsection (a) [amending this section] shall take effect October 1, 1960."

§ 1308. Limitation on payments to Puerto Rico, Virgin Islands, Guam, American Samoa, and Trust Territory of Pacific Islands

(a) Total amount certified under subchapters I, X, XIV, XVI and part A of subchapter IV

Except as provided in section 1397a(a)(2)(D) of this title, the total amount certified by the Secretary of Health, Education, and Welfare under subchapter I, X, XIV, and XVI of this chapter, and under part A of subchapter IV of this chapter (exclusive of any amounts on account of services and items to which subsection (b) of this section applies)—

(1) for payment to Puerto Rico shall not exceed—

(A) $12,500,000 with respect to the fiscal year 1968,

(B) $15,000,000 with respect to the fiscal year 1969,

(C) $18,000,000 with respect to the fiscal year 1970,

(D) $21,000,000 with respect to the fiscal year 1971,

(E) $24,000,000 with respect to the fiscal year 1972 and each fiscal year thereafter other than the fiscal year 1979, or

(F) $72,000,000 with respect to the fiscal year 1979;

(2) for payment to the Virgin Islands shall not exceed—

(A) $425,000 with respect to the fiscal year 1968,

(B) $500,000 with respect to the fiscal year 1969,

(C) $600,000 with respect to the fiscal year 1970,

(D) $700,000 with respect to the fiscal year 1971,

(E) $800,000 with respect to the fiscal year 1972 and each fiscal year thereafter other than the fiscal year 1979, or

(F) $2,400,000 with respect to the fiscal year 1979;

(3) for payment to Guam shall not exceed—

(A) $575,000 with respect to the fiscal year 1968,

(B) $690,000 with respect to the fiscal year 1969,

(C) $825,000 with respect to the fiscal year 1970,

(D) $960,000 with respect to the fiscal year 1971,

(E) $1,100,000 with respect to the fiscal year 1972 and each fiscal year thereafter other than the fiscal year 1979, or

(F) $3,300,000 with respect to the fiscal year 1979.

[*See main edition for text of* (b) *to* (d)]

(As amended Nov. 6, 1978, Pub. L. 95-600, title VIII, § 802(b), 92 Stat. 2945.)

AMENDMENTS

1978—Subsec. (a)(1)(E). Pub. L. 95-600, § 802(b)(1)(B), added "other than the fiscal year 1979, or".

Subsec. (a)(1)(F). Pub. L. 95-600, § 802(b)(1)(C), added subpar. (F).

Subsec. (a)(2)(E). Pub. L. 95-600, § 802(b)(2)(B), substituted "other than the fiscal year 1979, or" for "; and".

Subsec. (a)(2)(F). Pub. L. 95-600, § 802(b)(2)(C), added subpar. (F).

Subsec. (a)(3)(E). Pub. L. 95-600, § 802(b)(3)(B), added "other than the fiscal year 1979, or".

Subsec. (a)(3)(F). Pub. L. 95-600, § 802(b)(3)(C), added subpar. (F).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 1310. Cooperative research or demonstration projects

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 256, 1315 of this title.

§ 1314. Public advisory groups

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 1315. Demonstration projects; waiver of State plan requirements; costs regarded as State plan expenditures; availability of appropriations

(a) In the case of any experimental, pilot, or demonstration project which, in the judgment of the Secretary, is likely to assist in promoting the objectives of subchapter I, VI, X, XIV, XVI, XIX, or XX of this chapter, or part A of subchapter IV of this chapter, in a State or States—

(1) the Secretary may waive compliance with any of the requirements of section 302, 602, 802, 1202, 1352, 1382, 1396a, 1397a, 1397b, or 1397c of this title, as the case may be, to the extent and for the period he finds necessary to enable such State or States to carry out such project, and

(2) costs of such project which would not otherwise be included as expenditures under section 303, 603, 803, 1203, 1353, 1383, 1396b, or 1397a of this title, as the case may be, and which are not included as part of the costs of projects under section 1310 of this title, shall, to the extent and for the period prescribed by the Secretary, be regarded as expenditures under the State plan or plans approved under such subchapter, or for administration of such State plan or plans, or expenditures with respect to which payment shall be made under section 1397a of this title, as may be appropriate.

In addition, not to exceed $4,000,000 of the aggregate amount appropriated for payments to States under such subchapters for any fiscal year beginning after June 30, 1967, shall be available, under such terms and conditions as the Secretary may establish, for payments to States to cover so much of the cost of such projects as is not covered by payments under such subchapters and is not included as part of the cost of projects for purposes of section 1310 of this title.

(b)(1) In order to permit the States to achieve more efficient and effective use of funds for public assistance, to reduce dependency, and to improve the living conditions and increase the incomes of individuals who are recipients of public assistance, any State having an approved plan under part A of subchapter IV of this chapter may, subject to the provisions of this subsection, establish and conduct not more than three demonstration projects. In establishing and conducting any such project the State shall—

(A) provide that not more than one such project be conducted on a statewide basis;

(B) provide that in making arrangements for public service employment—

(i) appropriate standards for the health, safety, and other conditions applicable to the performance of work and training on such project are established and will be maintained,

(ii) such project will not result in the displacement of employed workers,

(iii) each participant in such project shall be compensated for work performed by him at an hourly rate equal to the prevailing hourly wage for similar work in the locality where the participant performs such work (and, for purposes of this clause, benefits payable under the State's plan approved under part A of subchapter IV of this chapter of the family of which such participant is a member shall be regarded as compensation for work performed by such participant),

(iv) with respect to such project the conditions of work, training, education, and employment are reasonable in the light of such factors as the type of work, geographical region, and proficiency of the participant, and

(v) appropriate workmen's compensation protection is provided to all participants; and

(C) provide that participation in such project by any individual receiving aid to families with dependent children be voluntary.

(2) Any State which establishes and conducts demonstration projects under this subsection may, subject to paragraph (3), with respect to any such project—

(A) waive, subject to paragraph (3), any or all of the requirements of sections 602(a)(1) of this title (relating to statewide operation), 602(a)(3) of this title (relating to administration by a single State agency), 602(a)(8) of this title (relating to disregard of earned income), except that no such waiver of 602(a)(8) of this title shall operate to waive any amount in excess of one-half of the earned income of any individual, and 602(a)(19) of this title (relating to the work incentive program);

(B) subject to paragraph (4), use to cover the costs of the project such funds as are appropriated for payment to such State with respect to the assistance which is or would, except for participation in a project under this subsection, be payable to individuals participating in such projects under part A of subchapter IV of this chapter for any fiscal year in which such projects are conducted; and

(C) use such funds as are appropriated for payments to States under the State and Local Fiscal Assistance Act of 1972 [31 U.S.C. 1221 et seq.] for any fiscal year in which the project is conducted to cover so much of the costs of salaries for individuals participating in public service employment as is not covered through the use of funds made available under subparagraph (B).

(3)(A) Any State which wishes to establish and conduct demonstration projects under the provisions of this subsection shall submit an application to the Secretary in such form and containing such information as the Secretary may require. Whenever any State submits such an application to the Secretary, it shall at the same time issue public notice of that fact together with a general description of the project with respect to which the application is submitted, and shall invite comment thereon from interested parties and comments thereon may be submitted, within the 30-day period beginning with the date the application is submitted to the Secretary, to the State or the Secretary by such parties. The State shall also make copies of the application available for public inspection. The Secretary shall also immediately publish a summary of the proposed project, make copies of the application available for public inspection, and receive and consider comments submitted with respect to the application. A State shall be authorized to proceed with a project submitted under this subsection—

(i) when such application has been approved by the Secretary (which shall be no earlier than 30 days following the date the application is submitted to him), or

(ii) 60 days after the date on which such application is submitted to the Secretary unless, during such 60 day period, he denies the application.

(B) Notwithstanding the provisions of paragraph (2)(A), the Secretary may review any waiver made by a State under such paragraph. Upon a finding that any such waiver is inconsistent with the purposes of this subsection and the purposes of part A of subchapter IV of this chapter, the Secretary may disapprove such waiver. The project with respect to which any such disapproved waiver was made shall be terminated by such State not later than the last day of the month following the month in which such waiver was disapproved.

(4) Any amount payable to a State under section 603(a) of this title on behalf of an individual participating in a project under this section shall not be increased by reason of the participation of such individual in any demonstration project conducted under this subsection over the amount which would be payable if such individual were receiving aid to families with dependent children and not participating in such project.

(5) Participation in a project established under this section shall not be considered to constitute employment for purposes of any finding with respect to "unemployment" as that term is used in section 607 of this title.

(6) Any demonstration project established and conducted pursuant to the provisions of this subsection shall be conducted for not longer than two years. All demonstration projects established and conducted pursuant to the provisions of this subsection shall be terminated not later than September 30, 1980.

(As amended Dec. 20, 1977, Pub. L. 95-216, title IV, § 404, 91 Stat. 1562.)

REFERENCES IN TEXT

The State and Local Fiscal Assistance Act of 1972, referred to in subsec. (b)(2)(C), is Pub. L. 92-512, Oct. 20, 1972, 86 Stat. 919, as amended, which is classified principally to chapter 24 (§ 1221 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 1221 of Title 31 and Tables.

AMENDMENTS

1977—Pub. L. 95-216 designated existing provisions as subsec. (a) and existing pars. (a) and (b) thereof as pars. (1) and (2), respectively, and added subsec. (b).

§ 1318. Alternative Federal payment with respect to public assistance expenditures

In the case of any State which has in effect a plan approved under subchapter XIX of this chapter for any calendar quarter, the total of the payments to which such State is entitled for such quarter, and for each succeeding quarter in the same fiscal year (which for purposes of this section means the 4 calendar quarters ending with September 30), under paragraphs (1) and (2) of sections 303(a), 603(a), 1203(a), 1353(a), and 1383(a) of this title shall, at the option of the State, be determined by application of the Federal medical assistance percentage (as defined in section 1396d of this title), instead of the percentages provided under each such section, to the expenditures under its State plans approved under subchapters I, X, XIV, and XVI of this chapter, and part A of subchapter IV of this chapter, which would be included in determining the amounts of the Federal payments to which such State is entitled under such sections, but without regard to any maximum on the dollar amounts per recipient which may be counted under such sections. For purposes of the preceding sentence, the term "Federal medical assistance percentage" shall, in the case of Puerto Rico, the Virgin Islands, and Guam, mean 75 per centum when applied to quarters in the fiscal year ending September 30, 1979.

(As amended Nov. 6, 1978, Pub. L. 95-600, title VIII, § 802(a), 92 Stat. 2945.)

AMENDMENTS

1978—Pub. L. 95-600, added provision relating to the definition of "Federal medical assistance percentage" in the case of Puerto Rico, the Virgin Islands, and Guam.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 603 of this title.

§ 1320. Approval of certain projects; report to Congress

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 1320a. Uniform reporting systems for health services facilities and organizations

(a) Establishment; criteria for regulations; requirements for hospitals

For the purposes of reporting the cost of services provided by, of planning, and of measuring and comparing the efficiency of and effective use of services in, hospitals, skilled nursing facilities, intermediate care facilities, home health agencies, health maintenance organizations, and other types of health services facilities and organizations to which payment may be made under this chapter, the Secretary shall establish by regulation, for each such type of health services facility or organization, a uniform system for the reporting by a facility or organization of that type of the following information:

(1) The aggregate cost of operation and the aggregate volume of services.

(2) The costs and volume of services for various functional accounts and subaccounts.

(3) Rates, by category of patient and class of purchaser.

(4) Capital assets, as defined by the Secretary, including (as appropriate) capital funds, debt service, lease agreements used in lieu of capital funds, and the value of land, facilities, and equipment.

(5) Discharge and bill data.

The uniform reporting system for a type of health services facility or organization shall provide for appropriate variation in the application of the system to different classes of facilities or organizations within that type and shall be established, to the extent practicable, consistent with the cooperative system for producing comparable and uniform health information and statistics described in section 242k(e)(1) of this title. In reporting under such a system, hospitals shall employ such chart of accounts, definitions, principles, and statistics as the Secretary may prescribe in order to reach a uniform reconciliation of financial and statistical data for specified uniform reports to be provided to the Secretary.

(b) Monitoring, etc., of systems by Secretary

The Secretary shall—

(1) monitor the operation of the systems established under subsection (a) of this section;

(2) assist with and support demonstrations and evaluations of the effectiveness and cost of the operation of such systems and encourage State adoption of such systems; and

(3) periodically revise such systems to improve their effectiveness and diminish their cost.

(c) Availability of information to appropriate agencies and organizations

The Secretary shall provide information obtained through use of the uniform reporting systems described in subsection (a) of this section in a useful manner and format to appropriate agencies and organizations, including health systems agencies (designated under section 300*l*-4 of this title) and State health planning and development agencies (designated under section 300m of this title), as may be necessary to carry out such agencies' and organizations' functions.

(Aug. 14, 1935, ch. 531, title XI, § 1121, as added Oct. 25, 1977, Pub. L. 95-142, § 19(a), 91 Stat. 1203.)

PRIOR PROVISIONS

A prior section 1320a, act Aug. 14, 1935, ch. 531, title XI, § 1121, as added Jan. 2, 1968, Pub. L. 90-248, title II, § 250(a), 81 Stat. 920, provided for assistance in the form of institutional services in intermediate care facilities, the subsecs. providing as follows: subsec. (a), modification of certain plans to include such benefit; subsec. (b), eligible individuals; subsec. (c), payments and Federal medical assistance percentage; subsec. (d), conditions, limitations, rights, and obligations applicable to modified plans; and subsec. (e), definition of "intermediate care facility", now covered in section 1396d(c) of this title; and was repealed by Pub. L. 92-223, § 4(c), Dec. 28, 1971, 85 Stat. 810.

Section was additionally amended by Pub. L. 92-603, title II, § 278(a)(24), Oct. 30, 1972, 86 Stat. 1453, without reference to the earlier repeal of this section by Pub. L. 92-223.

TIME PERIODS FOR ESTABLISHMENT OF UNIFORM REPORTING SYSTEMS; CONSULTATIONS WITH INTERESTED PARTIES

Section 19(c)(1) of Pub. L. 95-142 provided that: "The Secretary of Health, Education, and Welfare shall establish the systems described in section 1121(a) of the Social Security Act (added by subsection (a) of this section) [subsec. (a) of this section] only after consultation with interested parties and—

"(A) for hospitals, skilled nursing facilities, and intermediate care facilities, not later than the end of the one-year period, and

"(B) for other types of health services facilities and organizations, not later than the end of the two-year period;

beginning on the date of enactment of this Act [Oct. 25, 1977]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395x, 1396a of this title.

§ 1320a-1. Limitation on use of Federal funds for capital expenditures

(a) Use of reimbursement for planning activities for health services and facilities

The purpose of this section is to assure that Federal funds appropriated under subchapters V, XVIII, and XIX of this chapter are not used to support unnecessary capital expenditures made by or on behalf of health care facilities which are reimbursed under any of such subchapters and that, to the extent possible, reimbursement under such subchapters shall support planning activities with respect to health services and facilities in the various States.

(b) Agreement between Secretary and State for submission of proposed capital expenditures related to health care facilities and procedures for appeal from recommendations

The Secretary, after consultation with the Governor (or other chief executive officer) and with appropriate local public officials, shall make an agreement with any State which is able and willing to do so under which a designated planning agency (which shall be an agency described in clause (ii) of subsection (d)(1)(B) of this section that has a governing body or advisory board at least half of whose members represent consumer interests) will—

(1) make, and submit to the Secretary together with such supporting materials as he may find necessary, findings and recommendations with respect to capital expenditures proposed by or on behalf of any health care facility in such State within the field of its responsibilities,

(2) receive from other agencies described in clause (ii) of subsection (d)(1)(B) of this section, and submit to the Secretary together with such supporting material as he may find necessary, the findings and recommendations of such other agencies with respect to capital expenditures proposed by or on behalf of health care facilities in such State within the fields of their respective responsibilities, and

(3) establish and maintain procedures pursuant to which a person proposing any such capital expenditure may appeal a recommendation by the designated agency and will be granted an opportunity for a fair hearing by such agency or person other than the designated agency as the Governor (or other chief executive officer) may designate to hold such hearings,

whenever and to the extent that the findings of such designated agency or any such other agency indicate that any such expenditure is not consistent with the standards, criteria, or plans developed pursuant to the Public Health Service Act [42 U.S.C. 201 et seq.] (or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963 [42 U.S.C. 2689 et seq., 6000 et seq.]) to meet the need for adequate health care facilities in the area covered by the plan or plans so developed.

[*See main edition for text of* (c)]

(d) Determination of amount of exclusions from Federal payments

(1) Except as provided in paragraph (2), if the Secretary determines that—

[*See main edition for text of* (*A*)]

(B) [*See main edition text of* (*i*)]

(ii) the planning agency so designated had, prior to submitting to the Secretary the findings referred to in subsection (b) of this section—

(I) consulted with, and taken into consideration the findings and recommendations of, the State planning agencies established pursuant to sections 314(a) and 604(a) of the Public Health Service Act [42 U.S.C. 246(a), 291d(a)] (to the extent that either such agency is not the agency so designated) as well as the public or nonprofit private agency or organization responsible for the comprehensive regional, metropolitan area, or other local area plan or plans referred to in section 314(b) of the Public Health Service Act [42 U.S.C. 246(b)] and covering the area in which the health care facility proposing such capital expenditure is located (where such agency is not the agency designated in the agreement), or, if there is no such agency, such other public or nonprofit private agency or organization (if any) as performs, as determined in accordance with criteria included in regulations, similar functions, and

(II) granted to the person proposing such capital expenditure an opportunity for a fair hearing with respect to such findings;

then, for such period as he finds necessary in any case to effectuate the purpose of this section, he shall, in determining the Federal payments to be made under subchapters V, XVIII, and XIX of this chapter with respect to services furnished in the health care facility for which such capital expenditure is made, not include any amount which is attributable to depreciation, interest, on borrowed funds, a return on equity capital (in the case of proprietary facilities), or other expenses related to such capital expenditure. With respect to any organization which is reimbursed on a per capita or a fixed fee or negotiated rate basis, in determining the Federal payments to be made under subchapters V, XVIII, and XIX of this chapter, the Secretary shall exclude an amount which in his judgment is a reasonable equivalent to the amount which would otherwise be excluded under this subsection if payment were to be made on other than a per capita or a fixed fee or negotiated rate basis.

(2) If the Secretary, after submitting the matters involved to the advisory council established or designated under subsection (i) of this section, determines that an exclusion of expenses related to any capital expenditure of any health care facility would discourage the operation of expansion of such facility which has demonstrated to his satisfaction proof of capability to provide comprehensive health care services (including institutional services) efficiently, effectively, and economically, or would otherwise be inconsistent with the effective organization and delivery of health services or the effective administration of subchapter V, XVII, or XIX of this chapter, he shall not exclude such expenses pursuant to paragraph (1).

[*See main edition for text of* (*e*) *to* (*i*)]

(As amended Nov. 1, 1978, Pub. L. 95-559, § 14(b), 92 Stat. 2141; July 10, 1979, Pub. L. 96-32, § 2(c), 93 Stat. 82.)

REFERENCES IN TEXT

The Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, referred to in subsec. (b), is Pub. L. 88-164, Oct. 31, 1963, 77 Stat. 282, as amended, which is classified principally to subchapter III (§ 2689 et seq.) of chapter 33 and chapter 75 (§ 6000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

AMENDMENTS

1979—Pub. L. 96-32 amended directory language of Pub. L. 95-559 and required no change in text of the section. See 1978 Amendment notes below.

1978—Subsecs. (a), (b). Pub. L. 95-559, § 14(b)(1), (2), as amended by Pub. L. 96-32, struck out references to health maintenance organizations wherever appearing.

Subsec. (d). Pub. L. 95-559, § 14(b)(1), (3), as amended by Pub. L. 96-32, struck out references to health maintenance organizations wherever appearing and in par. (2) "or organization, or of any facility of such organization," following "expansion of such facility".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300m-2, 705, 706, 709, 1395x, 1395mm, 1396a, 1396b, 6371d of this title.

§ 1320a-3. Disclosure of ownership and related information; procedure; definitions; scope of requirements

(a)(1) The Secretary shall by regulation or by contract provision provide that each disclosing entity (as defined in paragraph (2)) shall—

(A) as a condition of the disclosing entity's participation in, or certification or recertification under, any of the programs established by subchapters V, XVIII, XIX, and XX of this chapter, or

(B) as a condition for the approval or renewal of a contract or agreement between the disclosing entity and the Secretary or the appropriate State agency under any of the programs established under subchapters V, XVIII, XIX, and XX of this chapter,

supply the Secretary or the appropriate State agency with full and complete information as to the identity of each person with an ownership or control interest (as defined in paragraph (3)) in the entity or in any subcontractor (as defined by the Secretary in regulations) in which the entity directly or indirectly has a 5 per centum or more ownership interest.

(2) As used in this section, the term "disclosing entity" means an entity which is—

(A) a provider of services (as defined in section 1395x(u) of this title, other than a fund), an independent clinical laboratory, a renal disease facility, or a health maintenance organization (as defined in section 300e(a) of this title);

(B) an entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, items or services with respect to which payment may be claimed by the entity under any plan or program established pursuant to subchapter V of this chapter or under a State plan approved under subchapter XIX of this chapter;

(C) a carrier or other agency or organization that is acting as a fiscal intermediary or agent with respect to one or more providers of services (for purposes of part A or part B of subchapter XVIII of this chapter, or both, or for purposes of a State plan approved under subchapter XIX of this chapter) pursuant to (i) an agreement under section 1395h of this title, (ii) a contract under section 1395u of this title, or (iii) an agreement with a single State agency administering or supervising the administration of a State plan approved under subchapter XIX of this chapter; or

(D) an entity (other than an individual practitioner or group of practitioners) that furnishes, or arranges for the furnishing of, health related services with respect to which payment may be claimed by the entity under a State plan or program approved under subchapter XX of this chapter.

(3) As used in this section, the term "person with an ownership or control interest" means, with respect to an entity, a person who—

(A)(i) has directly or indirectly (as determined by the Secretary in regulations) an ownership interest of 5 per centum or more in the entity; or

(ii) is the owner (in whole or in part) of an interest of 5 per centum or more in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof; or

(B) is an officer or director of the entity, if the entity is organized as a corporation; or

(C) is a partner in the entity, if the entity is organized as a partnership.

(b) To the extent determined to be feasible under regulations of the Secretary, a disclosing entity shall also include in the information supplied under subsection (a)(1) of this section, with respect to each person with an ownership or control interest in the entity, the name of any other disclosing entity with respect to which the person is a person with an ownership or control interest.

(Aug. 14, 1935, ch. 531, title XI, § 1124, as added Oct. 25, 1977, Pub. L. 95-142, § 3(a)(1), 91 Stat. 1177.)

EFFECTIVE DATE

Section 3(e) of Pub. L. 95-142 provided that: "The amendment made by subsection (a)(1) [enacting this section] shall apply with respect to certifications and recertifications made (and participation in the programs established by titles V, XVIII, XIX, and XX of the Social Security Act [subchapters V, XVIII, XIX and XX, of this chapter respectively] pursuant to certifications and recertifications made), and fiscal intermediary or agent agreements or contracts entered into or renewed, on and after the date of the enactment of this Act [Oct. 25, 1977]. The remaining amendments made by this section [amending sections 1395x(j)(11) and 1395cc(b)(2)(C) of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1977]; except that the amendments made by subsections (c) [amending sections 1396a(a)(35) and (38) and 1396b(i)(2) of this title] and (d) [amending sections 1397a(a)(15) and 1397b of this title] shall become effective January 1, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e-17, 1395x, 1396a, 1397b, 6067 of this title.

§ 1320a-4. Issuance of subpenas by Comptroller General

(a) Authorization; scope; service and proof of service

For the purpose of any audit, investigation, examination, analysis, review, evaluation, or other function authorized by law with respect to any program authorized under this chapter, the Comptroller General of the United States shall have power to sign and issue subpenas to any person requiring the production of any pertinent books, records, documents, or other information. Subpenas so issued by the Comptroller General shall be served by anyone authorized by him (1) by delivering a copy thereof to the person named therein, or (2) by registered mail or by certified mail addressed to such person at his last dwelling place or principal place of business. A verified return by the person so serving the subpena setting forth the manner of service, or, in the case of service by registered mail or by certified mail, the return post office receipt therefor signed by the person so served, shall be proof of service.

(b) Contumacy or refusal to obey subpena; contempt proceedings

In case of contumacy by, or refusal to obey a subpena issued pursuant to subsection (a) of this section and duly served upon, any person, any district court of the United States for the judicial district in which such person charged with contumacy or refusal to obey is found or resides or transacts business, upon application by the Comptroller General, shall have jurisdiction to issue an order requiring such person to produce the books, records, documents, or other information sought by the subpena; and any failure to obey such order of the court may be punished by the court as a contempt thereof. In proceedings brought under this subsection, the Comptroller General shall be represented by attorneys employed in the General Accounting Office or by counsel whom he may employ without regard to the provisions of title 5 governing appointments in the competitive service, and the provisions of chapter 51 and subchapters III and VI of chapter 53 of such title, relating to classification and General Schedule pay rates.

(c) Nondisclosure of personal medical records by General Accounting Office

No personal medical record in the possession of the General Accounting Office shall be subject to subpena or discovery proceedings in a civil action.

(Aug. 14, 1935, ch. 531, title XI, § 1125, as added Oct. 25, 1977, Pub. L. 95-142, § 6, 91 Stat. 1192.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (b), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

§ 1320a-5. Disclosure by institutions, organizations, and agencies of owners, officers, etc., convicted of offenses related to programs; notification requirements; definition

(a) As a condition of participation in or certification or recertification under the programs established by subchapters XVIII, XIX, and XX of this chapter, any hospital, nursing facility, or other institution, organization, or agency shall be required to disclose to the Secretary or to the appropriate State agency the name of any person who—

(1) has a direct or indirect ownership or control interest of 5 percent or more in such institution, organization, or agency or is an officer, director, agent, or managing employee (as defined in subsection (b) of this section) of such institution, organization, or agency, and

(2) has been convicted (on or after October 25, 1977, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to the involvement of such person in any of such programs.

The Secretary or the appropriate State agency shall promptly notify the Inspector General in the Department of Health, Education, and Welfare of the receipt from any institution, organization, or agency of any application or request for such participation, certification, or recertification which discloses the name of any such person, and shall notify the Inspector General of the action taken with respect to such application or request.

(b) For the purposes of this section, the term "managing employee" means, with respect to an institution, organization, or agency, an individual, including a general manager, business manager, administrator, and director, who exercises operational or managerial control over the institution, organization, or agency, or who directly or indirectly conducts the day-to-day operations of the institution, organization, or agency.

(Aug. 14, 1935, ch. 531, title XI, § 1126, as added Oct. 25, 1977, Pub. L. 95-142, § 8(a), 91 Stat. 1194.)

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE

Section 8(e) of Pub. L. 95-142 provided that: "The amendments made by this section [enacting this section and amending sections 1395cc(a)(3) and (b)(2)(G), 1396b(n), and 1397a(a)(16) of this title] shall apply with respect to contracts, agreements, and arrangements entered into and approvals given pursuant to applications or requests made on and after the first day of the fourth month beginning after the date of the enactment of this Act [Oct. 25, 1977]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395cc, 1396b, 1397a, 6067 of this title.

PART B—PROFESSIONAL STANDARDS REVIEW

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 300k-2, 1301, 1395x of this title.

§ 1320c-1. Professional Standards Review Organizations

[See main edition for text of (a)]

(b) Qualified organizations eligible for designation

For purposes of subsection (a) of this section, the term "qualified organization" means—

(1) when used in connection with any area—

(A) an organization (i) which is a nonprofit professional association (or a component organization thereof), (ii) which is composed of licensed doctors of medicine or osteopathy engaged in the practice of medicine or surgery in such area, (iii) the membership of which includes a substantial proportion of all such physicians in such area, (iv) which is organized in a manner which makes available professional competence to review health care services of the types and kinds with respect to which Professional Standards Review Organizations have review responsibilities under this part, (v) the membership of which is voluntary and open to all doctors of medicine or osteopathy licensed to engage in the practice of medicine or surgery in such area without requirement of membership in or payment of dues to any organized medical society or association, and (vi) which does not restrict the eligibility of any member for service as an officer of the Professional Standards Review Organization or eligibility for and assignment to duties of such Professional Standards Review Organization, or, subject to subsection (c)(1) of this section,

(B) such other public, nonprofit private, or other agency or organization, which the Secretary determines, in accordance with criteria prescribed by him in regulations, to be of professional competence and otherwise suitable; and

(2) an organization which the Secretary, on the basis of his examination and evaluation of a formal plan which shall be developed and submitted by the association, agency, or organization in accordance with subsection (h) of this section (as well as on the basis of other relevant data and information), finds to be willing to perform and capable of performing, in an effective, timely, and objective manner and at reasonable cost, the duties, functions, and activities of a Professional Standards Review Organization required by or pursuant to this part.

[See main edition for text of (c) and (d)]

(e) Scope of review responsibilities

Where the Secretary finds a Professional Standards Review Organization (whether designated on a conditional basis or otherwise) to be competent to perform review responsibilities, the review, certification, and similar activities otherwise required pursuant to provisions of this chapter (other than this part) shall not be applicable with respect to those providers, suppliers, and practitioners being reviewed by such Professional Standards Review Organization, except to the extent specified by the Secretary. Nothing in the preceding sentence shall be construed as rendering inapplicable any provision of this chapter wherein requirements with respect to conditions for eligibility to or payment of benefits (as distinct from reviews and certifications made with respect to determinations of the kind made pursuant to paragraphs (1) and (2) of section 1320c-4(a) of this title) must be satisfied.

[*See main edition for text of* (*f*) *and* (*g*)]

(h) Development, preparation, consultation, etc., requirements for State health care facility plan and modifications

(1) During the development and preparation by an organization of its formal plan under subsection (b)(2) of this section or of any modification of such plan to include review of services in skilled nursing facilities (as defined in section 1395x(j) of this title) or intermediate care facilities (as defined in section 1396d(c) of this title) or review of ambulatory care services, the organization shall consult with the single State agency responsible for administering or supervising the administration of the State plan approved under subchapter XIX of this chapter for the State in which the organization is located.

(2) Such plan and any such modification shall be submitted to the Governor of such State, at the time of its submission to the Secretary, for his comments.

(3) The Secretary, before making the findings described in subsection (b)(2) of this section or a finding regarding the organization's capability to perform review of such services (as the case may be), shall consider any such comments submitted to him by such Governor before the end of the thirty-day period beginning on the date of submission of the plan or of any such modification (as the case may be).

(4) If, after considering such comments, the Secretary intends to make findings which are adverse to such comments, the Secretary shall provide the Governor making such comments with the opportunity to submit additional evidence and comments on such intended findings during a period of not less than thirty days ending before the findings became effective.

(As amended Oct. 25, 1977, Pub. L. 95-142, § 5(a), (d)(2)(A), (B), (*o*)(1), 91 Stat. 1183, 1185, 1191.)

AMENDMENTS

1977—Subsec. (b)(1)(A). Pub. L. 95-142, § 5(*o*)(1), substituted "(c)(1)" for "(c)(i)".

Subsec. (b)(2). Pub. L. 95-142, § 5(d)(2)(A), substituted "which shall be developed and submitted by the association, agency, or organization in accordance with subsection (h) of this section" for "submitted to him by the association, agency, or organization".

Subsec. (e). Pub. L. 95-142, 5(a), substituted provisions authorizing the Secretary to specifically direct the extent of review responsibilities of an organization and provisions relating to review requirements of an organization with respect to eligibility and payment of benefits, for provisions authorizing the Secretary to waive review, certification, and similar activities covered by organizations.

Subsec. (h). Pub. L. 95-142, § 5(d)(2)(B), added subsec. (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300*l*, 300*l*-2, 1320c-3, 1320c-16, 1320c-18 of this title.

§ 1320c-3. Trial period for Professional Standards Review Organization

[*See main edition for text of* (*a*)]

(b) Functions and duties authorized to be performed during period

During any such trial period (which may not exceed 48 months except as provided in subsection (c) of this section), the Secretary may require a Professional Standards Review Organization to perform, in addition to review of health care services provided by or in institutions, only such of the duties and functions required under this part of Professional Standards Review Organization as he determines such organization to be capable of performing. The number and type of such duties shall, during the trial period, be progressively increased as the organization becomes capable of added responsibility so that, by the end of such period, such organization shall be considered a qualified organization only if the Secretary finds that it is substantially carrying out in a satisfactory manner, the activities and functions required of Professional Standards Review Organizations under this part with respect to the review of health care services provided by or in institutions (including ancillary services) and, in addition, review of such other health care services as the Secretary may require. Any of such duties and functions not performed by such organization during such period shall be performed in the manner and to the extent otherwise provided for under law.

(c) Extension of period

If the Secretary finds that an organization designated under subsection (a) of this section has been unable to perform satisfactorily all of the duties and functions required under this part for reasons beyond the organization's control, he may extend such organization's trial period for an additional period not exceeding twenty-four months.

(d) Termination of designation agreement; notice requirements

Any agreement under which any organization is conditionally designated as the Professional Standards Review Organization for any area may be terminated by such organization upon 90 days notice to the Secretary or by the Secretary upon 90 days notice to such organization.

(e) Procedures applicable for determination by Secretary of qualifications, etc., of designated organization

In determining whether an organization designated on a conditional basis as the Professional Standards Review Organization for any area is substantially carrying out its duties in a satisfactory manner and should be considered a qualified organization, the Secretary shall follow the procedures specified in section 1320c-1(h) of this title (concerning the Secretary's consideration of comments of the Governor of the State in which the organization is located).

(As amended Oct. 25, 1977, Pub. L. 95-142, § 5(b), (d)(2)(C), 91 Stat. 1184, 1186.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-142, § 5(b)(1), added ", in addition to review of health care services provided by or in institutions," following "to perform", and substituted "48 months except as provided in subsection (c) of this section" for "24 months", and "by or in institutions (including ancillary services) and, in addition, review of such other health care services as the Secretary may require" for "or ordered by physicians and other practitioners and institutional and other health care facilities, agencies, and organizations".

Subsec. (c). Pub. L. 95-142, § 5(b)(2), added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95-142, § 5(b)(2), redesignated former subsec. (c) as (d).

Subsec. (e). Pub. L. 95-142, § 5(d)(2)(C), added subsec. (e).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1320c-4 of this title.

§ 1320c–4. Duties and functions of Professional Standards Review Organizations

(a) Responsibility for review of professional activities; case criteria; patient profiles; physician review of hospital care; involvement of reviewing physicians

(1) Notwithstanding any other provision of law, but consistent with the provisions of this part, it shall be the duty and function of each Professional Standards Review Organization for any area to assume, at the earliest date practicable, responsibility for the review of the professional activities in such area of physicians and other health care practitioners and institutional and noninstitutional providers of health care services (except as provided in paragraph (7)) in the provision of health care services and items for which payment may be made (in whole or in part) under this chapter for the purpose of determining whether—

[*See main edition for text of* (*A*) *to* (*C*), (*2*) *to* (*4*)]

(5) Physicians assigned responsibility for the review of hospital care may be only those having active hospital staff privileges in at least one of the participating hospitals in the area served by the Professional Standards Review Organization.

(6) No physician shall be permitted to review—

(A) health care services provided to a patient if he was directly responsible for providing such services, or

(B) health care services provided in or by an institution, organization, or agency, if he or any member of his family has, directly or indirectly, a significant financial interest in such institution, organization, or agency.

For purposes of this paragraph, a physician's family includes only his spouse (other than a spouse who is legally separated from him under a decree of divorce or separate maintenance), children (including legally adopted children), grandchildren, parents, and grandparents.

(7)(A) Except as provided in subparagraph (B), a Professional Standards Review Organization located in a State has the function and duty to assume responsibility for the review under paragraph (1) of professional activities in intermediate care facilities (as defined in section 1396d(c) of this title) and in public institutions for the mentally retarded (described in section 1396d(d)(1) of this title) only if (i) the Secretary finds, on the basis of such documentation as he may require from the State, that the single State agency which administers or supervises the administration of the State plan approved under subchapter XIX of this chapter for that State is not performing effective review of the quality and necessity of health care services provided in such facilities and institutions, or (ii) the State requests such organization to assume such responsibility.

(B) A Professional Standards Review Organization located in a State has the function and duty to assume responsibility for the review under paragraph (1) of professional activities in intermediate care facilities in the State that are also skilled nursing facilities (as defined in section 1395x(j) of this title), to the extent that the Secretary finds that the performance of such function by the single State agency (described in subparagraph (A)) for that State is inefficient.

[*See main edition for text of* (*b*) *to* (*d*)]

(e) Review committees of hospitals or other operating health care facilities or organizations

(1) Each Professional Standards Review Organization shall utilize the services of, and accept the findings of, the review committees of a hospital (including any skilled nursing facility, as defined in section 1395x(j) of this title, or intermediate care facility, as defined in section 1396d(c) of this title, which is also a part of such hospital) or other operating health care facility or organization (other than such a skilled nursing facility or intermediate care facility which is not a part of a hospital) located in the area served by such organization, but only when and only to the extent and only for such time that such committees in such hospital or other operating health care facility or organization have demonstrated to the satisfaction of such organization their capacity effectively and in timely fashion to review activities in such hospital or other operating health care facility or organization (including the medical necessity of admissions, types and extent of services ordered, and lengths of stay) so as to aid in accomplishing the purposes and responsibilities described in subsection (a)(1) of this section, except where the Secretary disapproves, for good cause, such acceptance.

(2) The Secretary may prescribe regulations to carry out the provisions of this subsection.

(f) Agreement requirements

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Any such agreement with an organization under this part may be in the form of a grant or an assistance agreement.

(g) Priority for requests for review responsibility over shared health facilities; assumption or request for review responsibility over ambulatory care services

(1) Where a Professional Standards Review Organization (whether designated on a conditional basis or otherwise) requests review responsibility with respect to services furnished in shared health facilities, the Secretary must give priority to such request, with the highest priority being assigned to requests from organizations located in areas with substantial numbers of shared health facilities.

(2) The Secretary shall require any Professional Standards Review Organization which is capable of exercising review responsibility with respect to ambulatory care services to perform review responsibility with respect to such services on and after a date not earlier than the date the organization is designated as a Professional Standards Review Organization (other than under section 1320c-3 of this title) and not later than two years after the date the organization has been so designated, but any such designated Professional Standards Review Organization may be approved to perform such review responsibility at any earlier time if such organization applies for, and is found capable of exercising, such responsibility.

(As amended Oct. 25, 1977, Pub. L. 95-142, § 5(c)(1), (d)(3), (*o*)(2), (p), 91 Stat. 1184, 1188, 1191, 1192.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-142, § 5(d)(3)(B)(i), (o)(2), added "(except as provided in paragraph (7))" following "providers of health care services", and struck out "(subject to the provisions of subsection (g) of this section)" preceding "be the duty".

Subsec. (a)(5). Pub. L. 95-142, § 5(p), struck out restriction on assigned physicians relating to scope of participation in review of care and services provided in any hospital in which such physicians have active staff privileges.

Subsec. (a)(6). Pub. L. 95-142, § 5(c)(1)(A), (B), in subpar. (A) substituted "directly responsible for" for "directly or indirectly involved in" and in subpar. (B) substituted "a significant financial" for "any financial".

Subsec. (a)(7). Pub. L. 95-142, § 5(d)(3)(B)(ii), added par. (7).

Subsec. (e)(1). Pub. L. 95-142, § 5(d)(3)(A), added provisions relating to utilization of services, etc., of review committees from skilled nursing facilities and intermediate care facilities which are parts of hospitals.

Subsec. (f)(3). Pub. L. 95-142, § 5(c)(1)(C), added par. (3).

Subsec. (g). Pub. L. 95-142, § 5(c)(1)(D), designated existing provisions as par. (1) and, as so designated, substituted provisions relating to priority for review responsibility with respect to shared health facilities, for provisions relating to review responsibility as limited to, unless otherwise authorized, health care services by or in institutions, and added par. (2).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c-1, 1320c-5, 1320c-7, 1320c-8, 1320c-16, 1320c-20, 1320c-22 of this title.

§ 1320c-6. Submission of reports by Professional Standards Review Organizations

If, in discharging its duties and functions under this part, any Professional Standards Review Organization determines that any health care practitioner or any hospital, or other health care facility, agency, or organization has violated any of the obligations imposed by section 1320c-9 of this title, such organization shall report the matter to the Statewide Professional Standards Review Council for the State in which such organization is located together with the recommendations of such Organization as to the action which should be taken with respect to the matter. Any Statewide Professional Standards Review Council receiving any such report and recommendation shall review the same and promptly transmit such report and recommendation to the Secretary together with any additional comments or recommendations thereon as it deems appropriate.

(As amended Oct. 25, 1977, Pub. L. 95-142, § 13(b)(4), 91 Stat. 1198.)

AMENDMENTS

1977—Pub. L. 95-142 struck out provisions authorizing the Secretary to utilize a Professional Standards Review Organization in lieu of a program review team for purposes of sections 1395y(d)(1)(C) and 1395cc(b)(2)(F) of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 13(c) of Pub. L. 95-142 provided that: "The amendments made by this section [amending sections 1395y(d), and 1395cc(b)(2)(F) of this title] shall take effect on the date of the enactment of this Act [Oct. 25, 1977]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320c-9, 1395y of this title.

§ 1320c-7. Claims review by Professional Standards Review Organization as condition for payment by Secretary

(a) Review and disapproval

Except as provided for in section 1320c-8 of this title and subsection (d) of this section, no Federal funds appropriated under any subchapter of this chapter (other than subchapter V) for the provision of health care services or items shall be used (directly or indirectly) for the payment, under such subchapter or any program established pursuant thereto, of any claim for the provision of such services or items, unless the Secretary, pursuant to regulation determines that the claimant is without fault if—

[*See main edition for text of (1) and (2)*]

(b) Notice of disapproval

[*See main edition for text of (b)*]

(c) Conclusiveness of particular determinations

Where a Professional Standards Review Organization (whether designated on a conditional basis or otherwise) has been found competent by the Secretary to assume review responsibility with respect to specified types of health care services or specified providers or practitioners of such services and is performing such reviews, determinations made pursuant to paragraphs (1) and (2) of section 1320c-4(a) of this title in connection with such reviews shall constitute the conclusive determination on those issues (subject to sections 1320c-8 and 1320c-20(a)(1) and (d)(3) of this title) for purposes of payment under this chapter, and no reviews with respect to those determinations shall be conducted, for purposes of payment, by agencies and organizations which are parties to agreements entered into by the Secretary pursuant to section 1395h of this title, carriers which are parties to contracts entered into by the Secretary pursuant to section 1395u of this title or single State agencies administering or supervising the administration of State plans approved under subchapter XIX of this chapter.

(d) Payment for disapproved inpatient hospital services or posthospital extended care services

In any case in which a Professional Standards Review Organization disapproves (under subsection (a) of this section) of inpatient hospital services or posthospital extended care services, payment may be made for such services furnished before the second day after the day on which the provider received notice of such disapproval, or, if such organization determines that more time is required in order to arrange postdischarge care, payment may be made for such services furnished before the fourth day after the day on which the provider received notice of such disapproval.

(As amended Oct. 25, 1977, Pub. L. 95-142, §§ 5(d)(1), 22(a), 91 Stat. 1185, 1208.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-142, § 22(a)(1), added reference to subsec. (d) of this section.

Subsec. (c). Pub. L. 95-142, § 5(d)(1), added subsec. (c).

Subsec. (d). Pub. L. 95-142, § 22(a)(2), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 22(b) of Pub. L. 95-142 provided that: "The amendments made by subsection (a) [amending subsec. (a) of this section and adding subsec. (d) of this section] shall be effective on the date of enactment of this Act [Oct. 25, 1977]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1320c-20 of this title.

§ 1320c-9. Obligations of health care practitioners and providers of health care services

[*See main edition for text of (a)*]

(b) Failure to comply with obligations; gross and flagrant violations; exclusion of health care practitioner, etc., from eligibility; sanctions and penalties; hearing and review

(1) If after reasonable notice and opportunity for discussion with the practitioner or provider concerned, any Professional Standards Review Organization submits a report and recommendations to the Secretary pursuant to section 1320c-6 of this title (which report and recommendations shall be submitted through the Statewide Professional Standards Review Council, if such Council has been established, which shall promptly transmit such report and recommendations together with any additional comments and recommendations thereon as it deems appropriate) and if the Secretary determines that such health care practitioner or hospital, or other health care facility, agency, or organization, in providing health care services over which such organization has review responsibility and for which payment (in whole or in part) may be made under this chapter, has—

(A) by failing, in a substantial number of cases, substantially to comply with any obligation imposed on him under subsection (a) of this section, or

(B) by grossly and flagrantly violating any such obligation in one or more instances,

demonstrated an unwillingness or a lack of ability substantially to comply with such obligations, he (in addition to any other sanction provided under law) may exclude (permanently or for such period as the Secretary may prescribe) such practitioner or provider from eligibility to provide such services on a reimbursable basis.

[*See main edition for text of (2) to (4); (c)*]

(As amended Oct. 25, 1977, Pub. L. 95-142, § 5(e), (*o*)(3), 91 Stat. 1189, 1191.)

AMENDMENTS

1977—Subsec. (b)(1). Pub. L. 95-142 added "or" following "permanently" and substituted "health care practitioner or hospital, or other health care facility, agency, or organization" for "practitioner or provider" wherever appearing therein.

§ 1320c-12. National Professional Standards Review Council

(a) Establishment; membership

[*See main edition for text of (1)*]

(2) Members of the Council shall be appointed for a term of three years, except that the Secretary may provide, in the case of any terms scheduled to expire after January 1, 1978, for such shorter terms as will ensure that (on a continuing basis) the terms of no more than four members expire in any year. Members of the Council shall be eligible for reappointment.

[*See main edition for text of (3); (b) to (e)*]

(f) Repealed. Pub. L. 95-142, § 5(g), Oct. 25, 1977, 91 Stat. 1189

(As amended Oct. 25, 1977, Pub. L. 95-142, § 5(f), (g), 91 Stat. 1189.)

AMENDMENTS

1977—Subsec. (a)(2). Pub. L. 95-142, § 5(f), added provisions relating to authority of Secretary with respect to terms of members scheduled to expire after Jan. 1, 1978.

Subsec. (f). Pub. L. 95-142, § 5(g), struck out subsec. (f), which related to reports of the Council and set forth the required contents for such reports.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1320c-22 of this title.

§ 1320c-15. Disclosure of data or information

(a) General prohibition; exceptions

Any data or information acquired by any Professional Standards Review Organization, in the exercise of its duties and functions, shall be held in confidence and shall not be disclosed to any person except (1) to the extent that may be necessary to carry out the purposes of this part, (2) in such cases and under such circumstances as the Secretary shall by regulations provide to assure adequate protection of the rights and interests of patients, health care practitioners, or providers of health care, or (3) in accordance with subsection (b) of this section.

(b) Disclosure for purpose of investigating cases or patterns of fraud or abuse and implementing health care planning and related activities; applicability of penalty provisions

A Professional Standards Review Organization shall provide, in accordance with procedures established by the Secretary, data and information—

(1) to assist Federal and State agencies recognized by the Secretary as having responsibility for identifying and investigating cases or patterns of fraud or abuse, which data and information shall be provided by such organization to such agencies at the request of such agencies at the discretion of such Organization on the basis of its findings with respect to evidence of fraud or abuse; and

(2) to assist the Secretary, and such Federal and State agencies recognized by the Secretary as having health planning or related responsibilities under Federal or State law (including health systems agencies and State health planning and development agencies), in carrying out appropriate health care planning and related activities, which data and information shall be provided in such format and manner as may be prescribed by the Secretary or agreed upon by the responsible Federal and State agencies and such Organization, and shall be in the form of aggregate statistical data (without identifying any individual) on a geographic, institutional, or other basis reflecting the volume and frequency of services furnished, as well as the demographic characteristics of the population subject to review by such Organization.

The penalty provided in subsection (c) of this section shall not apply to the disclosure of any data and information received under this subsection, except that such penalty shall apply to the disclosure (by the agency receiving such data and information) of any such data and information described in paragraph (1) unless such disclosure is made in a judicial, administrative, or other formal legal proceeding resulting from an investigation conducted by the agency receiving the data and information.

(c) Violations and penalties for unauthorized disclosure

It shall be unlawful for any person to disclose any such information other than for such purposes, and any person violating the provisions of this section shall, upon conviction, be fined not more than $1,000, and imprisoned for not more than six months, or both, together with the costs of prosecution.

(d) Nondisclosure of patient records in civil actions

No patient record in the possession of a Professional Standards Review Organization, a Statewide Professional Standards Review Council, or the National Professional Standards Review Council shall be subject to subpena or discovery proceedings in a civil action.

(As amended Oct. 25, 1977, Pub. L. 95-142, § 5(h), 91 Stat. 1189.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-142, § 5(h)(1), (2), added cl. (3) and substituted ", (2)" for "or (2)".

Subsec. (b). Pub. L. 95-142 § 5(h)(3), (4), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 95-142, § 5(h)(3), redesignated former subsec. (b) as (c).

Subsec. (d). Pub. L. 95-142, § 5(h)(5), added subsec. (d).

§ 1320c-16. Limitation of liability

(a) Persons providing information to Professional Standards Review Organizations and Statewide Professional Standards Review Councils

Notwithstanding any other provision of law, no person providing information to any Professional Standards Review Organization or to any Statewide Professional Standards Review Council shall be held, by reason of having provided such information, to have violated any criminal law, or to be civilly liable under any law, of the United States or of any State (or political subdivision thereof) unless—

(1) such information is unrelated to the performance of the duties and functions of such Organization or such Council, or

(2) such information is false and the person providing such information knew, or had reason to believe, that such information was false.

(b) Members and employees of Professional Standards Review Organizations and Statewide Professional Standards Review Councils

(1) No individual who, as a member or employee of any Professional Standards Review Organization or of any Statewide Professional Standards Review Council or who furnishes professional counsel or services to such organization or council, shall be held by reason of the performance by him of any duty, function, or activity authorized or required of Professional Standards Review Organizations or of Statewide Professional Standards Review Councils under this part, to have violated any criminal law, or to be civilly liable under any law, of the United States or of any State (or political subdivision thereof) provided he has exercised due care.

[*See main edition for text of* (2)]

(c) Health care practitioners and providers

[*See main edition for text of* (c)]

(d) Reimbursement for expenses of defense of any suit, action, or proceeding brought against Professional Standards Review Organization, or member or employee

The Secretary shall make payment to a Professional Standards Review Organization, whether conditionally designated or qualified, or to any member or employee thereof, or to any person who furnishes legal counsel or services to such organization, in an amount equal to the reasonable amount of the expenses incurred, as determined by the Secretary, in connection with the defense of any suit, action, or proceeding brought against such organization, member, or employee related to the performance of any duty or function of such organization, member, or employee (as described in section 1320c-4 of this title).

(As amended Oct. 25, 1977, Pub. L. 95-142, § 5(l), (n), 91 Stat. 1190, 1191.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-142, § 5(n)(1), (2), added provisions relating to applicability to Statewide Professional Standards Review Councils.

Subsec. (b)(1). Pub. L. 95-142, § 5(n)(3) to (5), added provisions relating to applicability to Statewide Professional Standards Review Councils.

Subsec. (d). Pub. L. 95-142, § 5(l), added subsec. (d).

§ 1320c-17. Authorization for use of funds for administering professional review program; transfer of moneys between funds; payments for Professional Standards Review Organizations

Expenses incurred in the administration of this part shall be payable from—

(a) funds in the Federal Hospital Insurance Trust Fund;

(b) funds in the Federal Supplementary Medical Insurance Trust Fund; and

(c) funds appropriated to carry out the health care provisions of the several subchapters of this chapter;

in such amounts from each of the sources of funds (referred to in subsections (a), (b), and (c) of this section) as the Secretary shall deem to be fair and equitable after taking into consideration the costs attributable to the administration of this part with respect to each of such plans and programs. The Secretary shall make such transfers of moneys between the funds, referred to in clauses (a), (b), and (c) of the preceding sentence, as may be appropriate to settle accounts between them in cases where expenses properly payable from the funds described in one such clause have been paid from funds described in another of such clauses. The Secretary shall make payments to Professional Standards Review Organizations (whether designated on a conditional basis or otherwise) from funds described in the first sentence of this section (without any requirement for the contribution of funds by any State or political subdivision thereof) for expenses incurred in the performance of duties by such Organizations.

(As amended Oct. 25, 1977, Pub. L. 95-142, § 5(j), 91 Stat. 1190.)

AMENDMENTS

1977—Pub. L. 95-142 added provisions relating to authorization of Secretary to make payments to Professional Standards Review Organizations.

§ 1320c-20. Federal-State relations

(a) Memorandum of understanding between Professional Standards Review Organization and State agency as prerequisite for conclusiveness of determinations of Organization; waiver

(1) Except as provided in paragraph (2), no determination made by a Professional Standards Review Organization pursuant to paragraphs (1) and (2) of section 1320c-4(a) of this title in connection with reviews shall constitute conclusive determinations under section 1320c-7(c) of this title for purposes of payment under subchapter XIX of this chapter, unless such organization has entered into a memorandum of understanding, approved by the Secretary, with the single State agency responsible for administering or supervising the administration of the State plan approved under subchapter XIX of this chapter for the State in which the organization is located (hereinafter in this section referred to as the "State agency") for the purpose of delineating the relationship between the organization and the State agency and of providing for the exchange of data or information, and for administrative procedures, coordination mechanisms, and modification of the memorandum at any time that additional responsibility for review by the organization is authorized by the Secretary.

(2) The requirement of paragraph (1) may be waived by the Secretary if (A) the State agency indicates to the Secretary that it does not wish to enter into a memorandum of understanding with the organization involved, or (B) the Secretary finds that the State agency has refused to negotiate in good faith or in a timely manner with the organization involved.

(b) Specification by Organization of review goals and methods in memorandum of understanding; procedures applicable

(1) The State agency may request a Professional Standards Review Organization which is entering into such a memorandum of understanding with the agency to include in the memorandum a specification of review goals or methods (additional to any such goals or methods contained in the organization's formal plan) for the performance of the organization's duties and functions under this part.

(2) If the agency and the organization cannot reach agreement regarding the inclusion of any such requested specification, the Secretary shall review such specification and shall require that the specification be included in the memorandum to the extent that the Secretary determines that such specification of goals or methods (A) is consistent with the functions of the organization under this part and with the provisions of subchapter XIX of this chapter and the State's plan approved under such subchapter, and (B) does not seriously impact on the effectiveness and uniformity of the organi-

zation's review of health care services paid for under subchapters XVIII and XIX of this chapter.

(c) Contract by State agency and Organization for performance of additional review responsibilities by Organization; reimbursement as expense of State agency

Notwithstanding any other provision of this chapter, the State agency may contract with any Professional Standards Review Organization located in the State for the performance of review responsibilities in addition to those performed pursuant to this part (and the cost of performance of such additional responsibilities is reimbursable as an expense of the State agency under section 1396b(a) of this title) if—

(1) the State agency formally requests the performance of such additional responsibilities, and

(2) the performance of such additional responsibilities is not inconsistent with this part and is provided for in an amendment to the State's plan which is approved by the Secretary under subchapter XIX of this chapter.

(d) State monitoring plans for State agency oversight of Organization and performance of review responsibilities; development, approval, and contents; criteria and procedure for suspension of authority of Organization by Secretary

(1) Each State agency may monitor the performance of review responsibilities by Professional Standards Review Organizations located within the State, in accordance with a State monitoring plan which is developed after review and comment by such organizations and is approved by the Secretary. The costs of activities of the State agency under and in accordance with such plan are reimbursable as an expense of the State agency under section 1396b(a) of this title.

(2) A monitoring plan developed and approved under paragraph (1) may include a specification of performance criteria for judging the effectiveness of the review performance of the Professional Standards Review Organizations. If the State agency and the Professional Standards Review Organizations cannot reach agreement regarding such criteria, the Secretary shall assist the agency and organizations in resolving the matters in dispute.

(3)(A) Whenever a State agency monitoring the performance of review responsibilities by a Professional Standards Review Organization under a plan developed and approved under paragraph (1) submits to the Secretary reasonable documentation that the review determinations of such organization have caused an unreasonable and detrimental impact on total State expenditures under subchapter XIX of this chapter and on the appropriateness of care received by individuals under the State's plan approved under such subchapter, and requests the Secretary to act, the Secretary shall, within thirty days from the date of receipt of the documentation, make a determination as to the reasonableness of the allegation by the State agency. If the Secretary determines that the review determinations of such organization have caused an unreasonable and detrimental impact on total State expenditures under subchapter XIX of this chapter and on the appropriateness of care received by individuals under the State's plan approved under such subchapter, unless the Secretary determines that the organization has taken appropriate corrective action, he shall immediately suspend such organization's authority in whole or in part under section 1320c-7(c) of this title to make conclusive determinations for purposes of payment under subchapter XIX of this chapter (and he may suspend such authority for purposes of payment under subchapter XVIII of this chapter) until he (i) reevaluates such organization's performance of the responsibilities involved and determines that such performance does not have such unreasonable and detrimental impact, or (ii) determines that the organization has taken appropriate corrective action. Any determination made by the Secretary under this subparagraph shall be final and shall not be subject to judicial review.

(B) The Secretary shall notify the State agency submitting such documentation, and the organization involved, in writing, of his determination, any subsequent actions taken, and the basis thereof, and shall notify the appropriate committees of the United States House of Representatives and the Senate of any such documentation submitted and the actions taken.

(e) Establishment by Secretary of procedures and mechanisms to govern relations with State agencies; requirements for procedures and mechanisms; disclosure of information and data by Organization to State agency

(1) The Secretary shall in a timely manner establish procedures and mechanisms to govern his relationships with State agencies under this part (specifically including his relationships with such agencies in connection with their respective functions under the preceding provisions of this section). Such mechanisms shall include periodic consultation by the Secretary with State agency representatives and representatives of Professional Standards Review Organizations regarding relationships between such agencies and such organizations (including the appropriate exchange of data and information between such agencies and such organizations) and other problems of mutual concern, and such procedures shall permit the State agency to be represented on any project assessments conducted by the Secretary with respect to a Professional Standards Review Organization located within its State.

(2) Each Professional Standards Review Organization shall provide to the State agency for the State in which it is located, upon request, data or information which the Secretary requires such organizations to report to him routinely on a periodic basis, and such other data or information as the Secretary authorizes to be disclosed.

(Aug. 14, 1935, ch. 531, title XI, § 1171, as added Oct. 25, 1977, Pub. L. 95-142, § 5(d)(2)(D), 91 Stat. 1186.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1320c-7 of this title.

§ 1320c-21. Annual reports to Congress; contents

The Secretary shall submit to the Congress not later than April 1, 1978, and not later than April 1 of each year thereafter, a full and complete report on the administration, impact, and cost of the program under this part during the preceding fiscal year, including data and information on—

(1) the number, status (conditional or otherwise), and service areas of, and review methodologies employed by, all Professional Standards Review Organizations participating in the program;

(2) the number of health care institutions and practitioners whose services are subject to review by Professional Standards Review Organizations, and the number of beneficiaries and recipients who received services subject to such review during such year;

(3) the imposition of penalties and sanctions under this title for violations of law and for failure to comply with the obligations imposed by this part;

(4) the total costs incurred under subchapters V, XI, XVIII, and XIX of this chapter in the implementation and operation of all procedures required by such subchapters for the review of services to determine their medical necessity, appropriateness of use, and quality;

(5) changes in utilization rates and patterns, and changes in medical procedures and practices, attributable to the activities of Professional Standards Review Organizations;

(6) the results of program evaluation activities, including the operation of data collection systems and the status of Professional Standards Review Organization data policy and implementation;

(7) the extent to which Professional Standards Review Organizations are performing reviews of services for other governmental or private health insurance programs; and

(8) recommendations for legislative changes.

(Aug. 14, 1935, ch. 531, title XI, § 1172, as added Oct. 25, 1977, Pub. L. 95-142, § 5(k), 91 Stat. 1190.)

§ 1320c-22. Medical officers in American Samoa, Northern Mariana Islands, and the Trust Territory of the Pacific Islands includable in program

For purposes of applying this part (except sections 1320c-4(c) and 1320c-12 of this title) to American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands, individuals licensed to practice medicine in those places shall be considered to be physicians and doctors of medicine.

(Aug. 14, 1935, ch. 531, title XI, § 1173, as added Oct. 25, 1977, Pub. L. 95-142, § 5(*l*)(1), 91 Stat. 1191.)

SUBCHAPTER XIV—GRANTS TO STATES FOR AID TO THE PERMANENTLY AND TOTALLY DISABLED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 428, 602, 1301, 1306a, 1308, 1309, 1311, 1315, 1316, 1318, 1319, 1382, 1382c, 1395v, 1396a, 1396b, 1396d, 1397b of this title.

§ 1352. State plans for aid to the permanently and totally disabled

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§§ 1353, 1354

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER XVI—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 401, 428, 602, 909, 1301, 1306a, 1308, 1309, 1311, 1315, 1316, 1318, 1319, 1382, 1382c, 1395v, 1395z, 1396a, 1396b, 1396d, 1397a, 1397b, 1397c, 1397f, 6862 of this title; title 7 sections 2012, 2014, 2015, 2026; title 26 section 51; title 29 sections 762a, 802, 858, 967; title 48 section 1421q.

§ 1381. Statement of purpose; authorization of appropriations

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as set forth in Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, eff. Jan. 9, 1978, pursuant to Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1681 of Title 48, Territories and Insular Possessions.

§ 1381a. Basic entitlement to benefits

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as set forth in Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, eff. Jan. 9, 1978, pursuant to Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1681 of Title 48, Territories and Insular Possessions.

PART A—DETERMINATION OF BENEFITS

§ 1382. Eligibility for credits

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as set forth in Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, eff. Jan. 9, 1978, pursuant to Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1681 of Title 48, Territories and Insular Possessions.

§ 1382a. Income; definition of earned and unearned income; exclusions from income

[*See main edition for text of* (*a*)]

(b) In determining the income of an individual (and his eligible spouse) there shall be excluded—

[*See main edition for text of* (*1*) *to* (*9*)]

(10) any amounts received for the foster care of a child who is not an eligible individual but who is living in the same home as such individual and was placed in such home by a public or nonprofit private child-placement or child-care agency;

(11) assistance received under the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.] or other assistance provided pursuant to a Federal statute on account of a catastrophe which is declared to be a major disaster by the President; and

(12) interest income received on assistance funds referred to in paragraph (11) within the 9-month period beginning on the date such funds are received (or such longer periods as the Secretary shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period).

(As amended Nov. 12, 1977, Pub. L. 95-171, § 8(a), 91 Stat. 1355.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-171 added par. (12).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 8(b) of Pub. L. 95-171 provided that: "The amendment made by this section [enacting subsec. (b)(12) of this section] shall be effective July 1, 1976, with respect to catastrophes which occurred on or after June 1, 1976, and before December 31, 1976. With respect to catastrophes which occurred on or after December 31, 1976, the amendment made by this section [enacting subsec. (b)(12) of this section] shall be effective the first day of the calendar quarter following enactment of this Act [Nov. 12, 1977]."

EFFECTIVE DATE OF 1976 AMENDMENT

Section 2(b) of Pub. L. 94-331, as amended by Pub. L. 95-171, § 6(a), Nov. 12, 1977, 91 Stat. 1355, effective the first day of calendar quarter following Nov. 12, 1977, provided that: "The Amendments made by this Act [amending subsec. (b)(11) of this section and sections 815, 3402, 6153, and 6154 of Title 26, Internal Revenue Code, and enacting provisions set out as notes under sections 815 and 3402 of Title 26] shall be applicable only in the case of catastrophes which occur on or after June 1, 1976."

Section 4(b) of Pub. L. 94-331, as amended by Pub. L. 95-171, § 7(a), Nov. 12, 1977, 91 Stat. 1355, effective the first day of calendar quarter following Nov. 12, 1977, provided that: "The amendments made by this Act [see Effective Date note above] shall be applicable only in the case of catastrophes which occur on or after June 1, 1976."

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as set forth in Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, eff. Jan. 9, 1978, pursuant to Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1382, 1382b, 1382e of this title.

§ 1382b. Resources; exclusions from resources; disposition of resources

(a) In determining the resources of an individual (and his eligible spouse, if any) there shall be excluded—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) such resources of an individual who is blind or disabled and who has a plan for achieving self-support approved by the Secretary, as may be necessary for the fulfillment of such plan;

(5) in the case of Natives of Alaska, shares of stock held in a Regional or a Village Corporation, during the period of twenty years in which such stock is inalienable, as provided in section 1606(h) and section 1607(c) of title 43; and

(6) assistance referred to in section 1382a(b)(11) of this title for the 9-month period beginning on the date such funds are received (or for such longer period as the Secretary shall by regulations prescribe in cases where good cause is shown by the individual concerned for extending such period); and, for purposes of this paragraph, the term "assistance" includes interest thereon which is excluded from income under section 1382a(b)(12) of this title.

In determining the resources of an individual (or eligible spouse) an insurance policy shall be taken into account only to the extent of its cash surrender value; except that if the total face value of all life insurance policies on any person is $1,500 or less, no part of the value of any such policy shall be taken into account.

[*See main edition for text of* (*b*)]

(As amended Nov. 12, 1977, Pub. L. 95-171, § 9(a), 91 Stat. 1355.)

AMENDMENTS

1977—Subsec. (a)(6). Pub. L. 95-171 added par. (6).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 9(b) of Pub. L. 95-171 provided that: "The amendment made by this section [enacting subsec. (a)(6) of this section] shall be effective July 1, 1976, with respect to catastrophes which occurred on or after June 1, 1976, and before December 31, 1976. With respect to catastrophes which occurred on or after December 1, 1976, the amendment made by this section shall be effective the first day of the calendar quarter following enactment of this Act [Nov. 12, 1977]."

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as set forth in Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, eff. Jan. 9, 1978, pursuant to Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1681 of Title 48, Territories and Insular Possessions.

§ 1382c. Definitions

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as set forth in Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, eff. Jan. 9, 1978, pursuant to Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1681 of Title 48, Territories and Insular Possessions.

§ 1382d. Rehabilitation services for blind and disabled individuals

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as set forth in Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, eff. Jan. 9, 1978, pursuant to Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1681 of Title 48, Territories and Insular Possessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 3441; title 29 section 762a.

§ 1382e. Supplementary assistance by State or subdivision to needy individuals

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as set forth in Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, eff. Jan. 9, 1978, pursuant to Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1681 of Title 48, Territories and Insular Possessions.

PERIOD WITHIN WHICH CALIFORNIA MAY MAKE CASH PAYMENTS IN LIEU OF FOOD STAMPS TO RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME BENEFITS

Pub. L. 95-458, § 5(b), Oct. 14, 1978, 92 Stat. 1261, provided that: "No additional cash payment under title XVI of the Social Security Act [this subchapter] may be made pursuant to the third sentence of section 8(d) of Public Law 93-233 (as added by subsection (a) of this section) [amending a note under this section] for any month beginning before October 1, 1978, or ending after September 30, 1979."

ELIGIBILITY OF SUPPLEMENTAL SECURITY INCOME RECIPIENTS FOR FOOD STAMPS

Section 8(c) of Pub. L. 93-233, as amended by Pub. L. 95-113, title XIII, § 1302(a)(3), Sept. 29, 1977, 91 Stat. 979, provided that: "For purposes of section 6(g) of the Food Stamp Act of 1977 [section 2015(g) of Title 7, Agriculture] and subsections (b)(3) [set out as a note under section 612c of Title 7] and (f) [set out as a note below] of this section, the level of State supplementary payment under section 1616(a) [subsec. (a) of this section] shall be found by the Secretary to have been specifically increased so as to include the bonus value of food stamps (1) only if, prior to October 1, 1973, the State has entered into an agreement with the Secretary or taken other positive steps which demonstrate its intention to provide supplementary payments under section 1616(a) [subsec. (a) of this section] at a level which is at least equal to the maximum level which can be determined under section 401(b)(1) of the Social Security Amendments of 1972 [set out as a note under this section] and which is such that the limitation on State fiscal liability under section 401 [set out as a note under this section] does result in a reduction in the amount which would otherwise be payable to the Secretary by the State, and (2) only with respect to such months as the State may, at its option, elect."

Section 1302(b) of Pub. L. 95-113 provided that the amendment of section 8(c) of Pub. L. 93-233 by section 1302(a)(3) of Pub. L. 95-113 is effective Oct. 1, 1977.

PERMISSION FOR CALIFORNIA TO ELECT TO REMAIN A FOOD STAMP CASHOUT STATE UPON NONQUALIFICATION FOR HOLD HARMLESS TREATMENT UNDER SUPPLEMENTAL SECURITY INCOME PROGRAM; CASH BENEFITS IN LIEU OF FOOD STAMPS TO RECIPIENTS OF SUPPLEMENTAL SECURITY INCOME BENEFITS

Section 8(d) of Pub. L. 93-233, as added by Pub. L. 94-379, § 1(a), Aug. 10, 1976, 90 Stat. 1111; Pub. L. 95-458, § 5(a), Oct. 14, 1978, 92 Stat. 1260, provided that:

"Upon the request of the State of California the Secretary shall find, for purposes of the provisions specified in subsection (c) of this section, that the level of such State's supplementary payments of the type described in section 1616(a) of the Social Security Act [subsec. (a) of this section] has been specifically increased for any month after June 1976 so as to include the bonus value of food stamps if—

[*See main edition for text of (1) and (2)*]

As used in this subsection, the term 'cost-of-living increase in the level of benefits payable under title XVI of the Social Security Act [this subchapter]' means an increase in benefits payable under such title XVI by reason of the operation of section 1617 of such Act [section 1382f of this title]; except that the cost-of-living increase in the level of benefits payable under such title XVI which became effective for the month of July 1976 shall be deemed (for purposes of determining the amount of the required excess referred to in the matter following subparagraph (A) and preceding subparagraph (B) in paragraph (1)) to have provided an increase of $3.00 per month in the case of an individual without an eligible spouse and $4.50 per month in the case of an individual with an eligible spouse. For purposes of this subsection, if the State requests the Secretary to make the finding specified in the first sentence of this subsection and to make an additional cash payment under title XVI [this subchapter] in lieu of food stamps, in the amount and the manner described below, to every individual in the State who does not have an eligible spouse and who receives a supplementary payment pursuant to an agreement under section 1616(a) of the Act [subsec. (a) of this section] (other than an individual who (i) receives such a supplementary payment at a level prescribed by the State by reason of his or her residence in an institution, or other living arrangement in which board and care are provided, or (ii) receives payments pursuant to section 212 of Public Law 93-66 [set out as a note under section 1382 of this title] at a level in excess of the level applicable to such individual as established by the State under such agreement), the Secretary shall make such payments if he finds that the conditions of paragraph (1) have been met (and for this purpose the conditions of paragraph (1) shall be considered to have been met to the extent that they involve amounts payable under the law referred to in paragraph (1)(B) notwithstanding the suspension in 1978 of the cost-of-living increase in State supplementary payments under such law) for months beginning with the first month in which, as determined by the Secretary, such additional cash payment can be made, and ending with the month before the first subsequent month for which the conditions of paragraph (1) are met without regard to this sentence (and the requirements of paragraph (2) shall also be considered to have been met, effective on the first day of such first subsequent month, for purposes of applying the first sentence of this subsection to that month and succeeding months). For purposes of the preceding sentence, the amount of an additional cash payment under title XVI [this subchapter] in lieu of food stamps shall equal the cash value of the minimum allotment specified by section 8(a) of the Food Stamp Act of 1977 [section 2017(a) of Title 7, Agriculture] for one-person households, and such additional cash payment shall be appropriately included in or with the check issued to such individual in payment of his supplementary security income benefit (or supplementary payment under such section 1616(a) [subsec. (a) of this section])."

Adjusted Payment Level; Payment Level Modification

* * * * *

Section 8(f), formerly 8(e), of Pub. L. 93-233, as amended by Pub. L. 93-335, § 1(b), July 8, 1974, 88 Stat. 291; Pub. L. 94-44, § 3(b), June 28, 1975, 89 Stat. 235; Pub. L. 94-365, § 2(2), July 14, 1976, 90 Stat. 990, and renumbered and amended by Pub. L. 94-379, § 1(a), (b), Aug. 10, 1976, 90 Stat. 1111; Pub. L. 95-59, § 3(2), June 30, 1977, 91 Stat. 255; Pub. L. 95-113, title XIII, § 1302(a)(4), Sept. 29, 1977, 91 Stat. 979, provided that: "The amendment made by subsection (e) [set out as a note under this section in the main edition] shall not be effective in any State which provides supplementary payments of the type described in section 1616(a) of the Social Security Act [subsec. (a) of this section] the level of which has been found by the Secretary to have been specifically increased so as to include the bonus value of food stamps."

Section 3 of Pub. L. 95-59 provided in part that the amendment of section 8(f) of Pub. L. 93-233 by section 3(2) of Pub. L. 95-59 is effective July 1, 1977.

Section 1302(b) of Pub. L. 95-113 provided that the amendment of section 8(f) of Pub. L. 93-233 by section 1302(a)(4) of Pub. L. 95-113 is effective Oct. 1, 1977.

* * * * *

Limitation on Fiscal Liability of States for Payment to Secretary of Supplementary Payments Made by Secretary Pursuant to Agreement

Section 401 of Pub. L. 92-603, as amended by Pub. L. 93-233, § 18(h), Dec. 31, 1973, 87 Stat. 969; Pub. L. 94-566, title V, § 504(a), Oct. 20, 1976, 90 Stat. 2686; Pub. L. 94-585 § 2(b), Oct. 21, 1976, 90 Stat. 2902, provided that:

"(a)(1) The amount payable to the Secretary by a State for any fiscal year, other than fiscal year 1974, pursuant to its agreement or agreements under section 1616 of the Social Security Act [this section] shall not exceed the non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of the State approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter] (as defined in subsection (c) of this section), and the amount payable for fiscal year 1974 pursuant to such agreement or agreements shall not exceed one-half of the non-Federal share of such expenditures.

"(2) Paragraph (1) of this subsection shall only apply with respect to that portion of the supplementary payments made by the Secretary on behalf of the State under such agreements in any fiscal year which does not exceed in the case of any individual the difference between—

"(A) the adjusted payment level under the appropriate approved plan of such State as in effect for January 1972 (as defined in subsection (b) of this section), and

"(B) the benefits under title XVI of the Social Security Act [this subchapter] (subject to the second sentence of this paragraph), plus income not excluded under section 1612(b) of such Act [section 1382a(b) of this title] in determining such benefits, paid to such individual in such fiscal year,

and shall not apply with respect to supplementary payments to any individual who (i) is not required by section 1616 of such Act [this section] to be included in any such agreement administered by the Secretary and (ii) would have been ineligible (for reasons other than income) for payments under the appropriate approved State plan as in effect for January 1972. In determining the difference between the level specified in subparagraph (A) and the benefits and income described in subparagraph (B) there shall be excluded any part of any such benefit which results from (and would not be payable but for) any cost-of-living increase in such benefits under section 1617 of such Act [section 1382f of this title] (or any general increase enacted by law in the dollar amounts referred to in such section) becoming effective after June 30, 1977.

"(b)(1) For purposes of subsection (a), the term 'adjusted payment level under the appropriate approved plan of a State as in effect for January 1972' means the amount of the money payment which an individual with no other income would have received under the plan of such State approved under title I, X, XIV, or XVI of the Social Security Act [subchapters I, X, XIV, or XVI of this chapter], as may be appropriate, and in effect for January 1972; except that the State may, at its option, increase such payment level with respect to any such plan by an amount which does not exceed the sum of—

"(A) a payment level modification (as defined in paragraph (2) of this subsection) with respect to such plan, and

"(B) the bonus value of food stamps in such State for January 1972 (as defined in paragraph (3) of this subsection).

"(2) For purposes of paragraph (1), the term 'payment level modification' with respect to any State plan means that amount by which a State which for January 1972 made money payments under such plan to individuals with no other income which were less than 100 per centum of its standard of need could have increased such money payments without increasing (if it reduced its standard of need under such plan so that such increased money payments equaled 100 per centum of such standard of need) the non-Federal share of expenditures as aid or assistance for quarters in calendar year 1972 under the plans of such State approved under titles I, X, XIV, and XVI of the Social Security Act [subchapters I, X, XIV, and XVI of this chapter].

"(3) For purposes of paragraph (1), the term 'bonus value of food stamps in a State for January 1972' with respect to an individual means—

"(A) the face value of the coupon allotment which would have been provided to such an individual under the Food Stamp Act of 1964 [section 2011 et seq. of Title 7, Agriculture] for January 1972, reduced by

"(B) the charge which such an individual would have paid for such coupon allotment.

if the income of such individual, for purposes of determining the charge it would have been paid for its coupon allotment, had been equal to the adjusted payment level under the State plan (including any payment level modification with respect to the plan adopted pursuant to paragraph (2) (but not including any amount under this paragraph)). The total face value of food stamps and the cost thereof in January 1972 shall be determined in accordance with rules prescribed by the Secretary of Agriculture in effect in such month.

"(c) For purposes of this section, the term 'non-Federal share of expenditures as aid or assistance for quarters in the calendar year 1972 under the plans of a State approved under titles I, X, XIV, and XVI of the Social Security Act' [subchapters I, X, XIV, and XVI of this chapter] means the difference between—

"(1) the total expenditures in such quarters under such plans for aid or assistance (excluding expenditures authorized under section 1119 of such Act [section 1319 of this title] for repairing the home of an individual who was receiving aid or assistance under one of such plans (as such section was in effect prior to the enactment of this Act)), and

"(2) the total of the amounts determined under sections 3, 1003, 1403, and 1603 of the Social Security Act [sections 303, 1203, 1353, and 1383 note of this title], under section 1118 of such Act [section 1318 of this title] and under section 9 of the Act of April 19, 1950 [section 639 of Title 25, Indians], for such State with respect to such expenditures in such quarters."

Amendment of section 401(a)(2) of Pub. L. 92-603 by Pub. L. 94-585 inserting parenthetical text in subpar. (B) and enacting last sentence, such amendments being identical to amendments by Pub. L. 94-566 less the words "and before July 1, 1979" following "June 30, 1977", effective with respect to benefits payable for months after June 1977, see section 2(c) of Pub. L. 94-585, set out as a note under section 1382g of this title.

Amendment of section 401(a)(2) of Pub. L. 92-603 by Pub. L. 94-566 inserting parenthetical text in subpar. (B) and enacting last sentence effective under provisions of Pub. L. 94-566, title V, § 504(b), Oct. 20, 1976, 90 Stat. 2686, with respect to benefits payable for months after June 1977.

Amendment by section 18(h) of Pub. L. 93-233 effective Jan. 1, 1974, see section 18(z-3)(1) of Pub. L. 93-233.

Section Referred to in Other Sections

This section is referred to in sections 1382g, 1383 of this title; title 7 sections 2012, 2015; title 26 section 51.

§§ 1382f, 1382g

Application to Northern Mariana Islands

For applicability of sections to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as set forth in Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, eff. Jan. 9, 1978, pursuant to Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1681 of Title 48, Territories and Insular Possessions.

Part B—Procedural and General Provisions

§ 1383. Procedure for payment of benefits

Prior Provisions

A prior section 1383, act Aug. 14, 1935, ch. 531, title XVI, § 1603, as added July 25, 1962, Pub. L. 87-543, title I, § 141(a), 76 Stat. 200, and amended July 30, 1965, Pub. L. 89-97, title I, § 122, title II, § 221(d)(4), title IV, § 401(b), 79 Stat. 353, 359, 414; Jan. 2, 1968, Pub. L. 90-248, title II, § 212(d), 81 Stat. 898; Oct. 20, 1972, Pub. L. 92-512, title III, § 301(b), (d), (e), 86 Stat. 946, 947, related to the determination of amounts payable to the states, and was omitted in the general amendment of title XVI of the Social Security Act by Pub. L. 92-603, § 301, but is set out as a note below in view of its continued applicability to Puerto Rico, Guam, and the Virgin Islands.

Application to Northern Mariana Islands

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as set forth in Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, eff. Jan. 9, 1978, pursuant to Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1681 of Title 48, Territories and Insular Possessions.

Hearing Examiners Appointed Prior to January 2, 1976, Deemed Appointed to Career-Absolute Positions

Pub. L. 95-216, title III, § 371, Dec. 20, 1977, 91 Stat. 1559, provided that: "The persons who were appointed to serve as hearing examiners under section 1631(d)(2) of the Social Security Act [subsec. (d)(2) of this section] (as in effect prior to January 2, 1976), and who by section 3 of Public Law 94-202 [set out as a note under this section in the 1976 Edition of this Code] were deemed to be appointed under section 3105 of title 5, United States Code (with such appointments terminating no later than at the close of the period ending December 31, 1978), shall be deemed appointed to career-absolute positions as hearing examiners under and in accordance with section 3105 of title 5, United States Code, with the same authority and tenure (without regard to the expiration of such period) as hearing examiners appointed directly under such section 3105, and shall receive compensation at the same rate as hearing examiners appointed by the Secretary of Health, Education, and Welfare directly under such section 3105. All of the provisions of title 5, United States Code and the regulations promulgated pursuant thereto, which are applicable to hearing examiners appointed under such section 3105, shall apply to the persons described in the preceding sentence."

Reimbursement for Erroneous State Supplementary Payments; Authorization of Appropriations

Pub. L. 95-216, title IV, § 405, Dec. 20, 1977, 91 Stat. 1564, provided that:

"(a) Notwithstanding any other provision of law, the Secretary of Health, Education, and Welfare is authorized and directed to pay to each State an amount equal to the amount expended by such State for erroneous supplementary payments to aged, blind, or disabled individuals whenever, and to the extent to which, the Secretary through an audit by the Department of Health, Education, and Welfare which has been reviewed and concurred in by the Inspector General of such department determines that—

"(1) such amount was paid by such State as a supplementary payment during the calendar year 1974 pursuant to an agreement between the State and the Secretary required by section 212 of the Act entitled 'An Act to extend the Renegotiation Act of 1951 for one year, and for other purposes', approved July 9, 1973, [set out as a note under section 1382 of this title], or such amount was paid by such State as an optional State supplementation, as defined in section 1616 of the Social Security Act [section 1382 of this title], during the calendar year 1974,

"(2) the erroneous payments were the result of good faith reliance by such State upon erroneous or incomplete information supplied by the Department of Health, Education, and Welfare, through the State data exchange, or good faith reliance upon incorrect supplemental security income benefit payments made by such department, and

"(3) recovery of the erroneous payments by such State would be impossible or unreasonable.

"(b) There are authorized to be appropriated such sums as are necessary to carry out the provisions of this section."

Section Referred to in Other Sections

This section is referred to in sections 643, 909, 1306a, 1318, 1319, 1396a of this title.

§§ 1383a to 1383c

APPLICATION TO NORTHERN MARIANA ISLANDS

For applicability of this section to the Northern Mariana Islands, see section 502(a)(1) of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as set forth in Pub. L. 94-241, Mar. 24, 1976, 90 Stat. 263, eff. Jan. 9, 1978, pursuant to Proc. No. 4534, Oct. 24, 1977, 42 F.R. 6593, set out as notes under section 1681 of Title 48, Territories and Insular Possessions.

SUBCHAPTER XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 242b, 254a-1, 254b, 254c, 254e, 254h, 300e-6, 300m-6, 300n, 300t-12, 401, 426-1, 705, 706, 907a, 1301, 1306, 1320a-1, 1320a-2, 1320a-3, 1320a-5, 1320c-9, 1320c-14, 1320c-20, 1320c-21, 1353, 1395x, 1395gg, 1396a, 1396b, 1396i, 1397a, 2689e, 3013, 3035c, 3524 of this title; title 7 sections 2012, 3178; title 12 sections 1715w, 1715z-7; title 38 sections 4108, 5053; title 45 section 231r.

§ 1395b-1. Incentives for economy while maintaining or improving quality in the provision of health services

(a) Grants and contracts to develop and engage in experiments and demonstration projects

(1) The Secretary of Health, Education, and Welfare is authorized, either directly or through grants to public or nonprofit private agencies, institutions, and organizations or contracts with public or private agencies, institutions, and organizations, to develop and engage in experiments and demonstration projects for the following purposes:

[*See main edition for text of* (*A*) *to* (*G*)]

(H) to establish an experimental program to provide day-care services, which consist of such personal care, supervision, and services as the Secretary shall by regulation prescribe, for individuals eligible to enroll in the supplemental medical insurance program established under part B of this subchapter and subchapter XIX of this chapter, in day-care centers which meet such standards as the Secretary shall by regulation establish;

(I) to determine whether the services of clinical psychologists may be made more generally available to persons eligible for services under this subchapter and subchapter XIX of this chapter in a manner consistent with quality of care and equitable and efficient administration; and

(J) to develop or demonstrate improved methods for the investigation and prosecution of fraud in the provision of care or services under the health programs established by this chapter.

For purposes of this subsection, "health programs established by this chapter" means the program established by this subchapter, a program established by a plan of a State approved under subchapter XIX of this chapter, and a program established by a plan of a State approved under subchapter V of this chapter.

[*See main edition for text of* (*2*); (*b*)]

(As amended Pub. L. 95-142, § 17(d), Oct. 25, 1977, 91 Stat. 1202.)

AMENDMENTS

1977—Subsec. (a)(1)(J). Pub. L. 95-142 added subpar. (J).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

DEMONSTRATION PROJECTS FOR PHYSICIAN-DIRECTED CLINICS IN URBAN MEDICALLY UNDERSERVED AREAS; REPORT SUBMITTED NO LATER THAN JANUARY 1, 1981

Pub. L. 95-210, § 3, Dec. 13, 1977, 91 Stat. 1489, provided that:

"(a) The Secretary shall provide, through demonstration projects, reimbursement on a cost basis for services provided by physician-directed clinics in urban medically underserved areas for which payment may be made under title XVIII of the Social Security Act [this subchapter] and, notwithstanding any other provision of such title, for services provided by a physician assistant or nurse practitioner employed by such clinics which would otherwise be covered under such title if provided by a physician.

"(b) The demonstration projects developed under subsection (a) shall be of sufficient scope and carried out on a broad enough scale to allow the Secretary to evaluate fully—

"(1) the relative advantages and disadvantages of reimbursement on the basis of costs and fee-for-service for physician-directed clinics employing a physician assistant or nurse practitioner;

"(2) the appropriate method of determining the compensation for physician services on a cost basis for the purposes of reimbursement of services provided in such clinics;

"(3) the appropriate definition for such clinics;

"(4) the appropriate criteria to use for the purposes of designating urban medically underserved areas; and

"(5) such other possible changes in the provisions of title XVIII of the Social Security Act [this subchapter] as might be appropriate for the efficient and cost-effective reimbursement of services provided in such clinics.

"(c) Grants, payments under contracts, and other expenditures made for demonstration projects under this section shall be made in appropriate part from the Federal Hospital Insurance Trust Fund (established by section 1817 of the Social Security Act [section 1395i of this title]) and the Federal Supplementary Medical Insurance Trust Fund (established by section 1841 of the Social Security Act [section 1395t of this title]). Grants and payments under contracts may be made either in advance or by way of reimbursement, as may be determined by the Secretary, and shall be made in such installments and on such conditions as the Secretary finds necessary to carry out the purpose of this section. With respect to any such grant, payment, or other expenditure, the amount to be paid from each trust fund shall be determined by the Secretary giving due regard to the purposes of the demonstration projects.

"(d) The Secretary shall submit to the Congress, no later than January 1, 1981, a complete, detailed report on the demonstration projects conducted under subsection (b). Such report shall include any recommendations for legislative changes which the Secretary finds necessary or desirable as a result of carrying out such demonstration projects.

"(e) As used in this section, the terms 'physician assistant' and 'nurse practitioner' have the meanings given such terms in section 1861(aa)(3) of the Social Security Act [section 1395x of this title]."

Part A—Hospital Insurance Benefits for the Aged and Disabled

Part Referred to in Other Sections

This part is referred to in sections 294v, 402, 417, 426, 426-1, 426a, 429, 907, 1320a-3, 1320b-1, 1395*l*, 1395*o*, 1395p, 1395u, 1395x, 1395y, 1395aa, 1395cc, 1395ff, 1395*ll*, 1395mm, 1395pp, 1395rr, 1396b of this title; title 45 section 231f.

§ 1395c. Description of program

The insurance program for which entitlement is established by sections 426 and 426-1 of this title provides basic protection against the costs of hospital and related posthospital services in accordance with this part for (1) individuals who are age 65 or over and are entitled to retirement benefits under subchapter II of this chapter or under the railroad retirement system, (2) individuals under age 65 who have been entitled for not less than 24 consecutive months to benefits under subchapter II of this chapter or under the railroad retirement system on the basis of a disability, and (3) certain individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease.

(As amended June 13, 1978, Pub. L. 95-292, § 4(a), 92 Stat. 315.)

Amendments

1978—Pub. L. 95-292 added references to section 426-1 of this title and to individuals who do not meet the conditions specified in either clause (1) or (2) but who are medically determined to have end stage renal disease.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95-292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

§ 1395f. Conditions of and limitations on payment for services

[*See main edition for text of* (*a*)]

(b) Amount paid to provider of services

The amount paid to any provider of services with respect to services for which payment may be made under this part shall, subject to the provisions of section 1395e of this title, be—

(1) the lesser of (A) the reasonable cost of such services, as determined under section 1395x(v) of this title and as further limited by section 1395rr(b)(2)(B) of this title, or (B) the customary charges with respect to such services; or

[*See main edition for text of* (*2*)]

(c) No payments to Federal providers of services

Subject to section 1395qq of this title, no payment may be made under this part (except under subsection (d) or subsection (j) of this section) to any Federal provider of services, except a provider of services which the Secretary determines is providing services to the public generally as a community institution or agency; and no such payment may be made to any provider of services for any item or service which such provider is obligated by a law of, or a contract with, the United States to render at public expense.

[*See main edition for text of* (*d*) *to* (*i*)]

(j) Payment for specified hospital services provided in Veterans' Administration hospitals; amount of payment

(1) Payments shall also be made to any hospital operated by the Veterans' Administration for inpatient hospital services furnished in a calendar year by the hospital, or under arrangements (as defined in section 1395x(w) of this title with it, to an individual entitled to hospital benefits under section 426 of this title even though the hospital is a Federal provider of services if (A) the individual was not entitled to have the services furnished to him free of charge by the hospital, (B) the individual was admitted to the hospital in the reasonable belief on the part of the admitting authorities that the individual was a person who was entitled to have the services furnished to him free of charge, (C) the authorities of the hospital, in admitting the individual, and the individual, acted in good faith, and (D) the services were furnished during a period ending with the close of the day on which the authorities operating the hospital first became aware of the fact that the individual was not entitled to have the services furnished to him by the hospital free of charge, or (if later) ending with the first day on which it was medically feasible to remove the individual from the hospital by discharging him therefrom or transferring him to a hospital which has in effect an agreement under this subchapter.

(2) Payment for services described in paragraph (1) shall be in an amount equal to the charge imposed by the Veterans' Administration for such services, or (if less) the reasonable costs for such services (as estimated by the Secretary). Any such payment shall be made to the entity to which payment for the services involved would have been payable, if payment for such services had been made by the individual receiving the services involved (or by another private person acting on behalf of such individual).

(As amended Oct. 25, 1977, Pub. L. 95-142, § 23(a), (b), 91 Stat. 1208; June 13, 1978, Pub. L. 95-292, § 4(f), 92 Stat. 315.)

Amendments

1978—Subsec. (b)(1). Pub. L. 95-292 added "and as further limited by section 1395rr(b)(2)(B) of this title" following "section 1395x(v) of this title".

1977—Subsec. (c). Pub. L. 95-142, § 23(a), added reference to subsec. (j) of this section.

Subsec. (j). Pub. L. 95-142, § 23(b), added subsec. (j).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95-292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 23(c) of Pub. L. 95-142 provided that: "The amendments made by this section [amending subsec. (c) of this section and adding subsec. (j) of this section] shall apply to inpatient hospital services furnished on and after July 1, 1974."

§ 1395g. Payments to providers of services; conditions; amount; payments under assignment or power of attorney

[*See main edition for text of* (*a*) *and* (*b*)]

(c) No payment which may be made to a provider of services under this subchapter for any service furnished to an individual shall be made to any other person under an assignment or power of attorney; but nothing in this subsection shall be construed (1) to prevent the making of such a payment in accordance with an assignment from the provider if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (2) to preclude an agent of the provider of services from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for on[1] in connection with the billing or collection of payments due such provider under this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

(As amended Oct. 25, 1977, Pub. L. 95-142, § 2(a)(2), 91 Stat. 1175.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-142 added subsec. (c).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 2(a)(4) of Pub. L. 95-142 provided that: "The amendments made by this subsection [adding subsec. (c) of this section and amending sections 1395u and 1396a(a)(32) of this title] shall apply with respect to care and services furnished on or after the date of the enactment of this Act [Oct. 25, 1977]."

§ 1395h. Use of public or private agencies or organizations to facilitate payment to providers of services.

(a) Authorization for agreement by Secretary for implementation; scope of agreement

If any group or association of providers of services wishes to have payments under this part to such providers made through a national, State, or other public or private agency or organization and nominates such agency or organization for this purpose, the Secretary is authorized to enter into an agreement with such agency or organization providing for the determination by such agency or organization (subject to the provisions of section 1395*oo* of this title and to such review by the Secretary as may be provided for by the agreement) of the amount of the payments required pursuant to this part to be made to such providers (and to providers assigned to such agency or organization under subsection (e) of this section), and for the making of such payments by such agency or organization to such providers (and to providers assigned to such agency or organization under subsection (e) of this section). Such agreement may also include provision for the agency or organization to do all or any part of the following: (1) to provide consultative services to institutions or agencies to enable them to establish and maintain fiscal records necessary for purposes of this part and otherwise to qualify as hospitals, extended care facilities, or home-health agencies, and (2) with respect to the providers of services which are to receive payments through it (A) to serve as a center for, and communicate to providers, any information or instructions furnished to it by the Secretary, and serve as a channel of communication from providers to the Secretary; (B) to make such audits of the records of providers as may be necessary to insure that proper payments are made under this part; and (C) to perform such other functions as are necessary to carry out this subsection.

(b) Prerequisites for agreement or renewal of agreement by Secretary

The Secretary shall not enter into or renew an agreement with any agency or organization under this section unless—

(1) he finds—

(A) after applying the standards, criteria, and procedures developed under subsection (f) of this section, that to do so is consistent with the effective and efficient administration of this part, and

(B) that such agency or organization is willing and able to assist the providers to which payments are made through it under this part in the application of safeguards against unnecessary utilization of services furnished by them to individuals entitled to hospital insurance benefits under section 426 of this title, and the agreement provides for such assistance; and

(2) such agency or organization agrees—

(A) to furnish to the Secretary such of

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[1] So in original. Probably should be "or".

the information acquired by it in carrying out its agreement under this section, and

(B) to provide the Secretary with access to all such data, information, and claims processing operations,

as the Secretary may find necessary in performing his functions under this part.

[*See main edition for text of* (c) *and* (d)]

(e) Assignment or reassignment by Secretary of provider of services; designation by Secretary of agency or organization to perform services for provider of services; procedures applicable to assignment or reassignment, or designation

(1) Notwithstanding subsections (a) and (d) of this section, the Secretary, after taking into consideration any preferences of providers of services, may assign or reassign any provider of services to any agency or organization which has entered into an agreement with him under this section, if he determines, after applying the standards, criteria, and procedures developed under subsection (f) of this section, that such assignment or reassignment would result in the more effective and efficient administration of this part.

(2) Notwithstanding subsections (a) and (d) of this section, the Secretary may designate a national or regional agency or organization which has entered into an agreement with him under this section to perform functions under the agreement with respect to a class of providers of services in the Nation or region (as the case may be), if he determines, after applying the standards, criteria, and procedures developed under subsection (f) of this section, that such designation would result in more effective and efficient administration of this part.

(3)(A) Before the Secretary makes an assignment or reassignment under paragraph (1) of a provider of services to other than the agency or organization nominated by the provider, he shall furnish (i) the provider and such agency or organization with a full explanation of the reasons for his determination as to the efficiency and effectiveness of the agency or organization to perform the functions required under this part with respect to the provider, and (ii) such agency or organization with opportunity for a hearing, and such determination shall be subject to judicial review in accordance with chapter 7 of title 5.

(B) Before the Secretary makes a designation under paragraph (2) with respect to a class of providers of services, he shall furnish (i) such providers and the agencies and organizations adversely affected by such designation with a full explanation of the reasons for his determination as to the efficiency and effectiveness of such agencies and organizations to perform the functions required under this part with respect to such providers, and (ii) the agencies and organizations adversely affected by such designation with opportunity for a hearing, and such determination shall be subject to judicial review in accordance with chapter 7 of title 5.

(f) Development of standards, criteria, and procedures by Secretary for evaluation of agency or organization performance

In order to determine whether the Secretary should enter into, renew, or terminate an agreement under this section with an agency or organization, whether the Secretary should assign or reassign a provider of services to an agency or organization, and whether the Secretary should designate an agency or organization to perform services with respect to a class of providers of services, the Secretary shall develop standards, criteria, and procedures to evaluate such agency's or organization's (1) overall performance of claims processing and other related functions required to be performed by such an agency or organization under an agreement entered into under this section, and (2) performance of such functions with respect to specific providers of services, and the Secretary shall establish, by regulation, standards and criteria with respect to the efficient and effective administration of this part. No agency or organization shall be found under such standards and criteria not to be efficient or effective or to be less efficient or effective solely on the ground that the agency or organization serves only providers located in a single State.

(g) Termination of agreement; procedures applicable

An agreement with the Secretary under this section may be terminated—

(1) by the agency or organization which entered into such agreement at such time and upon such notice to the Secretary, to the public, and to the providers as may be provided in regulations, or

(2) by the Secretary at such time and upon such notice to the agency or organization, to the providers which have nominated it for purposes of this section, and to the public, as may be provided in regulations, but only if he finds after applying the standards, criteria, and procedures developed under subsection (f) of this section and after reasonable notice and opportunity for hearing to the agency or organization, that (A) the agency or organization has failed substantially to carry out the agreement, or (B) the continuation of some or all of the functions provided for in the agreement with the agency or organization is disadvantageous or is inconsistent with the efficient administration of this part.

(h) Bonding requirement under agreement for officers and employees of agency or organization

An agreement with an agency or organization under this section may require any of its officers or employees certifying payments or disbursing funds pursuant to the agreement, or otherwise participating in carrying out the agreement, to give surety bond to the United States in such amount as the Secretary may deem appropriate.

(i) Liability of certifying and disbursing officers designated under agreement for negligent, etc., payments

(1) No individual designated pursuant to an agreement under this section as a certifying of-

ficer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payments certified by him under this section.

(2) No disbursing officer shall, in the absence of gross negligence or intent to defraud the United States, be liable with respect to any payment by him under this section if it was based upon a voucher signed by a certifying officer designated as provided in paragraph (1).

(3) No such agency or organization shall be liable to the United States for any payments referred to in paragraph (1) or (2).

(As amended Oct. 25, 1977, Pub. L. 95-142, § 14(a), 91 Stat. 1198.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-142, § 14(a)(1), added provisions relating to applicability to providers assigned to the agency or organization under subsec. (e) of this section.

Subsec. (b). Pub. L. 95-142, § 14(a)(2), substituted provisions setting forth criteria for agreements by the Secretary or renewal of such agreements with agencies or organizations, for provisions setting forth criteria for agreements by the Secretary with agencies or organizations.

Subsec. (e). Pub. L. 95-142, § 14(a)(4), (5), added subsec. (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 95-142, § 14(a)(4), (5), added subsec. (f). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 95-142, § 14(a)(3), (4), redesignated former subsec. (e) as (g) and, as so redesignated, added provisions relating to applicability of standards, etc., developed under subsec. (f) of this section. Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 95-142, § 14(a)(4), redesignated former subsecs. (f) and (g) as (h) and (i), respectively.

EFFECTIVE DATE OF 1977 AMENDMENT

Section 14(c) and (d) of Pub. L. 95-142 provided that:

"(c) The amendment made by paragraphs (2) and (3) of subsection (a) [amending subsecs. (b) and (g)(2) of this section, respectively] to the extent that they require application of standards, criteria, and procedures developed under section 1816(f) of the Social Security Act [subsec. (f) of this section] shall apply to the entering into, renewal, or termination of agreements on and after October 1, 1978.

"(d) Except as provided in subsection (c), the amendment made by subsection (a)(2) [amending subsec. (b) of this section] shall apply to agreements entered into or renewed on or after the date of enactment of this Act [Oct. 25, 1977]."

DEVELOPMENTAL DATE FOR STANDARDS, CRITERIA, AND PROCEDURES PURSUANT TO SUBSEC. (f) OF THIS SECTION

Section 14(b) of Pub. L. 95-142 provided that: "The Secretary of Health, Education, and Welfare shall develop the standards, criteria, and procedures described in subsection (f) of section 1816 of the Social Security Act (as added by subsection (a)(5)) [subsec. (f) of this section] not later than October 1, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1320a-3, 1320c-7, 1320c-14, 1395u, 1395mm, 1395*oo* of this title.

§ 1395i. Federal Hospital Insurance Trust Fund

[*See main edition for text of* (*a*)]

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Administrator of the Health Care Financing Administration shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

[*See main edition for text of* (*1*) *to* (*4*)]

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall be printed as a House document of the session of the Congress to which the report is made.

[*See main edition for text of* (*c*) *to* (*h*)]

(As amended June 13, 1978, Pub. L. 95-292, § 5, 92 Stat. 315.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-292 substituted "Administrator of the Health Care Financing Administration" for "Commissioner of Social Security" in the provisions preceding par. (1).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95-292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

PART B—SUPPLEMENTARY MEDICAL INSURANCE BENEFITS FOR THE AGED AND DISABLED

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 294v, 303, 426, 426-1, 1320a-3, 1395b-1, 1395i-2, 1395x, 1395y, 1395cc, 1395ff, 1395*ll*, 1395mm, 1395pp, 1395rr, 1396a, 1396b of this title; title 26 section 213.

§ 1395k. Scope of benefits; definitions

(a) The benefits provided to an individual by the insurance program established by this part shall consist of—

(1) entitlement to have payment made to him or on his behalf (subject to the provisions of this part) for medical and other health services, except those described in subparagraphs (B) and (D) of paragraph (2);

(2) entitlement to have payment made on his behalf (subject to the provisions of this part) for—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) outpatient physical therapy services, other than services to which the next to last sentence of section 1395x(p) of this title applies; and

(D) rural health clinic services.

[*See main edition for text of* (*b*)]

(As amended Dec. 13, 1977, Pub. L. 95-210, § 1(a), 91 Stat. 1485.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-210, § 1(a)(1), substituted "subparagraphs (B) and (D) of paragraph (2)" for "paragraph (2)(B)".

Subsec. (a)(2)(D). Pub. L. 95-210, § 1(a)(2), added subpar. (D).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 1(j) of Pub. L. 95-210 provided that: "The amendments made by this section [amending sections 1395k, 1395*l*, 1395x, 1395y, and 1395aa of this title and enacting provisions set out as notes under sections 1395*l*, and 1395x of this title] shall apply to services rendered on or after the first day of the third calendar month which begins after the date of enactment of this Act [Dec. 13, 1977]."

PAYMENT FOR SERVICES OF PHYSICIANS RENDERED IN A TEACHING HOSPITAL FOR ACCOUNTING PERIODS BEGINNING AFTER JUNE 30, 1975, AND PRIOR TO OCTOBER 1, 1978; STUDIES, REPORTS, ETC.; EFFECTIVE DATES

Pub. L. 93-233, § 15(a)(2), Dec. 31, 1973, 87 Stat. 966, which provided that for the cost accounting periods beginning after June 30, 1975, and prior to Oct. 1, 1978, subsec. (a)(2)(B)(i) of this section will be administered as if subclause II of subsec. (a)(2)(B)(i) read as follows: "(II) a physician to a patient in a hospital which has a teaching program approved as specified in paragraph (6) of section 1861(b) [section 1395x(b)(6) of this title] (including services in conjunction with the teaching programs of such hospital whether or not such patient is an inpatient of such hospital), where the conditions specified in paragraph (7) of such section [section 1395x(b)(7) of this title] are met and" was omitted from the Code as obsolete.

§ 1395*l*. Payment of benefits

(a) Amounts

Except as provided in section 1395mm of this title, and subject to the succeeding provisions of this section, there shall be paid from the Federal Supplementary Medical Insurance Trust Fund, in the case of each individual who is covered under the insurance program established by this part and incurs expenses for services with respect to which benefits are payable under this part, amounts equal to—

(1) in the case of services described in section 1395k(a)(1) of this title—80 percent of the reasonable charges for the services; except that (A) an organization which provides medical and other health services (or arranges for their availability) on a prepayment basis may elect to be paid 80 percent of the reasonable cost of services for which payment may be made under this part on behalf of individuals enrolled in such organization in lieu of 80 percent of the reasonable charges for such services if the organization undertakes to charge such individuals no more than 20 percent of such reasonable cost plus any amounts payable by them as a result of subsection (b) of this section, (B) with respect to expenses incurred for radiological or pathological services for which payment may be made under this part, furnished to any inpatient of a hospital by a physician in the field of radiology or pathology, the amounts paid shall be equal to 100 percent of the reasonable charges for such services, (C) with respect to expenses incurred for those physicians' services for which payment may be made under this part that are described in section 1395y(a)(4) of this title, the amounts paid shall be subject to such limitations as may be prescribed by regulations, (D) with respect to diagnostic tests performed in a laboratory for which payment is made under this part to the laboratory, the amounts paid shall be equal to 100 percent of the negotiated rate for such tests (as determined pursuant to subsection (g) of this section), and (E) with respect to services furnished to individuals who have been determined to have end stage renal disease, the amounts paid shall be determined subject to the provisions of section 1395rr of this title, and

(2) in the case of services described in section 1395k(a)(2) of this title (except those services described in subparagraph (D) of section 1395k(a)(2) of this title)—with respect to home health services, 100 percent, and with respect to other services (unless otherwise specified in section 1395rr of this title), 80 percent of—

(A) the lesser of (i) the reasonable cost of such services, as determined under section 1395x(v) of this title, or (ii) the customary charges with respect to such services; or

(B) if such services are furnished by a public provider of services free of charge or at nominal charges to the public, the amount determined in accordance with section 1395f(b)(2) of this title; or

(C) if such services are services to which the next to last sentence of section 1395x(p) of this title applies, the reasonable charges for such services, and

(3) in the case of services described in section 1395k(a)(2)(D) of this title, 80 percent of costs which are reasonable and related to the cost of furnishing such services or on such other tests of reasonableness as the Secretary may prescribe in regulations, including those authorized under section 1395x(v)(1)(A) of this title.

[*See main edition for text of* (*b*) *to* (*e*)]

(f) Purchase or rental of durable medical equipment; presumptions regarding costliness, etc., for determination of purchase versus rental; manner of payment; waiver of coinsurance amount in purchase of used equipment; reimbursement agreements with, and priorities applicable to, suppliers

(1) In the case of durable medical equipment to be furnished an individual as described in section 1395x(s)(6) of this title, the Secretary shall determine, on the basis of such medical and other evidence as he finds appropriate (including certification by the attending physician with respect to expected duration of need), whether the expected duration of the medical need for the equipment warrants a presumption that purchase of the equipment would be less costly or more practical than rental. If the Secretary determines that such a presumption does exist, he shall require that the equipment be purchased, on a lease-purchase basis or otherwise, and shall make payment in accordance with the lease-purchase agreement (or in a lump sum amount if the equipment is purchased other than on a lease-purchase basis); except that the Secretary may authorize the rental of the equipment notwithstanding such determination if he determines that the purchase of the equipment would be inconsistent with the purposes of this subchapter or would create an undue financial hardship on the individual who will use it.

(2) With respect to purchases of used durable medical equipment, the Secretary may waive the 20 percent coinsurance amount applicable under subsection (a) of this section whenever the purchase price of the used equipment is at least 25 percent less than the reasonable charge for comparable new equipment.

(3) For purposes of paragraph (1), the Secretary may, pursuant to agreements made with suppliers of durable medical equipment, establish reimbursement procedures which he finds to be equitable, economical, and feasible.

(4) The Secretary shall encourage suppliers of durable medical equipment to make their equipment available to individuals entitled to benefits under this subchapter on a lease-purchase basis whenever possible.

[*See main edition for text of* (*g*) *and* (*h*)]

(As amended Oct. 25, 1977, Pub. L. 95-142, § 16(a), 91 Stat. 1200; Dec. 13, 1977, Pub. L. 95-210, § 1(b), 91 Stat. 1485; June 13, 1978, Pub. L. 95-292, § 4(b), (c), 92 Stat. 315.)

AMENDMENTS

1978—Subsec. (a)(1)(E). Pub. L. 95-292, § 4(b)(2), added cl. (E).

Subsec. (a)(2). Pub. L. 95-292, § 4(c), added "(unless otherwise specified in section 1395rr of this title)" after "and with respect to other services" in the provisions preceding subpar. (A).

1977—Subsec. (a)(2). Pub. L. 95-210, § 1(b)(2), added parenthetical provisions preceding subpar. (A) excepting those services described in subparagraph (D) of section 1395k(a)(2) of this title.

Subsec. (a)(3). Pub. L. 95-210, § 1(b)(1), (3), (4), added par. (3).

Subsec. (f)(1). Pub. L. 95-142 substituted provisions relating to determinations by the Secretary with respect to presumptions regarding the purchase price or practicality of buying or renting durable medical equipment, for provisions relating to the purchase price of durable medical equipment authorized to be paid by the Secretary.

Subsec. (f)(2). Pub. L. 95-142 substituted provisions relating to waiver of the coinsurance amount in the purchase of used durable medical equipment, for provisions relating to reimbursement procedures established by the Secretary in cases of rental of durable medical equipment.

Subsec. (f)(3), (4). Pub. L. 95-142 added pars. (3) and (4).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95-292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95-210 applicable to services rendered on or after the first day of the third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95-210, set out as an Effective Date of 1977 Amendment note under section 1395k of this title.

Section 16(b) of Pub. L. 95-142 provided that: "The amendment made by subsection (a) [amending subsec. (f) of this section] shall apply with respect to durable medical equipment purchased or rented on or after October 1, 1977."

STUDY OF FEASIBILITY AND DESIRABILITY OF IMPOSING COPAYMENT REQUIREMENT ON RURAL HEALTH CLINIC VISITS; REPORT NOT LATER THAN DECEMBER 13, 1978

Section 1(c) of Pub. L. 95-210, which provided that the Secretary of Health, Education, and Welfare conduct a study of the feasibility and desirability of imposing a copayment for each visit to a rural health clinic for rural health clinic services under this part and that the Secretary report to the appropriate committee of Congress, not later than one year after Dec. 13, 1977, on such study, was omitted from the Code as executed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395n, 1395x, 1395cc, 1395mm, 1395rr, 1396a of this title.

§ 1395r. Amount of premiums for individuals enrolled under this part

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Monthly actuarial rates; determination of monthly premium for each month after June 1973

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The Secretary shall, during December of 1972 and of each year thereafter, determine and promulgate the monthly premium applicable for the individuals enrolled under this part for the 12-month period commencing July 1 in the succeeding year. The monthly premium shall be equal to the smaller of—

[*See main edition for text of* (*A*)]

(B) the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 415(a)(1) of this title, based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on May 1 of the year of the promulgation. He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals on the following May 1.

Whenever the Secretary promulgates the dollar amount which shall be applicable as the monthly premium for any period, he shall, at the time such promulgation is announced, issue a public statement setting forth the actuarial assumptions and bases employed by him in arriving at the amount of an adequate actuarial rate for enrollees age 65 and over as provided in paragraph (1) and the derivation of the dollar amounts specified in this paragraph.

[*See main edition for text of* (*4*); (*d*) *to* (*f*)]

(As amended Dec. 20, 1977, Pub. L. 95-216, title II, § 205(e), 91 Stat. 1529.)

AMENDMENTS

1977—Subsec. (c)(3)(B). Pub. L. 95-216 substituted "the monthly premium rate most recently promulgated by the Secretary under this paragraph, increased by a percentage determined as follows: The Secretary shall ascertain the primary insurance amount computed under section 415(a)(1) of this title, based upon average indexed monthly earnings of $900, that applied to individuals who became eligible for and entitled to old-age insurance benefits on May 1 of the year of the promulgation" for "the monthly premium rate most recently promulgated by the Secretary under this paragraph or, in the case of the determination made in December 1971, such rate promulgated under subsection (b)(2) of this section multiplied by the ratio of (i) the amount in column IV of the table which, by reason of the law in effect at the time the promulgation is made, will be in effect as of May 1 next following such determination appears (or is deemed to appear) in section 415(a) of this title on the line which includes the figure '750' in column III of such table to (ii) the amount in column IV of the table which appeared (or was deemed to appear) in section 415(a) of this title on the line which included the figure '750' in column III as of May 1 of the year in which such determination is made" and added "He shall increase the monthly premium rate by the same percentage by which that primary insurance amount is increased when, by reason of the law in effect at the time the promulgation is made, it is so computed to apply to those individuals on the following May 1."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-216 effective with respect to monthly benefits and lump-sum death payments for deaths occurring after Dec., 1978, see section 206 of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 402 of this title.

§ 1395s. Payment of premiums

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission or the Chairman thereof were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 1395t. Federal Supplementary Medical Insurance Trust Fund

[*See main edition for text of* (*a*)]

(b) Board of Trustees; composition; meetings; duties

With respect to the Trust Fund, there is hereby created a body to be known as the Board of Trustees of the Trust Fund (hereinafter in this section referred to as the "Board of Trustees") composed of the Secretary of the Treasury, the Secretary of Labor, and the Secretary of Health, Education, and Welfare, all ex officio. The Secretary of the Treasury shall be the Managing Trustee of the Board of Trustees (hereinafter in this section referred to as the "Managing Trustee"). The Administrator of the Health Care Financing Administration shall serve as the Secretary of the Board of Trustees. The Board of Trustees shall meet not less frequently than once each calendar year. It shall be the duty of the Board of Trustees to—

[*See main edition for text of* (*1*) *to* (*4*)]

The report provided for in paragraph (2) shall include a statement of the assets of, and the disbursements made from, the Trust Fund during the preceding fiscal year, an estimate of the expected income to, and disbursements to be made from, the Trust Fund during the current fiscal year and each of the next 2 fiscal years, and a statement of the actuarial status of the Trust Fund. Such report shall be printed as a House document of the session of the Congress to which the report is made.

[*See main edition for text of* (*c*) *to* (*g*)]

(h) Payments from Trust Fund of costs incurred by Office of Personnel Management

The Managing Trustee shall pay from time to time from the Trust Fund such amounts as the Secretary of Health, Education, and Welfare certifies are necessary to pay the costs incurred by the Director of the Office of Personnel Management in making deductions pursuant to section 1395s(d) of this title. During each fiscal year, or after the close of such fiscal year, the Director of the Office of Personnel Management shall certify to the Secretary the amount of the costs it incurred in making such deductions, and such certified amount shall be the basis for the amount of such costs certified by the Secretary to the Managing Trustee.

[*See main edition for text of* (*i*)]

(As amended June 13, 1978, Pub. L. 95-292, § 5, 92 Stat. 315; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-292 substituted "Administrator of the Health Care Financing Administration" for "Commissioner of Social Security" in the provisions preceding par. (1).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95-292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 1395u. Use of carriers for administration of benefits

[*See main edition for text of* (*a*)]

(b) Applicability of competitive bidding provisions; findings as to financial responsibility, etc., of carrier; contractual duties imposed by contract

[*See main edition for text of* (*1*) *and* (*2*)]

(3) Each such contract shall provide that the carrier—

[*See main edition for text of* (*A*) *to* (*E*)]

and shall contain such other terms and conditions not inconsistent with this section as the Secretary may find necessary or appropriate. In determining the reasonable charge for services for purposes of this paragraph, there shall be taken into consideration the customary charges for similar services generally made by the physician or other person furnishing such services, as well as the prevailing charges in the locality for similar services. No charge may be determined to be reasonable in the case of bills submitted or requests for payment made under this part after December 31, 1970, if it exceeds the higher of (i) the prevailing charge recognized by the carrier and found acceptable by the Secretary for similar services in the same locality in administering this part on December 31, 1970, or (ii) the prevailing charge level that, on the basis of statistical data and methodology acceptable to the Secretary, would cover 75 percent of the customary charges made for similar services in the same locality during the last preceding calendar year elapsing prior to the start of the twelve-month period (beginning July 1 of each year) in which the bill is submitted or the request for payment is made. In the case of physician services the prevailing charge level determined for purposes of clause (ii) of the preceding sentence for any twelve-month period (beginning after June 30, 1973) specified in clause (ii) of such sentence may not exceed (in the aggregate) the level determined under such clause for the fiscal year ending June 30, 1973, except to the extent that the Secretary finds, on the basis of appropriate economic index data, that such higher level is justified by economic changes. With respect to power-operated wheelchairs for which payment may be made in accordance with section 1395x(s)(6) of this title, charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality. In the case of medical services, supplies, and equipment (including equipment servicing) that, in the judgment of the Secretary, do not generally vary significantly in quality from one supplier to another, the charges incurred after December 31, 1972, determined to be reasonable may not exceed the lowest charge levels at which such services, supplies, and equipment are widely and consistently available in a locality except to the extent and under the circumstances specified by the Secretary. The requirement in subparagraph (B) that a bill be submitted or request for payment be made by the close of the following calendar year shall not apply if (i) failure to submit the bill or request the payment by the close of such year is due to the error or misrepresentation of an officer, employee, fiscal intermediary, carrier, or agent of the Department of Health, Education, and Welfare performing functions under this subchapter and acting within the scope of his or its authority, and (ii) the bill is submitted or the payment is requested promptly after such error or misrepresentation is eliminated or corrected. Notwithstanding the provisions of the third and fourth sentences preceding this sentence, the prevailing charge level in the case of a physician service in a particular locality determined pursuant to such third and fourth sentences for the twelve-month period beginning on July 1, in any calendar year after 1974 shall, if lower than the prevailing charge level for the fiscal year ending June 30, 1975, in the case of a similar physician service in the same locality by reason of the application of economic index data, be raised to such prevailing charge level for the fiscal year ending June 30, 1975.

[*See main edition for text of* (*4*)]

(5) No payment under this part for a service provided to any individual shall (except as provided in section 1395gg of this title) be made to anyone other than such individual or (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) the physician or other person who provided the service, except that payment may be made (A) to the employer of such physician or other person if such physician or other person is required as a condition of his employment to turn over his fee for such service to his employer, or (B) (where the service was provided in a hospital, clinic, or other facility) to the facility in which the service was provided if there is a contractual arrangement between such physician or other person and such facility under which such facility submits the bill for such service. No payment which under the preceding sentence may be made directly to the physician or other person providing the service involved (pursuant to an assignment described in subparagraph (B)(ii) of paragraph (3)) shall be made to anyone else under a reassignment or power of attorney (except to an employer or facility as described in clause (A) or (B) of such sentence); but nothing in this subsection shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the individual to whom the service was provided or a reassignment from the physician or other person providing such service if such assignment or reassignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of the physician or other person providing the service from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such physician or other person under this subchapter is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment.

[*See main edition for text of* (*c*) *to* (*g*)]

(As amended Oct. 25, 1977, Pub. L. 95-142, § 2(a)(1), 91 Stat. 1175; Dec. 20, 1977, Pub. L. 95-216, title V, § 501(b), 91 Stat. 1565.)

AMENDMENTS

1977—Subsec. (b)(3). Pub. L. 95-216 provided that, with respect to power-operated wheelchairs for which payment may be made in accordance with section 1395x(s)(6) of this title, charges determined to be reasonable may not exceed the lowest charge at which power-operated wheelchairs are available in the locality.

Subsec. (b)(5). Pub. L. 95-142 added provisions relating to payments under a reassignment or power of attorney in cases other than direct payments to physicians or service providers.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95-216 effective in the case of items and services furnished after Dec. 20, 1977, see section 501(c) of Pub. L. 95-216, set out as an Effective Date of 1977 Amendment note under section 1395x of this title.

Amendment by Pub. L. 95-142 applicable with respect to care and services furnished on or after Oct. 25, 1977, see section 2(a)(4) of Pub. L. 95-142, set out as an Effective Date of 1977 Amendment note under section 1395g of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 1320a-3, 1320c-7, 1320c-14, 1395t, 1395v, 1395mm, 1395nn, 1395pp, 1396b of this title.

PART C—MISCELLANEOUS PROVISIONS

§ 1395x. Definitions

For purposes of this subchapter—

[*See main edition for text of* (*a*) *to* (*i*)]

(j) Skilled nursing facility

The term "skilled nursing facility" means (except for purposes of subsection (a)(2) of this section) an institution (or a distinct part of an institution) which has in effect a transfer agreement (meeting the requirements of subsection (*l*) of this section) with one or more hospitals having agreements in effect under section 1395cc of this title and which—

[*See main edition for text of* (*1*) *to* (*10*)]

(11) complies with the requirements of section 1320a-3 of this title;

[*See main edition for text of* (*12*)]

(13) meets such provisions of the Life Safety Code of the National Fire Protection Association (23d edition, 1973) as are applicable to nursing homes; except that the Secretary may waive, for such periods as he deems appropriate, specific provisions of such Code which if rigidly applied would result in unreasonable hardship upon a nursing home, but only if such waiver will not adversely affect the health and safety of the patients; except that the provisions of such Code shall not apply in any State if the Secretary finds that in such State there is in effect a fire and safety code, imposed by State law, which adequately protects patients in nursing facilities;

(14) establishes and maintains a system that (A) assures a full and complete accounting of its patients' personal funds, and (B) includes the use of such separate account for such funds as will preclude any commingling of such funds with facility funds or with the funds of any person other than another such patient; and

[*See main edition for text of* (*15*)]

except that such term shall not (other than for purposes of subsection (a)(2) of this section) include any institution which is primarily for the care and treatment of mental diseases or tuberculosis. For purposes of subsection (a)(2) of this section, such term includes any institution which meets the requirements of paragraph (1) of this subsection. The term "skilled nursing facility" also includes an institution described in paragraph (1) of subsection (y) of this section, to the extent and subject to the limitations provided in such subsection. To the extent that paragraph (6) of this subsection may be deemed to require that any skilled nursing facility engage the services of a registered professional nurse for more than 40 hours a week, the Secretary is authorized to waive such requirement if he finds that—

(A) such facility is located in a rural area and the supply of skilled nursing facility services in such area is not sufficient to meet the needs of individuals residing therein.

(B) such facility has one full-time registered professional nurse who is regularly on duty at such facility 40 hours a week, and

(C) such facility (i) has only patients whose physicians have indicated (through physicians' orders or admission notes) that each such patient does not require the services of a registered nurse or a physician for a 48-hour period, or (ii) has made arrangements for a registered professional nurse or a physician to spend such time at such facility as may be indicated as necessary by the physician to provide necessary skilled nursing services on days when the regular full-time registered professional nurse is not on duty.

[*See main edition for text of* (*k*) *to* (*r*)]

(s) Medical and other health services

The term "medical and other health services" means any of the following items or services:

(1) physicians' services;

(2) [*See main edition for text of* (*A*) *and* (*B*)]

(C) diagnostic services which are—

(i) furnished to an individual as an outpatient by a hospital or by others under arrangements with them made by a hospital, and

(ii) ordinarily furnished by such hospital (or by others under such arrangements) to its outpatients for the purpose of diagnostic study;

(D) outpatient physical therapy services;

(E) rural health clinic services; and

(F) home dialysis supplies and equipment, self-care home dialysis support services, and institutional dialysis services and supplies;

[*See main edition for text of* (*3*) *to* (*5*)]

(6) durable medical equipment, including iron lungs, oxygen tents, hospital beds, and wheelchairs (which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe) used in the patient's home (including an institution used as his home other than an institution that meets the requirements of subsection (e)(1) or (j)(1) of this section), whether furnished on a rental basis or purchased;

(7) ambulance service where the use of other methods of transportation is contraindicated by the individual's condition, but only to the extent provided in regulations;

(8) prosthetic devices (other than dental) which replace all or part of an internal body organ (including colostomy bags and supplies directly related to colostomy care), including replacement of such devices; and

(9) leg, arm, back, and neck braces, and artificial legs, arms, and eyes, including replacements if required because of a change in the patient's physical condition.

No diagnostic tests performed in any laboratory which is independent of a physician's office, or rural health clinic, or a hospital (which, for purposes of this sentence, means an institution considered a hospital for purposes of section 1395f(d) of this title) shall be included within paragraph (3) unless such laboratory—

(10) if situated in any State in which State or applicable local law provides for licensing of establishments of this nature, (A) is licensed pursuant to such law, or (B) is approved, by the agency of such State or locality responsible for licensing establishments of this nature, as meeting the standards established for such licensing; and

(11) meets such other conditions relating to the health and safety of individuals with respect to whom such tests are performed as the Secretary may find necessary.

There shall be excluded from the diagnostic services specified in paragraph (2)(C) any item or service (except services referred to in paragraph (1)) which—

(12) would not be included under subsection (b) of this section if it were furnished to an inpatient of a hospital; or

(13) is furnished under arrangements referred to in such paragraph (2)(C) unless furnished in the hospital or in other facilities operated by or under the supervision of the hospital or its organized medical staff.

None of the items and services referred to in the preceding paragraphs (other than paragraphs (1) and (2)(A)) of this subsection which are furnished to a patient of an institution which meets the definition of a hospital for purposes of section 1395f(d) of this title shall be included unless such other conditions are met as the Secretary may find necessary relating to health and safety of individuals with respect to whom such items and services are furnished.

[*See main edition for text of* (*t*) *and* (*u*)]

(v) Reasonable cost; semi-private accommodations

(1) [*See main edition for text of* (*A*) *to* (*E*)]

(F) Such regulations shall require each provider of services (other than a fund) to make reports to the Secretary of information described in section 1320a(a) of this title in accordance with the uniform reporting system (established under such section) for that type of provider.

[*See main edition for text of* (*2*) *to* (*7*)]

(w) Arrangements for certain services; payments pursuant to arrangements for utilization review activities.

[*See main edition for text of* (*1*)]

(2) Utilization review activities conducted, in accordance with the requirements of the program established under part B of subchapter XI of this chapter with respect to services furnished by a hospital to patients insured under part A of this subchapter or entitled to have payment made for such services under part B of this subchapter or under a State plan approved under subchapter V or XIX of this chapter, by a Professional Standards Review Organization designated for the area in which such hospital is located shall be deemed to have been conducted pursuant to arrangements between such hospital and such organization under which such hospital is obligated to pay to such organization, as a condition of receiving payment for hospital services so furnished under this part or under such a State plan, such amount as is reasonably incurred and requested (as determined under regulations of the Secretary) by such organization in conducting such review activities with respect to services furnished by such hospital to such patients.

[*See main edition for text of* (*x*) *to* (*z*)]

(aa) Rural health clinic services

(1) The term "rural health clinic services" means—

(A) physicians' services and such services and supplies as are covered under subsection (s)(2)(A) of this section if furnished as an incident to a physician's professional service,

(B) such services furnished by a physician assistant or by a nurse practitioner and such services and supplies furnished as an incident to his service as would otherwise be covered if furnished by a physician or as an incident to a physician's service, and

(C) in the case of a rural health clinic located in an area in which there exists a shortage of home health agencies, part-time or intermittent nursing care and related medical supplies (other than drugs and biologicals) furnished by a registered professional nurse or licensed practical nurse to a homebound individual under a written plan of treatment (i) established and periodically reviewed by a physician described in paragraph (2)(B), or (ii) established by a nurse practitioner or physician assistant and periodically reviewed and approved by a physician described in paragraph (2)(B),

when furnished to an individual as an outpatient of a rural health clinic.

(2) The term "rural health clinic" means a facility which—

(A) is primarily engaged in furnishing to outpatients services described in subparagraphs (A) and (B) of paragraph (1);

(B) in the case of a facility which is not a physician-directed clinic, has an arrangement (consistent with the provisions of State and local law relative to the practice, performance, and delivery of health services) with one or more physicians (as defined in subsection (r)(1)) of this section under which provision is made for the periodic review by such physicians of covered services furnished by physician assistants and nurse practitioners, the supervision and guidance by such physicians of physician assistants and nurse practitioners, the preparation by such physicians of such medical orders for care and treatment of clinic patients as may be necessary, and the availability of such physicians for such referral of and consultation for patients as is necessary and for advice and assistance in the management of medical emergencies; and, in the case of a physician-directed clinic, has one or more of its staff physicians perform the activities accomplished through such an arrangement;

(C) maintains clinical records on all patients;

(D) has arrangements with one or more hospitals, having agreements in effect under section 1395cc of this title, for the referral and admission of patients requiring inpatient services or such diagnostic or other specialized services as are not available at the clinic;

(E) has written policies, which are developed with the advice of (and with provision for review of such policies from time to time by) a group of professional personnel, including one or more physicians and one or more physician assistants or nurse practitioners, to govern those services described in paragraph (1) which it furnishes;

(F) has a physician, physician assistant, or nurse practitioner responsible for the execution of policies described in subparagraph (E) and relating to the provision of the clinic's services;

(G) directly provides routine diagnostic services, including clinical laboratory services, as prescribed in regulations by the Secretary, and has prompt access to additional diagnostic services from facilities meeting requirements under this subchapter;

(H) in compliance with State and Federal law, has available for administering to patients of the clinic at least such drugs and biologicals as are determined by the Secretary to be necessary for the treatment of emergency cases (as defined in regulations) and has appropriate procedures or arrangements for storing, administering, and dispensing any drugs and biologicals;

(I) has appropriate procedures for review of utilization of clinic services to the extent that the Secretary determines to be necessary and feasible; and

(J) meets such other requirements as the Secretary may find necessary in the interest of the health and safety of the individuals who are furnished services by the clinic.

For the purposes of this subchapter, such term includes only a facility which (i) is located in an area that is not an urbanized area (as defined by the Bureau of the Census) and that is designated by the Secretary either (I) as an area with a shortage of personal health services under section 300e-1(7) of this title or (II) as a health manpower shortage area described in section 254e(a)(1)(A) of this title because of its shortage of primary medical care manpower, (ii) has filed an agreement with the Secretary by which it agrees not to charge any individual or other person for items or services for which such individual is entitled to have payment made under this subchapter, except for the amount of any deductible or coinsurance amount imposed with respect to such items or services (not in excess of the amount customarily charged for such items and services by such clinic), pursuant to subsections (a) and (b) of section 1395*l* of this title, (iii) employs a physician assistant or nurse practitioner, and (iv) is not a rehabilitation agency or a facility which is primarily for the care and treatment of mental diseases. A facility that is in operation and qualifies as a rural health clinic under this subchapter or subchapter XIX of this chapter and that subsequently fails to satisfy the requirement of clause (i) shall be considered, for purposes of this subchapter and subchapter XIX of this chapter, as still satisfying the requirement of such clause.

(3) The term "physician assistant" and the term "nurse practitioner" mean, for the purposes of paragraphs (1) and (2), a physician assistant or nurse practitioner who performs such services as such individual is legally authorized to perform (in the State in which the individual performs such services) in accordance with State law (or the State regulatory mechanism provided by State law), and who meets such training, education, and experience requirements (or any combination thereof) as the Secretary may prescribe in regulations.

(As amended Oct. 25, 1977, Pub. L. 95-142, §§ 3(a)(2), 5(m), 19(b)(1), 21(a), 91 Stat. 1178, 1191, 1204, 1207; Dec. 13, 1977, Pub. L. 95-210, § 1(d), (g), (h), 91 Stat. 1485, 1487, 1488; Dec. 20, 1977, Pub. L. 95-216, title V, § 501(a), 91 Stat. 1564; June 13, 1978, Pub. L. 95-292, § 4(d), 92 Stat. 315.)

Payment for Service of Physicians Rendered in a Teaching Hospital for Accounting Periods Beginning After June 30, 1975, and Prior to October 1, 1978; Studies, Reports, etc.; Effective Dates

Pub. L. 93-233, § 15(a)(1), (b)-(d), Dec. 31, 1973, 87 Stat. 965, as amended by Pub. L. 93-368, § 7, Aug. 7, 1974, 88 Stat. 422; Pub. L. 94-368, § 1, July 16, 1976, 90 Stat. 997; Pub. L. 95-292, § 7, June 13, 1978, 92 Stat. 316, which provided that for the cost accounting periods beginning after June 30, 1975, and prior to October 1, 1978, subsec. (b) of this section will be administered as if paragraph (7) of subsec. (b) read as follows: "(7) a physician where the hospital has a teaching program approved as specified in paragraph (6), if (A) the hospital elects to receive any payment due under this title [this subchapter] for reasonable costs of such services, and (B) all physicians in such hospital agree not to bill charges for professional services rendered in such hospital to individuals covered under the insurance program established by this title [this subchapter]", provided for studies with respect to methods of reimbursement for physicians' services under subchapters XVIII and XIX of this chapter in hospitals which have a teaching program and a determination as to how and to what extent such funds are utilized, and provided that a final report be submitted to the Secretary of Health, Education, and Welfare, the Committee on Finance of the Senate, and the Committee on Ways and Means of the House of Representatives not later than Mar. 1, 1976, was omitted from the Code as executed.

Amendments

1978—Subsec. (s)(2)(F). Pub. L. 95-292 added subpar. (F).

1977—Subsec. (j)(11). Pub. L. 95-142, § 3(a)(2), substituted provisions relating to compliance with requirements of section 1320a-3 of this title, for provisions relating disclosure of ownership, corporate status, etc., information to the Secretary or his delegate.

Subsec. (j)(13). Pub. L. 95-142, § 21(a), struck out "; and" following "nursing facilities".

Subsec. (j)(14). Pub. L. 95-142, § 21(a), added par. (14).

Subsec. (s). Pub. L. 95-210, § 1(g), (h), added subpar. (E) of par. (2) and in the provisions following par. (9) added ", a rural health clinic," following "independent of a physician's office".

Subsec. (s)(6). Pub. L. 95-216 added "(which may include a power-operated vehicle that may be appropriately used as a wheelchair, but only where the use of such a vehicle is determined to be necessary on the basis of the individual's medical and physical condition and the vehicle meets such safety requirements as the Secretary may prescribe)" following "wheelchairs".

Subsec. (v)(1)(F). Pub. L. 95-142, § 19(b)(1), added subpar. (F).

Subsec. (w)(2). Pub. L. 95-142, § 5(m), added "part B of this subchapter or under" following "or entitled to have payment made for such services under".

Subsec. (aa). Pub. L. 95-210, § 1(d), added subsec. (aa).

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95-292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

Effective Date of 1977 Amendments

Amendment of subsec. (j)(11) by section 3(a)(2) of Pub. L. 95-142 effective on Oct. 25, 1977, see section 3(e) of Pub. L. 95-142, set out as an Effective Date note under section 1320a-3 of this title.

Section 21(c)(1) of Pub. L. 95-142 provided that: "The amendments made by subsection (a) [adding subsec. (j)(14) of this section] shall be effective on the first day of the first calendar quarter which begins more than six months after the date of enactment of this Act [Oct. 25, 1977]."

Amendment of subsec. (s) and addition of subsec. (aa) by Pub. L. 95-210 applicable to services rendered on or after the first day of the third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95-210, set out as an Effective Date of 1977 Amendment note under section 1395k of this title.

Section 501(c) of Pub. L. 95-216 provided that: "The amendments made by this section [amending subsec. (s)(6) of this section and section 1395u(b)(3) of this title] shall be effective in the case of items and services furnished after the date of the enactment of this Act [Dec. 20, 1977]."

Amendment of subsec. (v)(1)(F) by section 19(b)(1) of Pub. L. 95-142 effective with respect to operation of a hospital, skilled nursing facility, or intermediate care facility on and after the first day of its first fiscal year which begins after the end of the six-month period beginning on the date a uniform reporting system is established under section 1320a(a) of this title for that type of health services facility, except that for other types of facilities or organizations effective with respect to operations on and after the first day of its first fiscal year which begins after such date as the Secretary determines to be appropriate for the implementation of the reporting requirement for that type of facility or organization, see section 19(c)(2) of Pub. L. 95-142, set out as an Effective Date of 1977 Amendment note under section 1396a of this title.

Private, Nonprofit Health Care Clinics Qualifying, as of July 1, 1977, as Rural Health Clinics

Section 1(e) of Pub. L. 95-210 provided that: "Any private, nonprofit health care clinic that—

"(1) on July 1, 1977, was operating and located in an area which on that date (A) was not an urbanized area (as defined by the Bureau of the Census) and (B) had a supply of physicians insufficient to meet the needs of the area (as determined by the Secretary), and

"(2) meets the definition of a rural health clinic under section 1861(aa)(2) [subsec. (aa)(2) of this section] or section 1905(*l*) of the Social Security Act [section 1396d(*l*) of this title], except for clause (i) of section 1861(aa)(2) [subsec. (aa)(2) of this section],

shall be considered, for the purposes of title XVIII or XIX, respectively, of the Social Security Act [this subchapter or subchapter XIX of this chapter], as satisfying the definition of a rural health clinic under such section."

Promulgation of Regulations Defining Costs Chargeable to Personal Funds of Patients in Skilled Nursing Facilities; Date of Issuance

Section 21(b) of Pub. L. 95-142 provided that: "The Secretary of Health, Education, and Welfare shall, by regulation, define those costs which may be charged to the personal funds of patients in skilled nursing facilities who are individuals receiving benefits under the provisions of title XVIII [this subchapter], or under a State plan approved under the provisions of title XIX, of the Social Security Act [subchapter XIX of this chapter], and those costs which are to be included in the reasonable cost or reasonable charge for extended care services as determined under the provisions of title XVIII, or for skilled nursing and intermediate care facility services as determined under the provisions of title XIX, of such Act."

Section 21(c)(2) of Pub. L. 95-142 provided that: "The Secretary of Health, Education, and Welfare shall issue the regulations required under subsection (b) [set out as note above] within ninety days after the date of enactment of this Act [Oct. 25, 1977]."

Home Health Services: Grants for Establishment, Operation, Staffing, etc., of Public and Nonprofit Private Agencies and Entities; Procedures; Payments; Authorizations of Appropriations

Pub. L. 94-63, title VI, § 602, July 29, 1975, 89 Stat. 346, as amended by Pub. L. 94-460, title III, § 302, Oct. 8, 1976, 90 Stat. 1960; Pub. L. 95-83 title III, § 310, Aug. 1, 1977, 91 Stat. 397, which provided for a program of home health services and of training of professional and paraprofessional personnel, was repealed by Pub. L. 95-626, title II, § 207(b), Nov. 10, 1978, 92 Stat. 3586, effective Oct. 1, 1978. See section 255 of this title.

Section Referred to in Other Sections

This section is referred to in sections 254b, 254c, 255, 300n, 300t-12, 426-1, 705, 706, 1301, 1320a-3, 1320c-1, 1320c-4, 1395d, 1395f, 1395g, 1395k, 1395*l*, 1395m, 1395n, 1395u, 1395y, 1395z, 1395aa, 1395bb, 1395cc, 1395mm, 1395nn, 1395*oo*, 1395rr, 1396a, 1396b, 1396d, 2689e, 3022 of this title; title 26 section 415.

§ 1395y. Exclusions from coverage

(a) Items or services specifically excluded

Notwithstanding any other provision of this subchapter, no payment may be made under part A or part B for any expenses incurred for items or services—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) which are paid for directly or indirectly by a governmental entity (other than under this chapter and other than under a health benefits or insurance plan established for employees of such an entity), except in the case of rural health clinic services, as defined in section 1395x(aa)(1) of this title, and in such other cases as the Secretary may specify;

[*See main edition for text of* (*b*) *and* (*c*)]

(d) False statements, etc.; excessive bills or requests; excessive services or supplies; determination of Secretary

(1) No payment may be made under this subchapter with respect to any item or services furnished to an individual by a person where the Secretary determines under this subsection that such person—

[*See main volume for text of* (*A*)]

(B) has submitted or caused to be submitted (except in the case of a provider of services), bills or requests for payment under this subchapter containing charges (or in applicable cases requests for payment of costs to such person) for services rendered which the Secretary finds to be substantially in excess of such person's customary charges (or in applicable cases substantially in excess of such person's costs) for such services, unless the Secretary finds there is good cause for such bills or requests containing such charges (or in applicable cases, such costs); or

(C) has furnished services or supplies which are determined by the Secretary, on the basis of reports transmitted to him in accordance with section 1320c-6 of this title (or, in the absence of any such report, on the basis of such data as he acquires in the administration of the program under this subchapter), to be substantially in excess of the needs of individuals or to be of a quality which fails to meet professionally recognized standards of health care.

[*See main edition for text of* (*2*) *and* (*3*)]

(4) Repealed. Pub. L. 95-142, § 13(a), Oct. 25, 1977, 91 Stat. 1197

(e) Suspension of practitioners convicted of crimes related to practitioner's involvement in programs

(1) Whenever the Secretary determines that a physician or other individual practitioner has been convicted (on or after October 25, 1977, or within such period prior to that date as the Secretary shall specify in regulations) of a criminal offense related to such physician's or practitioner's involvement in the programs under this subchapter or the program under subchapter XIX of this chapter, the Secretary shall suspend such physician or practitioner

from participation in the program under this subchapter for such period as he may deem appropriate; and no payment may be made under this subchapter with respect to any item or service furnished by such physician or practitioner during the period of such suspension. The provisions of paragraphs (2) and (3) of subsection (d) of this section shall apply with respect to determinations made by the Secretary under this subsection.

(2) In any case where the Secretary under paragraph (1) suspends any physician or other individual practitioner from participation in the program under this subchapter, he shall—

(A) promptly notify each single State agency which administers or supervises the administration of a State plan approved under subchapter XIX of this chapter of the fact, circumstances, and period of such suspension; and

(B) promptly notify the appropriate State or local agency or authority having responsibility for the licensing or certification of such physician or practitioner of the fact and circumstances of such suspension, request that appropriate investigations be made and sanctions invoked in accordance with applicable State law and policy, and request that such State or local agency or authority keep the Secretary and the Inspector General of the Department of Health, Education, and Welfare fully and currently informed with respect to any actions taken in response to such request.

(As amended Oct. 25, 1977, Pub. L. 95-142, §§ 7(a), 13(a), (b)(1), (2), 91 Stat. 1192, 1197, 1198; Dec. 13, 1977, Pub. L. 95-210, § 1(f), 91 Stat. 1487.)

AMENDMENTS

1977—Subsec. (a)(3). Pub. L. 95-210 substituted "except in the case of rural health clinic services, as defined in section 1395x(aa)(1) of this title, and in such other cases as the Secretary may specify" for "except in such cases as the Secretary may specify".

Subsec. (d)(1)(B). Pub. L. 95-142, § 13(b)(1), struck out requirement for concurrence of appropriate program review team for finding of Secretary under this paragraph.

Subsec. (d)(1)(C). Pub. L. 95-142, § 13(b)(2), substituted provisions relating to determinations by the Secretary on the basis of reports transmitted to him in accordance with section 1320c-6 of this title or other data acquired in the administration of this subchapter, for provisions relating to determinations by the Secretary with the concurrence of appropriate review team members.

Subsec. (d)(4). Pub. L. 95-142, § 13(a), struck out subsec. (d)(4) which set forth provisions relating to appointment and functions of program review teams.

Subsec. (e). Pub. L. 95-142, § 7(a), added subsec. (e).

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment by Pub. L. 95-210 applicable to services rendered on or after the first day of the third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95-210, set out as an Effective Date of 1977 Amendment note under section 1395k of this title.

Amendment of subsec. (d) by section 13(a) and (b)(1), (2) of Pub. L. 95-142, effective on Oct. 25, 1977, see section 13(c) of Pub. L. 95-142, set out as an Effective Date of 1977 Amendment note under section 1320c-6 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 1395*l*, 1395u, 1395x, 1395gg, 1395*oo*, 1395pp, 1396a, 1396b of this title; title 45 section 231f.

§ 1395aa. Agreements with States

(a) Use of State agencies to determine compliance by providers of services with conditions of participation

The Secretary shall make an agreement with any State which is able and willing to do so under which the services of the State health agency or other appropriate State agency (or the appropriate local agencies) will be utilized by him for the purpose of determining whether an institution therein is a hospital or skilled nursing facility, or whether an agency therein is a home health agency, or whether a facility therein is a rural health clinic as defined in section 1395x(aa)(2) of this title, or whether a laboratory meets the requirements of paragraphs (10) and (11) of section 1395x(s) of this title, or whether a clinic, rehabilitation agency, or public health agency meets the requirements of subparagraph (A) or (B), as the case may be, of section 1395x(p)(4) of this title. To the extent that the Secretary finds it appropriate, an institution or agency which such a State (or local) agency certifies is a hospital, skilled nursing facility, rural health clinic, or home health agency (as those terms are defined in section 1395x of this title) may be treated as such by the Secretary. Any State agency which has such an agreement may (subject to approval of the Secretary) furnish to a skilled nursing facility, after proper request by such facility, such specialized consultative services (which such agency is able and willing to furnish in a manner satisfactory to the Secretary) as such facility may need to meet one or more of the conditions specified in section 1395x(j) of this title. Any such services furnished by a State agency shall be deemed to have been furnished pursuant to such agreement. Within 90 days following the completion of each survey of any health care facility, rural health clinic, laboratory, clinic, agency, or organization by the appropriate State or local agency described in the first sentence of this subsection, the Secretary shall make public in readily available form and place the pertinent findings of each such survey relating to the compliance of each such health care facility, rural health clinic, laboratory, clinic, agency, or organization with (1) the statutory conditions of participation imposed under this subchapter and (2) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such health care facility, rural health clinic, laboratory, clinic, agency, or organization.

[*See main edition for text of* (b) *and* (c)]

(As amended Dec. 13, 1977, Pub. L. 95-210, § 1(i), 91 Stat. 1488.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-210 expanded the enumeration of institutions and agencies included under the coverage of this subsection by added references to rural health clinics in five places.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-210 applicable to services rendered on or after the first day of the third calendar month which begins after Dec. 31, 1977, see section 1(j) of Pub. L. 95-210, set out as an Effective Date of 1977 Amendment note under section 1395k of this title.

§ 1395cc. Agreements with providers of services

(a) Filing of agreement; eligibility for payment; charges with respect to items and services

(1) Any provider of services (except a fund designated for purposes of section 1395f(g) and section 1395n(e) of this title) shall be qualified to participate under this subchapter and shall be eligible for payments under this subchapter if it files with the Secretary an agreement—

[*See main edition for text of* (*A*) *and* (*B*)]

(C) to make adequate provision for return (or other disposition, in accordance with regulations) of any moneys incorrectly collected from such individual or other person, and

(D) to promptly notify the Secretary of its employment of an individual who, at any time during the year preceding such employment, was employed in a managerial, accounting, auditing, or similar capacity (as determined by the Secretary by regulation) by an agency or organization which serves as a fiscal intermediary or carrier (for purposes of part A or part B, or both, of this subchapter) with respect to the provider.

An agreement under this paragraph with a skilled nursing facility shall be for a term of not exceeding 12 months, except that the Secretary may extend such term for a period not exceeding 2 months, where the health and safety of patients will not be jeopardized thereby, if he finds that such extension is necessary to prevent irreparable harm to such facility or hardship to the individuals being furnished items or services by such facility or if he finds it impracticable within such 12-month period to determine whether such facility is complying with the provisions of this subchapter and regulations thereunder.

(2)(A) A provider of services may charge such individual or other person (i) the amount of any deduction or coinsurance amount imposed pursuant to section 1395e(a)(1) or (a)(3), section 1395*l*(b), or section 1395x(y)(3) of this title with respect to such items and services (not in excess of the amount customarily charged for such items and services by such provider), and (ii) an amount equal to 20 per centum of the reasonable charges for such items and services (not in excess of 20 per centum of the amount customarily charged for such items and services by such provider) for which payment is made under part B (but in the case of items and services furnished to individuals with end-stage renal disease, an amount equal to 20 percent of the estimated amounts for such items and services calculated on the basis established by the Secretary). In the case of items and services described in section 1395*l*(c) of this title, clause (ii) of the preceding sentence shall be applied by substituting for 20 percent the proportion which is appropriate under such section.

[*See main edition for text of* (*B*) *to* (*D*)]

(3) The Secretary may refuse to enter into or renew an agreement under this section with a provider of services if any person who has a direct or indirect ownership or control interest of 5 percent or more in such provider, or who is an officer, director, agent, or managing employee (as defined in section 1320a-5(b) of this title) of such provider, is a person described in section 1320a-5(a) of this title.

(b) Termination of agreements

An agreement with the Secretary under this section may be terminated (and in the case of a skilled nursing facility, prior to the end of the term specified in subsection (a)(1) of this section)—

[*See main edition for text of* (*1*)]

(2) by the Secretary at such time and upon such reasonable notice to the provider of services and the public as may be specified in regulations, but only after the Secretary has determined (A) that such provider of services is not complying substantially with the provisions of such agreement, or with the provisions of this subchapter and regulations thereunder, or (B) that such provider of services no longer substantially meets the applicable provisions of section 1395x of this title, or (C) that such provider of services has failed (i) to provide such information as the Secretary finds necessary to determine whether payments are or were due under this subchapter and the amounts thereof, or has refused to permit such examination of its fiscal and other records by or on behalf of the Secretary as may be necessary to verify such information, or (ii) to supply (within such period as may be specified by the Secretary in regulations) upon request specifically addressed to such provider by the Secretary (I) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom such provider has had, during the previous twelve months, business transactions in an aggregate amount in excess of $25,000, and (II) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between such provider and any wholly owned supplier or between such provider and any subcontractor, or (D) that such provider has made, or caused to be made, any false statement or representation of a material fact for use in an application for payment under this subchapter or for use in determining the right to a payment under this subchapter, or (E) that such provider has submitted, or caused to be submitted, request for payment under this subchapter of amounts for rendering services substantially in excess

of the costs incurred by such provider for rendering such services, or (F) that such provider has furnished services or supplies which are determined by the Secretary to be substantially in excess of the needs of individuals or to be of a quality which fails to meet professionally recognized standards of health care, or (G) that such provider (at the time the agreement was entered into) did not fully and accurately make any disclosure required of it by section 1320a-5(a) of this title.

Any termination shall be applicable—

[*See main edition for text of* (*3*) *to* (*5*)]

(c) Refiling after termination; agreements with skilled nursing facilities

[*See main edition for text of* (*1*)]

(2) In the case of a skilled nursing facility participating in the programs established by this subchapter and subchapter XIX of this chapter, the Secretary may enter into an agreement under this section only if such facility has been approved pursuant to section 1396i(a) of this title, and the term of any such agreement shall be in accordance with the period of approval of eligibility specified by the Secretary pursuant to such section.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended Oct. 25, 1977, Pub. L. 95-142, §§ 3(b), 8(b), 13(b)(3), 15(a), 91 Stat. 1178, 1194, 1195, 1198, 1200; Dec. 13, 1977, Pub. L. 95-210, § 2(e), 91 Stat. 1489; June 13, 1978, Pub. L. 95-292, § 4(e), 92 Stat. 315.)

AMENDMENTS

1978—Subsec. (a)(2)(A). Pub. L. 95-292 provided for the computation of and the charging of coinsurance amounts for items and services furnished individuals with end stage renal disease on the basis established by the Secretary.

Subsec. (a)(3). Pub. L. 95-142, § 8(b)(1), added par. (3).

Subsec. (b)(2)(G). Pub. L. 95-142, § 8(b)(2), added cl. (G).

1977—Subsec. (a)(1). Pub. L. 95-142, § 15(a), added subpar. (D).

Subsec. (b)(2)(C). Pub. L. 95-142, § 3(b), designated existing provisions as subcl. (i) and added subcl. (ii).

Subsec. (b)(2)(F). Pub. L. 95-142, § 13(b)(3), substituted "of a quality which fails to meet professionally recognized standards of health care" for "harmful to individuals or to be of a grossly inferior quality", and struck out provisions relating to approval by an appropriate program review team.

Subsec. (c)(2). Pub. L. 95-210 substituted "section 1396i(a) of this title" for "section 1396i of this title".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95-292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

EFFECTIVE DATE OF 1977 AMENDMENTS

Section 15(b) of Pub. L. 95-142 provided that: "The amendments made by subsection (a) [adding subsec. (a)(1)(D) of this section] shall apply with respect to agreements entered into or renewed on and after the date of enactment of this Act [Oct. 25, 1977]."

Amendment by section 8(b) of Pub. L. 95-142 [adding subsecs. (a)(3) and (b)(2)(G)] applicable with respect to contracts, agreements, etc., made on and after the first day of the fourth month beginning after Oct. 25, 1977, see section 8(e) of Pub. L. 95-142, set out as an Effective Date note under section 1320a-5 of this title.

Amendment of subsec. (b)(2)(C) by section 3(b) of Pub. L. 95-142 effective on Oct. 25, 1977, see section 3(e) of Pub. L. 95-142, set out as an Effective Date note under section 1320a-3 of this title.

Amendment of subsec. (b)(2)(F) by section 13(b)(3) of Pub. L. 95-142 effective on Oct. 25, 1977, see section 13(c) of Pub. L. 95-142, set out as an Effective Date of 1977 Amendment note under section 1320c-6 of this title.

Section 2(f) of Pub. L. 95-210 provided that:

"(1) The amendments made by this section [amending sections 1395cc, 1396a, 1396d, and 1396i of this title] shall (except as otherwise provided in paragraph (2)) apply to medical assistance provided, under a State plan approved under title XIX of the Social Security Act [subchapter XIX of this chapter], on and after the first day of the first calendar quarter that begins more than six months after the date of enactment of this Act [Dec. 13, 1977].

"(2) In the case of a State plan for medical assistance under title XIX of the Social Security Act [subchapter XIX of this chapter] which the Secretary determines requires State legislation in order for the plan to meet the additional requirements imposed by the amendments made by this section, the State plan shall not be regarded as failing to comply with the requirements of such title [subchapter] solely on the basis of its failure to meet these additional requirements before the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after the date of enactment of this Act [Dec. 13, 1977]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 706, 1395e, 1395f, 1395n, 1395x, 1395y, 1395aa, 1395ff, 1396b of this title.

§ 1395dd. Health Insurance Benefits Advisory Council; creation; composition; appointment of members; Chairman; representative activities and interests; terms of office; compensation and travel expenses; meetings; functions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 907a, 1395z of this title; title 45 section 231f.

§ 1395*ll*. Studies and recommendations

REPORT TO CONGRESS WITH RESPECT TO URBAN OR RURAL COMPREHENSIVE MENTAL HEALTH CENTERS AND CENTERS FOR TREATMENT OF ALCOHOLISM AND DRUG ABUSE; SUBMISSION NO LATER THAN JUNE 13, 1978

Pub. L. 95-210, § 4, Dec. 13, 1977, 91 Stat. 1490, which provided that the Secretary submit to the Congress, no later than six months after Dec. 13, 1977, a report on the advantages and disadvantages of extending coverage under this subchapter to urban or rural comprehensive mental health centers and to centers for treatment of alcoholism and drug abuse, was omitted from the Code as executed.

STUDY AND REVIEW BY COMPTROLLER GENERAL OF ADMINISTRATIVE STRUCTURE FOR PROCESSING MEDICARE CLAIMS; REPORT TO CONGRESS

Pub. L. 95-142, § 12, Oct. 25, 1977, 91 Stat. 1197, which provided that the Comptroller General conduct a comprehensive study and review of the administrative structure established for the processing of claims under this subchapter for the purpose of determining whether and to what extent more efficient claims administration under this subchapter could be achieved and that the Comptroller General submit to the Congress no later than July 1, 1979, a complete report with respect to such study and review, was omitted from the Code as executed.

REPORT BY SECRETARY OF HEALTH, EDUCATION, AND WELFARE ON DELIVERY OF HOME HEALTH AND OTHER IN-HOME SERVICES; CONTENTS; CONSULTATION REQUIREMENTS; SUBMISSION TO CONGRESS

Pub. L. 95-142, § 18, Oct. 25, 1977, 91 Stat. 1202, which provided that not later than one year after Oct. 25, 1977, the Secretary of Health, Education, and Welfare submit to the appropriate committees of the Congress a report analyzing, evaluating, and making recommendations with respect to all aspects of the delivery of home health and other in-home services authorized to be provided under subchapters XVIII, XIX, and XX of this chapter, was omitted from the Code as executed.

§ 1395mm. Payments to health maintenance organizations

[*See main edition for text of* (*a*)]

(b) Definitions; duties and functions of the Secretary

[*See main edition for text of* (*1*)]

(2) [*See main edition for text of* (*A*)]

(B) Except as provided in subparagraph (A), the Secretary shall administer the provisions of this section through the Administrator of the Health Care Financing Administration.

[*See main edition for text of* (*c*) *to* (*k*)]

(As amended June 13, 1978, Pub. L. 95-292, § 5, 92 Stat. 315.)

AMENDMENTS

1978—Subsec. (b)(2)(B). Pub. L. 95-292 substituted "Administrator of the Health Care Financing Administration" for "Commissioner of Social Security".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-292 effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95-292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

§ 1395nn. Offenses and penalties

(a) Making or causing to be made false statements or representations

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under this subchapter,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to any such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized, or

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under this subchapter, be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both.

(b) Illegal remunerations

(1) Whoever solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this subchapter, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this subchapter,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) Whoever offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this subchapter, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this subchapter,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under this subchapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this subchapter; and

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(c) False statements or representations with respect to condition or operation of institutions

Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution or facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, skilled nursing facility, or home health agency (as those terms are defined in section 1395x of this title) shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(d) Violation of assignment terms

Whoever accepts assignments described in section 1395u(b)(3)(B)(ii) of this title and knowingly, willfully, and repeatedly violates the term of such assignments specified in subclause (I) of such section, shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than $2,000 or imprisoned for not more than six months, or both.

(As amended Oct. 25, 1977, Pub. L. 95-142, § 4(a), 91 Stat. 1179.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-142 designated existing provisions following par. (4) as cl. (ii) and, in cl. (ii) as so designated, added provisions relating to activities of other persons, and added cl. (i).

Subsec. (b). Pub. L. 95-142 redesignated existing provisions as par. (1) and, as so redesignated, substituted provisions relating to solicitation or receiving of any remuneration in return for referring an individual to a person for the furnishing or arranging the furnishing of any item or service, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, etc., as constituting a felony punishable by a fine of not more than $25,000 and/or imprisonment for not more than five years, for provisions relating to furnishing items or services and soliciting, offering or receiving any kickback, bribe, or rebate in connection with furnishing, etc. items or services as constituting a misdemeanor punishable by a fine of not more than $10,000 and/or imprisonment for not more than one year, and added pars. (2) and (3).

Subsec. (c). Pub. L. 95-142 substituted provisions setting forth felony nature of criminal activities with a fine of not more than $25,000, or imprisonment for not more than five years, or both, for provisions setting forth misdemeanor nature of criminal activities with a fine of not more than $2,000, or imprisonment for not more than six months, or both.

Subsec. (d). Pub. L. 95-142 added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 4(d) of Pub. L. 95-142 provided that: "The amendments made by subsections (a) [amending this section] and (b) [amending section 1396h of this title] shall apply with respect to acts occurring and statements or representations made on or after the date of the enactment of this Act [Oct. 25, 1977]."

§ 1395oo. Provider Reimbursement Review Board

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1395h, 1395rr of this title.

§ 1395rr. End stage renal disease program

(a) Type, duration, and scope of benefits

The benefits provided by parts A and B of this subchapter shall include benefits for individuals who have been determined to have end-stage renal disease as provided in section 426-1 of this title, and benefits for kidney donors as provided in subsection (d) of this section. Notwithstanding any other provision of this subchapter, the type, duration, and scope of the benefit provided by parts A and B with respect to individuals who have been determined to have end-stage renal disease and who are entitled to such benefits without regard to section 426-1 of this title shall in no case be less than the type, duration, and scope of the benefits so provided for individuals entitled to such benefits solely by reason of that section.

(b) Payments with respect to services; dialysis; regulations; physicians' services; target reimbursement rates; home dialysis supplies and equipment; self-care home dialysis support services; self-care dialysis units

(1) Payments under this subchapter with respect to services, in addition to services for which payment would otherwise be made under this subchapter, furnished to individuals who have been determined to have end-stage renal disease shall include (A) payments on behalf of such individuals to providers of services and renal dialysis facilities which meet such requirements as the Secretary shall by regulation prescribe for institutional dialysis services and supplies (including self-dialysis services in a self-care dialysis unit maintained by the provider or facility), transplantation services, self-care home dialysis support services which are furnished by the provider or facility, and routine professional services performed by a physician during a maintenance dialysis episode if payments for his other professional services furnished to an individual who has end-stage renal disease are made on the basis specified in paragraph (3)(A) of this subsection, and (B) payments to or on behalf of such individuals for home dialysis supplies and equipment. The requirements prescribed by the Secretary under

subparagraph (A) shall include requirements for a minimum utilization rate for covered procedures and for self-dialysis training programs.

(2)(A) With respect to payments for dialysis services furnished by providers of services and renal dialysis facilities to individuals determined to have end-stage renal disease for which payments may be made under part B of this subchapter, such payments (unless otherwise provided in this section) shall be equal to 80 percent of the amounts determined in accordance with subparagraph (B); and with respect to payments for services for which payments may be made under part A of this subchapter, the amounts of such payments (which amounts shall not exceed, in respect to costs in procuring organs attributable to payments made to an organ procurement agency or histocompatibility laboratory, the costs incurred by that agency or laboratory) shall be determined in accordance with section 1395x(v) of this title. Payments shall be made to a renal dialysis facility only if it agrees to accept such payments as payment in full for covered services, except for payment by the individual of 20 percent of the estimated amounts for such services calculated on the basis established by the Secretary under subparagraph (B) and the deductible amount imposed by section 1395*l*(b) of this title.

(B) The Secretary shall prescribe in regulations any methods and procedures to (i) determine the costs incurred by providers of services and renal dialysis facilities in furnishing covered services to individuals determined to have end-stage renal disease, and (ii) determine, on a cost-related basis or other economical and equitable basis (including any basis authorized under section 1395x(v) of this title), the amounts of payments to be made for part B services furnished by such providers and facilities to such individuals. Such regulations shall provide for the implementation of appropriate incentives for encouraging more efficient and effective delivery of services (consistent with quality care), and shall include, to the extent determined feasible by the Secretary, a system for classifying comparable providers and facilities, and prospectively set rates or target rates with arrangements for sharing such reductions in costs as may be attributable to more efficient and effective delivery of services.

(C) Such regulations, in the case of services furnished by proprietary providers and facilities may include, if the Secretary finds it feasible and appropriate, provision for recognition of a reasonable rate of return on equity capital, providing such rate of return does not exceed the rate of return stipulated in section 1395x(v)(1)(B) of this title.

(D) For purposes of section 1395*oo* of this title, a renal dialysis facility shall be treated as a provider of services.

(3) With respect to payments for physicians' services furnished to individuals determined to have end-stage renal disease, the Secretary shall pay 80 percent of the amounts calculated for such services—

(A) on a reasonable charge basis (but may, in such case, make payment on the basis of the prevailing charges of other physicians for comparable services) except that payment may not be made under this subparagraph for routine services furnished during a maintenance dialysis episode, or

(B) on a comprehensive monthly fee or other basis for an aggregate of services provided over a period of time (as defined in regulations).

(4) Pursuant to agreements with approved providers of services and renal dialysis facilities, the Secretary may make payments to such providers and facilities for the cost of home dialysis supplies and equipment and self-care home dialysis support services furnished to patients whose self-care home dialysis is under the direct supervision of such provider or facility, on the basis of a target reimbursement rate (as defined in paragraph (6)).

(5) An agreement under paragraph (4) shall require, in accordance with regulations prescribed by the Secretary, that the provider or facility will—

(A) assume full responsibility for directly obtaining or arranging for the provision of—

(i) such medically necessary dialysis equipment as is prescribed by the attending physician;

(ii) dialysis equipment maintenance and repair services;

(iii) the purchase and delivery of all necessary medical supplies; and

(iv) where necessary, the services of trained home dialysis aides;

(B) perform all such administrative functions and maintain such information and records as the Secretary may require to verify the transactions and arrangements described in subparagraph (A);

(C) submit such cost reports, data, and information as the Secretary may require with respect to the costs incurred for equipment, supplies, and services furnished to the facility's home dialysis patient population; and

(D) provide for full access for the Secretary to all such records, data, and information as he may require to perform his functions under this section.

(6) The Secretary shall establish, for each calendar year, commencing with January 1, 1979, a target reimbursement rate for home dialysis which shall be adjusted for regional variations in the cost of providing home dialysis. In establishing such a rate, the Secretary shall include—

(A) the Secretary's estimate of the cost of providing medically necessary home dialysis supplies and equipment;

(B) an allowance, in an amount determined by the Secretary, to cover the cost of providing personnel to aid in home dialysis; and

(C) an allowance, in an amount determined by the Secretary, to cover administrative costs and to provide an incentive for the efficient delivery of home dialysis;

but in no event shall such target rate exceed 70 percent of the national average payment, adjusted for regional variations, for maintenance dialysis services furnished in approved providers and facilities during the preceding fiscal year. Any such target rate so established shall be utilized, without renegotiation of the rate, throughout the calendar year for which it is established. During the last quarter of each calendar year, the Secretary shall establish a home dialysis target reimbursement rate for the next calendar year based on the most recent data available to the Secretary at the time. In establishing any rate under this paragraph, the Secretary may utilize a competitive-bid procedure, a prenegotiated rate procedure, or any other procedure which the Secretary determines is appropriate and feasible in order to carry out this paragraph in an effective and efficient manner.

(7) For purposes of this subchapter, the term "home dialysis supplies and equipment" means medically necessary supplies and equipment (including supportive equipment) required by an individual suffering from end-stage renal disease in connection with renal dialysis carried out in his home (as defined in regulations), including obtaining, installing, and maintaining such equipment.

(8) For purposes of this subchapter, the term "self-care home dialysis support services", to the extent permitted in regulation, means—

(A) periodic monitoring of the patient's home adaptation, including visits by qualified provider or facility personnel (as defined in regulations), so long as this is done in accordance with a plan prepared and periodically reviewed by a professional team (as defined in regulations) including the individual's physician;

(B) installation and maintenance of dialysis equipment;

(C) testing and appropriate treatment of the water; and

(D) such additional supportive services as the Secretary finds appropriate and desirable.

(9) For purposes of this subchapter, the term "self-care dialysis unit" means a renal dialysis facility or a distinct part of such facility or of a provider of services, which has been approved by the Secretary to make self-dialysis services, as defined by the Secretary in regulations, available to individuals who have been trained for self-dialysis. A self-care dialysis unit must, at a minimum, furnish the services, equipment and supplies needed for self-care dialysis, have patient-staff ratios which are appropriate to self-dialysis (allowing for such appropriate lesser degree of ongoing medical supervision and assistance of ancillary personnel than is required for full care maintenance dialysis), and meet such other requirements as the Secretary may prescribe with respect to the quality and cost-effectiveness of services.

(c) Renal disease network areas; coordinating councils, executive committees, and medical review boards; national end stage renal disease medical information system; functions of network organizations

(1)(A) For the purpose of assuring effective and efficient administration of the benefits provided under this section, the Secretary shall establish, in accordance with such criteria as he finds appropriate, renal disease network areas, such network organizations (including a coordinating council, an executive committee of such council, and a medical review board, for each network area) as he finds necessary to accomplish such purpose, and a national end stage renal disease medical information system. The Secretary may by regulations provide for such coordination of network planning and quality assurance activities and such exchange of data and information among agencies with responsibilities for health planning and quality assurance activities under Federal law as is consistent with the economical and efficient administration of this section and with the responsibilities established for network organizations under this section.

(B) At least one patient representative shall serve as a member of each coordinating council and executive committee.

(C) The Secretary shall, in regulations, prescribe requirements with respect to membership in network organizations by individuals (and the relatives of such individuals) (i) who have an ownership or control interest in a facility or provider which furnishes services referred to in section 1395x(s)(2)(F) of this title, or (ii) who have received remuneration from any such facility or provider in excess of such amounts as constitute reasonable compensation for services (including time and effort relative to the provision of professional medical services) or goods supplied to such facility or provider; and such requirements shall provide for the definition, disclosure, and, to the maximum extent consistent with effective administration, prevention of potential or actual financial or professional conflicts of interest with respect to decisions concerning the appropriateness, nature, or site of patient care.

(2) The network organizations of each network shall be responsible, in addition to such other duties and functions as may be prescribed by the Secretary, for—

(A) encouraging, consistent with sound medical practice, the use of those treatment settings most compatible with the successful rehabilitation of the patient;

(B) developing criteria and standards relating to the quality and appropriateness of patient care; and network goals with respect to the placement of patients in self-care settings and undergoing or preparing for transplantation;

(C) evaluating the procedure by which facilities and providers in the network assess the appropriateness of patients for proposed treatment modalities;

(D) identifying facilities and providers that are not cooperating toward meeting network goals and assisting such facilities and providers in developing appropriate plans for correction; and

(E) submitting an annual report to the Secretary on July 1 of each year which shall include a full statement of the network's goals, data on the network's performance in meeting its goals (including data on the comparative performance of facilities and providers with respect to the identification and placement of suitable candidates in self-care settings and transplantation), identification of those facilities that have consistently failed to cooperate with network goals, and recommendations with respect to the need for additional or alternative services or facilities in the network in order to meet the network goals, including self-dialysis training, transplantation, and organ procurement facilities.

(3) Where the Secretary determines, on the basis of the data contained in the network's annual report and such other relevant data as may be available to him, that a facility or provider has consistently failed to cooperate with network plans and goals, he may terminate or withhold certification of such facility or provider (for purposes of payment for services furnished to individuals with end stage renal disease) until he determines that such provider or facility is making reasonable and appropriate efforts to cooperate with the network's plans and goals.

(4) The Secretary shall, in determining whether to certify additional facilities or expansion of existing facilities within a network, take into account the network's goals and performance as reflected in the network's annual report.

(5) The Secretary, after consultation with appropriate professional and planning organizations, shall provide such guidelines with respect to the planning and delivery of renal disease services as are necessary to assist network organizations in their development of their respective networks' goals to promote the optimum use of self-dialysis and transplantation by suitable candidates for such modalities.

(6) It is the intent of the Congress that the maximum practical number of patients who are medically, socially, and psychologically suitable candidates for home dialysis or transplantation should be so treated. The Secretary shall consult with appropriate professional and network organizations and consider available evidence relating to developments in research, treatment methods, and technology for home dialysis and transplantation. The Secretary shall periodically submit to the Congress such legislative recommendations as the Secretary finds warranted on the basis of such consultation and evidence to further the national objective of maximizing the use of home dialysis and transplantation consistent with good medical practice.

(d) Donors of kidney for transplant surgery

Notwithstanding any provision to the contrary in section 426 of this title any individual who donates a kidney for transplant surgery shall be entitled to benefits under parts A and B of this subchapter with respect to such donation. Reimbursement for the reasonable expenses incurred by such an individual with respect to a kidney donation shall be made (without regard to the deductible, premium, and coinsurance provisions of this subchapter), in such manner as may be prescribed by the Secretary in regulations, for all resonable preparatory, operation, and postoperation recovery expenses associated with such donation, including but not limited to the expenses for which payment could be made if he were an eligible individual for purposes of parts A and B of this subchapter without regard to this subsection. Payments for postoperation recovery expenses shall be limited to the actual period of recovery.

(e) Reimbursement of providers and facilities for costs of artificial kidney and automated dialysis peritoneal machines to be used in dialyzing at home

(1) Notwithstanding any other provision of this subchapter, the Secretary may, pursuant to agreements with approved providers of services and renal dialysis facilities, reimburse such providers and facilities (without regard to the deductible and coinsurance provisions of this subchapter) for the reasonable cost of the purchase, installation, maintenance and reconditioning for subsequent use of artificial kidney and automated dialysis peritoneal machines (including supportive equipment) which are to be used exclusively by entitled individuals dialyzing at home.

(2) An agreement under this subsection shall require that the provider or facility will—

(A) make the equipment available for use only by entitled individuals dialyzing at home;

(B) recondition the equipment, as needed, for reuse by such individuals throughout the useful life of the equipment, including modification of the equipment consistent with advances in research and technology;

(C) provide for full access for the Secretary to all records and information relating to the purchase, maintenance, and use of the equipment; and

(D) submit such reports, data, and information as the Secretary may require with respect to the cost, management, and use of the equipment.

(3) For purposes of this section, the term "supportive equipment" includes blood pumps, heparin pumps, bubble detectors, other alarm systems, and such other items as the Secretary may determine are medically necessary.

(f) Experiments, studies, and pilot projects

(1) The Secretary shall initiate and carry out, at selected locations in the United States, pilot projects under which financial assistance in the purchase of new or used durable medical equipment for renal dialysis is provided to individuals suffering from end stage renal disease at the time home dialysis is begun, with provision for a trial period to assure successful adaptation to home dialysis before the actual purchase of such equipment.

(2) The Secretary shall conduct experiments to evaluate methods for reducing the costs of the end stage renal disease program. Such experiments shall include (without being limited to) reimbursement for nurses and dialysis technicians to assist with home dialysis, and reimbursement to family members assisting with home dialysis.

(3) The Secretary shall conduct experiments to evaluate methods of dietary control for reducing the costs of the end stage renal disease program, including (without being limited to) the use of protein-controlled products to delay the necessity for, or reduce the frequency of, dialysis in the treatment of end stage renal disease.

(4) The Secretary shall conduct a comprehensive study of methods for increasing public participation in kidney donation and other organ donation programs.

(5) The Secretary shall conduct a full and complete study of the reimbursement of physicians for services furnished to patients with end stage renal disease under this subchapter, giving particular attention to the range of payments to physicians for such services, the average amounts of such payments, and the number of hours devoted to furnishing such services to patients at home, in renal disease facilities, in hospitals, and elsewhere.

(6) The Secretary shall conduct a study of the number of patients with end stage renal disease who are not eligible for benefits with respect to such disease under this subchapter (by reason of this section or otherwise), and of the economic impact of such noneligibility of such individuals. Such study shall include consideration of mechanisms whereby governmental and other health plans might be instituted or modified to permit the purchase of actuarially sound coverage for the costs of end stage renal disease.

(7) The Secretary shall conduct a study of the medical appropriateness and safety of cleaning and reusing dialysis filters by home dialysis patients. In such cases in which the Secretary determines that such home cleaning and reuse of filters is a medically sound procedure, the Secretary shall conduct experiments to evaluate such home cleaning and reuse as a method of reducing the costs of the end stage renal disease program.

(8) The Secretary shall submit to the Congress no later than October 1, 1979, a full report on the experiments conducted under paragraphs (1), (2), (3), and (7), and the studies under paragraphs (4), (5), (6), and (7). Such report shall include any recommendations for legislative changes which the Secretary finds necessary or desirable as a result of such experiments and studies.

(g) Annual report to Congress

The Secretary shall submit to the Congress on April 1, 1979, and April 1 of each year thereafter a report on the end stage renal disease program, including but not limited to—

(1) the number of patients, nationally and by renal disease network, on dialysis (self-dialysis or otherwise) at home and in facilities;

(2) the number of new patients entering dialysis at home and in facilities during the year;

(3) the number of facilities providing dialysis and the utilization rates of those facilities;

(4) the number of kidney transplants, by source of donor organ;

(5) the number of patients awaiting organs for transplant;

(6) the number of transplant failures;

(7) the range of costs of kidney acquisitions, by type of facility and by region;

(8) the number of facilities providing transplants and the number of transplants performed per facility;

(9) patient mortality and morbidity rates;

(10) the average annual cost of hospitalization for ancillary problems in dialysis and transplant patients, and drug costs for transplant patients;

(11) medicare payment rates for dialysis, transplant procedures, and physician services, along with any changes in such rates during the year and the reasons for those changes;

(12) the results of cost-saving experiments;

(13) the results of basic kidney disease research conducted by the Federal Government, private institutions, and foreign governments;

(14) information on the activities of medical review boards and other networks organizations; and

(15) estimated program costs over the next five year.

(Aug. 14, 1935, ch. 531, title XVIII, § 1881, as added June 13, 1978, Pub. L. 95-292, § 2, 92 Stat. 308.)

EFFECTIVE DATE

Section effective with respect to services, supplies, and equipment furnished after the third calendar month beginning after June 13, 1978, except that provisions for the implementation of an incentive reimbursement system for dialysis services furnished in facilities and providers to become effective with respect to a facility's or provider's first accounting period beginning after the last day of the twelfth month following the month of June 1978, and except that provisions for reimbursement rates for home dialysis to become effective on Apr. 1, 1979, see section 6 of Pub. L. 95-292, set out as an Effective Date of 1978 Amendment note under section 426 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 426-1, 1395f, 1395*l*.

SUBCHAPTER XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 242b, 254a-1, 254b, 254c, 254e, 254h, 294v, 300a-26, 300e, 300e-6, 300m-6, 602, 603, 713, 1301, 1306, 1308, 1309, 1315, 1316, 1318, 1320a-1, 1320a-2, 1320a-3, 1320a-5, 1320c-1, 1320c-4, 1320c-7, 1320c-20, 1320c-21, 1382, 1382g, 1383c, 1395b-1, 1395v, 1395x, 1395y, 1395z, 1395cc, 1397a, 1397b, 1397c, 2689e, 3013, 3026, 3035b, 3035c, 3524 of this title; title 7 section 3178; title 12 sections 1715w, 1715z-7; title 38 section 4108.

§ 1396. Appropriations

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 1396a. State plans for medical assistance

(a) Contents

A State plan for medical assistance must—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) provide (A) such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Secretary shall exercise no authority with respect to the selection, tenure of office, and compensation of any individual employed in accordance with such methods, and including

provision for utilization of professional medical personnel in the administration and, where administered locally, supervision of administration of the plan) as are found by the Secretary to be necessary for the proper and efficient operation of the plan, (B) for the training and effective use of paid subprofessional staff, with particular emphasis on the full-time or part-time employment of recipients and other persons of low income, as community service aides, in the administration of the plan and for the use, of nonpaid or partially paid volunteers in a social service volunteer program in providing services to applicants and recipients and in assisting any advisory committees established by the State agency, and (C) that each State or local officer or employee who is responsible for the expenditure of substantial amounts of funds under the State plan, each indivdual who formerly was such an officer or employee, and each partner of such an officer or employee shall be prohibited from committing any act, in relation to any activity under the plan, the commission of which, in connection with any activity concerning the United States Government, by an officer or employee of the United States Government, an individual who was such an officer or employee, or a partner of such an officer or employee is prohibited by section 207 or 208 of title 18.

[*See main edition for text of (5) to (12)*]

(13) provide—

[*See main edition for text of (A) to (D)*]

(E) effective July 1, 1976, for payment of the skilled nursing facility and intermediate care facility services provided under the plan on a reasonable cost related basis, as determined in accordance with methods and standards which shall be developed by the State on the basis of cost-finding methods approved and verified by the Secretary; and

(F) for payment for services described in section 1396d(a)(2)(B) of this title provided by a rural health clinic under the plan of 100 percent of costs which are reasonable and related to the cost of furnishing such services or based on such other tests of reasonableness, as the Secretary may prescribe in regulations under section 1395*l*(a)(3) of this title, or, in the case of services to which those regulations do not apply, on such tests of reasonableness as the Secretary may prescribe in regulations under this subparagraph;

[*See main edition for text of (14) to (22)*]

(23) except in the case of Puerto Rico, the Virgin Islands, and Guam, provide that any individual eligible for medical assistance (including drugs) may obtain such assistance from any institution, agency, community pharmacy, or person, qualified to perform the service or services required (including an organization which provides such services, or arranges for their availability, on a prepayment basis), who undertakes to provide him such services; and a State plan shall not be deemed to be out of compliance with the requirements of this paragraph or paragraph (1) or (10) solely by reason of the fact that the State (or any political subdivision thereof) has entered into a contract with an organization which has agreed to provide care and services in addition to those offered under the State plan to individuals eligible for medical assistance who reside in the geographic area served by such organization and who elect to obtain such care and services from such organization, or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic;

[*See main edition for text of (24) and (25)*]

(26) effective July 1, 1969, provide (A) for a regular program of medical review (including medical evaluation) of each patient's need for skilled nursing facility care or (in the case of individuals who are eligible therefor under the State plan) need for care in a mental hospital, a written plan of care, and, where applicable, a plan of rehabilitation prior to admission to a skilled nursing facility; (B) for periodic inspections to be made in all skilled nursing facilities and mental institutions (if the State plan includes care in such institutions) within the State by one or more medical review teams (composed of physicians and other appropriate health and social service personnel, or, in the case of skilled nursing facilities, composed of physicians or registered nurses and other appropriate health and social service personnel) of (i) the care being provided in such nursing facilities (and mental institutions, if care therein is provided under the State plan) to persons receiving assistance under the State plan, (ii) with respect to each of the patients receiving such care, the adequacy of the services available in particular nursing facilities (or institutions) to meet the current health needs and promote the maximum physical well-being of patients receiving care in such facilities (or institutions), (iii) the necessity and desirability of the continued placement of such patients in such nursing facilities (or institutions), and (iv) the feasibility of meeting their health care needs through alternative institutional or noninstitutional services; and (C) for the making by such team or teams of full and complete reports of the findings resulting from such inspections together with any recommendations to the State agency administering or supervising the administration of the State plan;

(27) provide for agreements with every person or institution providing services under the State plan under which such person or institution agrees (A) to keep such records as are necessary fully to disclose the extent of the services provided to individuals receiving assistance under the State plan, and (B) to furnish the State agency or the Secretary with such information, regarding any payments claimed by such person or institution for providing services under the State plan, as the State agency or the Secretary may from time to time request;

[*See main edition for text of* (*28*) *to* (*31*)]

(32) provide that no payment under the plan for any care or service provided to an individual shall be made to anyone other than such individual or the person or institution providing such care or service, under an assignment or power of attorney or otherwise; except that—

(A) in the case of any care or service provided by a physician, dentist, or other individual practitioner, such payment may be made (i) to the employer of such physician, dentist, or other practitioner if such physician, dentist, or practitioner is required as a condition of his employment to turn over his fee for such care or service to his employer, or (ii) (where the care or service was provided in a hospital, clinic, or other facility) to the facility in which the care or service was provided if there is a contractual arrangement between such physician, dentist, or practitioner and such facility under which such facility submits the bill for such care or service; and

(B) nothing in this paragraph shall be construed (i) to prevent the making of such a payment in accordance with an assignment from the person or institution providing the care or service involved if such assignment is made to a governmental agency or entity or is established by or pursuant to the order of a court of competent jurisdiction, or (ii) to preclude an agent of such person or institution from receiving any such payment if (but only if) such agent does so pursuant to an agency agreement under which the compensation to be paid to the agent for his services for or in connection with the billing or collection of payments due such person or institution under the plan is unrelated (directly or indirectly) to the amount of such payments or the billings therefor, and is not dependent upon the actual collection of any such payment;

[*See main edition for text of* (*33*) *and* (*34*)]

(35) provide that any intermediate care facility receiving payments under such plan complies with the requirements of section 1320a-3 of this title;

(36) provide that within 90 days following the completion of each survey of any health care facility, laboratory, agency, clinic, or organization, by the appropriate State agency described in paragraph (9), such agency shall (in accordance with regulations of the Secretary) make public in readily available form and place the pertinent findings of each such survey relating to the compliance of each such health care facility, laboratory, clinic, agency, or organization with (A) the statutory conditions of participation imposed under this subchapter, and (B) the major additional conditions which the Secretary finds necessary in the interest of health and safety of individuals who are furnished care or services by any such facility, laboratory, clinic, agency, or organization;

(37) provide for claims payment procedures which (A) ensure that 90 per centum of claims for payment (for which no further written information or substantiation is required in order to make payment) made for services covered under the plan and furnished by health care practitioners through individual or group practices or through shared health facilities are paid within 30 days of the date of receipt of such claims and that 99 per centum of such claims are paid within 90 days of the date of receipt of such claims, and (B) provide for procedures of prepayment and postpayment claims review, including review of appropriate data with respect to the recipient and provider of a service and the nature of the service for which payment is claimed, to ensure the proper and efficient payment of claims and management of the program;

(38) require that an entity (other than an individual practitioner or a group of practitioners) that furnishes, or arranges for the furnishing of, items or services under the plan, shall supply (within such period as may be specified in regulations by the Secretary or by the single State agency which administers or supervises the administration of the plan) upon request specifically addressed to such entity by the Secretary or such State agency, respectively, (A) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom such entity has had, during the previous twelve months, business transactions in an aggregate amount in excess of $25,000, and (B) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between such entity and any wholly owned supplier or between such entity and any subcontractor;

(39) provide that, subject to subsection (g) of this section, whenever the single State agency which administers or supervises the administration of the State plan is notified by the Secretary under section 1395y(e)(2)(A) of this title that a physician or other individual practitioner has been suspended from participation in the program under subchapter XVIII of this chapter, the agency shall promptly suspend such physician or practitioner from participation in the plan for not less than the period specified in such notice, and no payment may be made under the plan with respect to any item or service furnished by such physician or practitioner during the period of the suspension under this subchapter; and

(40) require each health services facility or organization which receives payments under the plan and of a type for which a uniform reporting system has been established under section 1320a(a) of this title to make reports to the Secretary of information described in such section in accordance with the uniform reporting system (established under such section) for that type of facility or organization.

Notwithstanding paragraph (5), if on January 1, 1965, and on the date on which a State submits its plan for approval under this subchapter, the State agency which administered or supervised the administration of the plan of such State approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) was different from the State agency which administered or supervised the administration of the State plan approved under subchapter I of this chapter (or subchapter XVI of this chapter, insofar as it relates to the aged), the State agency which administered or supervised the administration of such plan approved under subchapter X of this chapter (or subchapter XVI of this chapter, insofar as it relates to the blind) may be designated to administer or supervise the administration of the portion of the State plan for medical assistance which relates to blind individuals and a different State agency may be established or designated to administer or supervise the administration of the rest of the State plan for medical assistance; and in such case the part of the plan which each such agency administers, or the administration of which each such agency supervises, shall be regarded as a separate plan for purposes of this subchapter (except for purposes of paragraph (10)). For purposes of paragraphs (9)(A), (29), (31), and (33), and of section 1396b(i)(4) of this title, the terms "skilled nursing facility" and "nursing home" do not include a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts.

For purposes of paragraph (10) any individual who, for the month of August 1972, was eligible for or receiving aid or assistance under a State plan approved under subchapter I, X, XIV, or XVI, of this chapter, or part A of subchapter IV of this chapter and who for such month was entitled to monthly insurance benefits under subchapter II of this chapter shall for purposes of this subchapter only be deemed to be eligible for financial aid or assistance for any month thereafter if such individual would have been eligible for financial aid or assistance for such month had the increase in monthly insurance benefits under subchapter II of this chapter resulting from enactment of Public Law 92-336 not been applicable to such individual.

The requirement of clause (A) of paragraph (37) with respect to a State plan may be waived by the Secretary if he finds that the State has exercised good faith in trying to meet such requirement.

[*See main edition for text of* (*b*) *to* (*f*)]

(g) Waiver of suspension of payments to physician or practitioner suspended from participating in approved State plan; procedure applicable

The Secretary may waive suspension under subsection (a)(39) of this section of a physician's or practitioner's participation in a State plan approved under this subchapter and of the prohibition under such subsection of payment for any item or service furnished by him during the period of such suspension, if the single State agency which administers or supervises the administration of the plan submits a request to the Secretary for such waiver and if the Secretary approves such request.

(As amended Oct. 25, 1977, Pub. L. 95-142, §§ 2(a)(3), (b)(1), 3(c)(1), 7(b), (c), 9, 19(b)(2), 20(b), 91 Stat. 1176, 1178, 1193, 1195, 1204, 1207; Dec. 13, 1977, Pub. L. 95-210, § 2(c), 91 Stat. 1488; Nov. 1, 1978, Pub. L. 95-559, § 14(a)(1), 92 Stat. 2140.)

AMENDMENTS

1978—Subsec. (a)(4)(C). Pub. L. 95-559 added cl. (C).

1977—Subsec. (a)(13)(F). Pub. L. 95-210, § 2(c)(1), added subpar. (F).

Subsec. (a)(23). Pub. L. 95-210, § 2(c)(2), added ", or by reason of the fact that the plan provides for payment for rural health clinic services only if those services are provided by a rural health clinic" following "who elect to obtain such care and services from such organization".

Subsec. (a)(26). Pub. L. 95-142, § 20(b), added provision relating to staff of skilled nursing facilities.

Subsec. (a)(27)(B). Pub. L. 95-142, § 9, added "or the Secretary" following "State agency" wherever appearing therein.

Subsec. (a)(32). Pub. L. 95-142, § 2(a)(3), substituted provisions relating to terms, conditions, etc., for payments under an assignment or power of attorney, for provisions relating to terms, conditions, etc., for payments to anyone other than the individual receiving any care or service provided by a physician, dentist, or other individual practitioner, or such physician, dentist, or practitioner.

Subsec. (a)(35). Pub. L. 95-142, § 3(c)(1)(A), substituted provisions relating to requirements for intermediate care facilities to comply with section 1320a-3 of this title for provisions relating to disclosure requirements, effective Jan. 1, 1973, applicable to intermediate care facilities with respect to ownership, corporate, status, etc.

Subsec. (a)(37). Pub. L. 95-142, §§ 2(b)(1)(C), 3(c)(1)(C), 7(b)(1), added subsec. (a)(37) and made and struck out minor changes in phraseology, necessitating no changes in text.

Subsec. (a)(38). Pub. L. 95-142, §§ 3(c)(1)(D), 7(b)(2), 19(b)(2)(A) added subsec. (a)(38) and made and struck out minor changes in phraseology necessitating no changes in text.

Subsec. (a)(39). Pub. L. 95-142, §§ 7(b)(3), 19(b)(2)(B), added par. (39).

Subsec. (a)(40). Pub. L. 95-142, § 19(b)(2)(C), added par. (40).

Subsec. (a), foll. par. (40). Pub. L. 95-142, § 2(b)(1)(D) added paragraph relating to waiver of requirement of clause (A) of par. (37).

Subsec. (g). Pub. L. 95-142, § 7(c), added subsec. (g).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 14(a)(2) of Pub. L. 95-559 provided that:

"(A) Except as provided in subparagraph (B), the amendments made by paragraph (1) [enacting subsec. (a)(4)(C) of this section] shall take effect one hundred and eighty days after the date of the enactment of this Act [Nov. 1, 1978].

"(B) In the case of a State plan for medical assistance under title XIX of the Social Security Act [this subchapter] which the Secretary determines requires State legislation in order for the plan to meet the requirement added by the amendments made by paragraph (1), such amendments shall not apply with respect to such State plan before ninety days after the close of the first regular session of the State legislature that begins after the date of the enactment of this Act [Nov. 1, 1978]."

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment of subsec. (a)(13)(F) and (23) by Pub. L. 95-210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after the first day of the first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95-210, set out as an Effective Date of 1977 Amendment note under section 1395cc of this title.

Amendment of subsec. (a)(32) by section 2(a)(3) of Pub. L. 95-142 applicable with respect to care and services furnished on or after Oct. 25, 1977, see section 2(a)(4) of Pub. L. 95-142, set out as an Effective Date of 1977 Amendment note under section 1395g of this title.

Amendment of subsec. (a)(35) and (38) by section 3(c)(1) of Pub. L. 95-142 effective Jan. 1, 1978, see section 3(e) of Pub. L. 95-142, set out as an Effective Date note under section 1320a-3 of this title.

Section 2(b)(2) of Pub. L. 95-142 provided that: "The amendments made by paragraph (1) [adding par. (37) and a new unnumbered paragraph at the end of subsec. (a)] shall apply to calendar quarters beginning on and after July 1, 1978, with respect to State plans approved under title XIX of the Social Security Act [subchapter XIX of this chapter]."

Section 7(e)(2) of Pub. L. 95-142 provided that: "The amendment made by subsection (b) [adding subsec. (a)(39) of this section] shall become effective on January 1, 1978."

Section 19(c)(2) of Pub. L. 95-142 provided that:

"(A) The amendments made by subsection (b) [adding subsec. (a)(40) of this section and amending section 1395x(v)(1)(F) of this title] shall apply with respect to operations of a hospital, skilled nursing facility, or intermediate care facility, on and after the first day of its first fiscal year which begins after the end of the six-month period beginning on the date a uniform reporting system is established (under section 1121(a) of the Social Security Act) [section 1320a(a) of this title] for that type of health services facility.

"(B) The amendments made by subsection (b) [adding subsec. (a)(40) of this section and amending section 1395x(v)(1)(F) of this title] shall apply, with respect to the operation of a health services facility or organization which is neither a hospital, a skilled nursing facility, nor an intermediate care facility, on and after the first day of its first fiscal year which begins after such date as the Secretary of Health, Education, and Welfare determines to be appropriate for the implementation of the reporting requirement for that type of facility or organization.

"(C) Except as provided in subparagraphs (A) and (B), the amendments made by subsection (b)(2) [adding subsec. (a)(40) of this section] shall apply, with respect to State plans approved under title XIX of the Social Security Act [this subchapter], on and after October 1, 1977."

Amendment of subsec. (a)(26) by section 20(b) of Pub. L. 95-142 effective on Oct. 1, 1977, and the Secretary to adjust payments made to States under section 1396b of this title to reflect such amendment, see section 20(c) of Pub. L. 95-142, set out as an Effective Date of 1977 Amendment note under section 1396b of this title.

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 300e-17, 1315, 1395v, 1396b, 1396d, 1396g, 1396i, 4728 of this title; title 21 section 1173.

§ 1396b. Payment to States

(a) Computation of amount

From the sums appropriated therefor, the Secretary (except as otherwise provided in this section) shall pay to each State which has a plan approved under this subchapter, for each quarter, beginning with the quarter commencing January 1, 1966—

[*See main edition for text of (1) and (2)*]

(3) an amount equal to—

[*See main edition for text of (A)*]

(B) 75 per centum of so much of the sums expended during such quarter as are attributable to the operation of systems (whether such systems are operated directly by the State or by another person under a contract with the State) of the type described in subparagraph (A)(i) (whether or not designed, developed, or installed with assistance under such subparagraph) which are approved by the Secretary and which include provision for prompt written notice to each individual who is furnished services covered by the plan, or to each individual in a sample group of individuals who are furnished such services, of the specific services (other than confidential services) so covered, the name of the person or persons furnishing the services, the date or dates on which the services were furnished, and the amount of the payment or payments made under the plan on account of the services; plus

[*See main edition for text of (4) and (5)*]

(6) subject to subsection (b)(3) of this section, an amount equal to 90 per centum of the sums expended during each quarter beginning on or after October 1, 1977, and ending before October 1, 1980, with respect to costs incurred during such quarter (as found necessary by the Secretary for the elimination of fraud in the provision and administration of medical assistance provided under the State plan) which are attributable to the establishment and operation of (including the training of personnel employed by) a State medicaid fraud control unit (described in subsection (q) of this section); plus

(7) an amount equal to 50 per centum of the remainder of the amounts expended during such quarter as found necessary by the Secretary for the proper and efficient administration of the State plan.

(b) Quarterly expenditures beginning after December 31, 1969

[*See main edition for text of (1) and (2)*]

(3) The amount of funds which the Secretary is otherwise obligated to pay a State during a quarter under subsection (a)(6) of this section may not exceed the higher of—

(A) $125,000, or

(B) one-quarter of 1 per centum of the sums expended by the Federal, State, and local governments during the previous quarter in carrying out the State's plan under this subchapter.

[*See main edition for text of (c) to (f)*]

(g) Decrease in Federal medical assistance percentage of amounts paid for services furnished under State plan after June 30, 1973

(1) Subject to paragraph (3), with respect to amounts paid for the following services furnished under the State plan after June 30, 1973 (other than services furnished pursuant to a contract with a health maintenance organization as defined in section 1395mm of this title), the Federal medical assistance percentage shall be decreased as follows: After an individual has received care as an inpatient in a hospital (including an institution for tuberculosis), skilled nursing facility or intermediate care facility on 60 days, or in a hospital for mental diseases on 90 days (whether or not such days are consecutive), during any fiscal year, which for purposes of this section means the four calendar quarters ending with June 30, the Federal medical assistance percentage with respect to amounts paid for any such care furnished thereafter to such individual in the same fiscal year shall be decreased by a per centum thereof (determined under paragraph (5)) unless the State agency responsible for the administration of the plan makes a showing satisfactory to the Secretary that, with respect to each calendar quarter for which the State submits a request for payment at the full Federal medical assistance percentage for amounts paid for inpatient hospital services (including tuberculosis hospitals), skilled nursing facility services, or intermediate care facility services furnished beyond 60 days (or inpatient mental hospital services furnished beyond 90 days), there is in operation in the State an effective program of control over utilization of such services; such a showing must include evidence that—

[*See main edition for text of (A) to (D)*]

In determining the number of days on which an individual has received services described in this subsection, there shall not be counted any days with respect to which such individual is entitled to have payments made (in whole or in part) on his behalf under section 1395d of this title.

(2) The Secretary shall, as part of his validation procedures under this subsection, conduct timely sample onsite surveys of private and public institutions in which recipients of medical assistance may receive care and services under a State plan approved under this subchapter, and his findings with respect to such surveys (as well as the showings of the State agency required under this subsection) shall be made available for public inspection.

(3)(A) No reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under this subsection shall take effect—

(i) if such reduction is due to the State's unsatisfactory or invalid showing made with respect to a calendar quarter beginning before January 1, 1977;

(ii) before January 1, 1978;

(iii) unless a notice of such reduction has been provided to the State at least 30 days before the date such reduction takes effect; or

(iv) due to the State's unsatisfactory or invalid showing made with respect to a calendar quarter beginning after September 30, 1977, unless notice of such reduction has been provided to the State no later than the first day of the fourth calendar quarter following the calendar quarter with respect to which such showing was made.

(B) The Secretary shall waive application of any reduction in the Federal medical assistance percentage of a State otherwise required to be imposed under paragraph (1) because a showing by the State, made under such paragraph with respect to a calendar quarter ending after January 1, 1977, and before October 1, 1977, is determined to be either unsatisfactory under such paragraph or invalid under paragraph (2), if the Secretary determines that the State's showing made under paragraph (1) with respect to the calendar quarter ending on December 31, 1977, is satisfactory under such paragraph and is valid under paragraph (2).

(4)(A) The Secretary may not find the showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory if the showing is submitted to the Secretary later than the 30th day after the last day of the calendar quarter, unless the State demonstrates to the satisfaction of the Secretary good cause for not meeting such deadline.

(B) The Secretary shall find a showing of a State, with respect to a calendar quarter under paragraph (1), to be satisfactory under such paragraph with respect to the requirement that the State conduct annual onsite inspections in mental hospitals, skilled nursing facilities, and intermediate care facilities under paragraph (26) and (31) of section 1396a(a) of this title, if the showing demonstrates that the State has conducted such an onsite inspection during the 12-month period ending on the last date of the calendar quarter—

(i) in each of not less than 98 per centum of the number of such hospitals and facilities requiring such inspection, and

(ii) in every such hospital or facility which has 200 or more beds,

and that, with respect to such hospitals and facilities not inspected within such period, the State has exercised good faith and due diligence in attempting to conduct such inspection, or if the State demonstrates to the satisfaction of the Secretary that it would have made such a showing but for failings of a technical nature only.

(5) In the case of a State's unsatisfactory or invalid showing made with respect to a type of facility or institutional services in a calendar quarter, the per centum amount of the reduction of the State's Federal medical assistance percentage for that type of services under paragraph (1) is equal to 33⅓ per centum multiplied by a fraction, the denominator of which is equal to the total number of patients receiving that type of services in that quarter under the State plan in facilities or institutions for which a showing was required to be made under this subsection, and the numerator of which is equal to the number of such patients receiving such type of services in that quarter in those

facilities or institutions for which a satisfactory and valid showing was not made for that calendar quarter.

(6) The Secretary shall submit to Congress, not later than sixty days after the end of such calendar quarter, a report on—

(A) his determination as to whether or not each showing, made under paragraph (1) by a State with respect to the calendar quarter, has been found to be satisfactory under such paragraph;

(B) his review (through onsite surveys and otherwise) under paragraph (2) of the validity of showings previously submitted by a State; and

(C) any reduction in the Federal medical assistance percentage he has imposed on a State because of its submittal under paragraph (1) of an unsatisfactory or invalid showing.

[*See main edition for text of* (*h*)]

(i) Payment for services performed after December 31, 1972; restrictions

Payment under the preceding provisions of this section shall not be made—

[*See main edition for text of* (*1*)]

(2) with respect to any amount paid for services furnished under the plan after December 31, 1972, by a provider or other person during any period of time, if payment may not be made under subchapter XVIII of this chapter with respect to services furnished by such provider or person during such period of time solely by reason of a determination by the Secretary under section 1395y(d)(1) of this title or under clause (D), (E), or (F) of section 1395cc(b)(2) of this title, or by reason of noncompliance with a request made by the Secretary under clause (C)(ii) of such section 1395cc(b)(2) or under section 1396a(a)(38) of this title; or

[*See main edition for text of* (*3*) *and* (*4*); (*j*) *to* (*l*)]

(m) Definition; duties and functions of Secretary; payments to States; provisional determination of status by State

[*See main edition for text of* (*1*)(*A*)]

(B) The duties and functions of the Secretary, insofar as they involve making determinations as to whether an organization is a health maintenance organization within the meaning of subparagraph (A), shall be integrated with the administration of section 300e–11(a) and (b) of this title.

(2)(A) Except as provided in subparagraphs (B) and (C), no payment shall be made under this subchapter to a State with respect to expenditures incurred by it for payment (determined under a prepaid capitation basis or under any other risk basis) for services provided by any entity which is responsible for the provision of inpatient hospital services and any other service described in paragraph (2), (3), (4), (5), or (7) of section 1396d(a) of this title or for the provision of any three or more of the services described in such paragraphs unless—

(i) the Secretary (or the State as authorized by paragraph (3)) has determined that the entity is a health maintenance organization as defined in paragraph (1); and

(ii) less than one-half of the membership of the entity consists of individuals who (I) are insured for benefits under part B of subchapter XVIII of this chapter or for benefits under both parts A and B of such subchapter, or (II) are eligible to receive benefits under this subchapter.

(B) Subparagraph (A) does not apply with respect to payments under this subchapter to a State with respect to expenditures incurred by it for payment for services provided by an entity which—

(i)(I) received a grant of at least $100,000 in the fiscal year ending June 30, 1976, under section 254b(d)(1)(A) or 254c(d)(1) of this title, and (II) for the period beginning July 1, 1976, and ending on the expiration of the period for which payments are to be made under this subchapter has been the recipient of a grant under either such section; and

[*See main edition for text of* (*II*); (*ii*) *and* (*iii*)]

(C) Subparagraph (A)(ii) shall not apply with respect to payments under this subchapter to a State with respect to expenditures incurred by it for payment for services by an entity during the three-year period beginning on October 8, 1976, or beginning on the date the entity qualifies as a health maintenance organization (as determined by the Secretary), whichever occurs later, but only if the entity demonstrates to the satisfaction of the Secretary by the submission of plans for each year of such three-year period that it is making continuous efforts and progress toward achieving compliance with subparagraph (A)(ii).

[*See main edition for text of* (*3*)]

(n) State agency action upon disclosure or failure to disclose required information by institution, organization, etc.

The State agency may refuse to enter into any contract or agreement with a hospital, nursing home, or other institution, organization, or agency for purposes of participation under the State plan, or otherwise to approve an institution, organization, or agency for such purposes, if any person, who has a direct or indirect ownership or control interest of 5 percent or more in such institution, organization, or agency, or who is an officer, director, agent, or managing employee (as defined in section 1320a–5(b) of this title) of such institution, organization, or agency, is a person described in section 1320a–5(a) of this title (whether or not such institution, organization, or agency has in effect an agreement entered into with the Secretary pursuant to section 1395cc of this title or is subject to a suspension of payment order issued under subsection (j) of this section); and, notwithstanding any other provision of this section, the State agency may terminate any such contract, agreement, or approval if it determines that the institution, organization, or agency did not fully and accurately make any disclosure required of it by section 1320a–5(a) of this title at the time such contract or agreement was entered into or such approval was given.

(o) Restrictions on authorized payments to States

Notwithstanding the preceding provisions of this section, no payment shall be made to a State under the preceding provisions of this section for expenditures for medical assistance provided for an individual under its State plan approved under this subchapter to the extent that a private insurer (as defined by the Secretary by regulation) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligation because the individual is eligible for or is provided medical assistance under the plan.

(p) Assignment of rights of payment; incentive payments for enforcement and collection

(1) When a political subdivision of a State makes, for the State of which it is a political subdivision, or one State makes, for another State, the enforcement and collection of rights of support or payment assigned under section 1396k of this title, pursuant to a cooperative arrangement under such section (either within or outside of such State), there shall be paid to such political subdivision or such other State from amounts which would otherwise represent the Federal share of payments for medical assistance provided to the eligible individuals on whose behalf such enforcement and collection was made, an amount equal to 15 percent of any amount collected which is attributable to such rights of support or payment.

(2) Where more than one jurisdiction is involved in such enforcement or collection, the amount of the incentive payment determined under paragraph (1) shall be allocated among the jurisdictions in a manner to be prescribed by the Secretary.

(q) State medicaid fraud control unit defined

For the purposes of this section, the term "State medicaid fraud control unit" means a single identifiable entity of the State government which the Secretary certifies (and annually recertifies) as meeting the following requirements:

(1) The entity (A) is a unit of the office of the State Attorney General or of another department of State government which possesses statewide authority to prosecute individuals for criminal violations, (B) is in a State the constitution of which does not provide for the criminal prosecution of individuals by a statewide authority and has formal procedures, approved by the Secretary, that (i) assure its referral of suspected criminal violations relating to the program under this subchapter to the appropriate authority or authorities in the State for prosecution and (ii) assure its assistance of, and coordination with, such authority or authorities in such prosecutions, or (C) has a formal working relationship with the office of the State Attorney General and has formal procedures (including procedures for its referral of suspected criminal violations to such office) which are approved by the Secretary and which provide effective coordination of activities between the entity and such office with respect to the detection, investigation, and prosecution of suspected criminal violations relating to the program under this subchapter.

(2) The entity is separate and distinct from the single State agency that administers or supervises the administration of the State plan under this subchapter.

(3) The entity's function is conducting a statewide program for the investigation and prosecution of violations of all applicable State laws regarding any and all aspects of fraud in connection with any aspect of the provision of medical assistance and the activities of providers of such assistance under the State plan under this subchapter.

(4) The entity has procedures for reviewing complaints of the abuse and neglect of patients of health care facilities which receive payments under the State plan under this subchapter, and, where appropriate, for acting upon such complaints under the criminal laws of the State or for referring them to other State agencies for action.

(5) The entity provides for the collection, or referral for collection to a single State agency, of overpayments that are made under the State plan to health care facilities and that are discovered by the entity in carrying out its activities.

(6) The entity employes such auditors, attorneys, investigators, and other necessary personnel and is organized in such a manner as is necessary to promote the effective and efficient conduct of the entity's activities.

(7) The entity submits to the Secretary an application and annual reports containing such information as the Secretary determines, by regulation, to be necessary to determine whether the entity meets the other requirements of this subsection.

(As amended Aug. 1, 1977, Pub. L. 95-83, title I, § 105(a)(1), (2), 91 Stat. 384; Oct. 25, 1977, Pub. L. 95-142, §§ 3(c)(2), 8(c), 10(a), 11(a), 17(a)-(c), 20(a), 91 Stat. 1179, 1195, 1196, 1201, 1205; Nov. 1, 1978, Pub. L. 95-559, § 14(c), 92 Stat. 2141; Nov. 10, 1978, Pub. L. 95-626, title I, § 102(b)(3), 92 Stat. 3551; Oct. 4, 1979, Pub. L. 96-79, title I, § 128, 93 Stat. 629.)

REFERENCES IN TEXT

The Appalachian Regional Development Act of 1965, referred to in subsec. (m)(2)(B)(ii)(I), is Pub. L. 89-4, Mar. 9, 1965, 79 Stat. 5, as amended, which was classified generally to § 1 et seq. of Title 40, App., Public Buildings, Property, and Works, and was terminated, with the exception of section 201 of such Act, on Oct. 1, 1979, pursuant to section 405 of such Act.

AMENDMENTS

1979—Subsec. (m)(2)(C). Pub. L. 96-79 substituted "the date the entity qualifies as a health maintenance organization (as determined by the Secretary)" for "the date the entity enters into a contract with the State under this subchapter for the provision of health services on a prepaid risk basis".

1978—Subsec. (m)(1)(B). Pub. L. 95-559 struck out "shall be administered through the Assistant Secretary for Health and in the Office of the Assistant Secretary for Health, and the administration of such duties and functions" following "subparagraph (A),".

Subsec. (m)(2)(B)(i)(I). Pub. L. 95-626 substituted "section 254b(d)(1)(A)" for "section 247d(d)(1)(A)".

1977—Subsec. (a)(3)(B). Pub. L. 95-142, § 10(a), added provisions relating to notice to individuals in a sample group and provisions exempting notice respecting confidential services from notice requirements.

Subsec. (a)(6). Pub. L. 95-142, § 17(a), added par. (6). Former par. (6) was redesignated as (7).

Subsec. (a)(7). Pub. L. 95-142, § 17(a), redesignated former par. (6) as (7).

Subsec. (b)(3). Pub. L. 95-142, § 17(b), added par. (3).

Subsec. (g). Pub. L. 95-142, § 20(a), in par. (1) substituted "Subject to paragraph (3), with respect to" for "With respect to" and "by a per centum thereof (determined under paragraph (5))" for "by 33⅓ per centum thereof", in par. (2) added "timely" preceding "sample onsite surveys", and added pars. (3) to (6).

Subsec. (i)(2). Pub. L. 95-142, § 3(c)(2), added provisions relating to noncompliance under sections 1395cc(b)(2) and 1396a(a)(38) of this title.

Subsec. (m)(2)(A). Pub. L. 95-83, § 105(a)(1), in revising the text, incorporated former cl. (i) (I) and (II) provisions in the introductory text relating to responsibility for providing inpatient hospital services and other described services, substituting "capitation basis" for "capitation risk basis" and inserting the word "unless"; redesignated as cl. (i) former cl. (ii), substituting "has determined that the entity is a health maintenance organization" for "has not determined to be a health maintenance organization"; and redesignated as cl. (ii) former cl. (iii), substituting "less than one-half of the membership of the entity consists of individuals who (I) are insured for benefits under part B of subchapter XVIII of this chapter or for benefits under both parts A and B of such subchapter, or (II) are eligible to receive benefits under this subchapter" for "more than one-half of the membership of which consists of individuals who are insured under parts A and B of subchapter XVIII of this chapter or recipients of benefits under this subchapter."

Subsec. (m)(2)(C). Pub. L. 95-83, § 105(a)(2), substituted reference to subpar. "(A)(ii)" for "(A)(iii)" wherever appearing.

Subsec. (n). Pub. L. 95-142, § 8(c), added subsec. (n).

Subsecs. (o), (p). Pub. L. 95-142, § 11(a), added subsecs. (o) and (p).

Subsec. (q). Pub. L. 95-142, § 17(c), added subsec. (q).

EFFECTIVE DATE OF 1977 AMENDMENTS

Amendment of subsec. (i)(2) by section 3(c)(2) of Pub. L. 95-142 effective Jan. 1, 1978, see section 3(e) of Pub. L. 95-142, set out as an Effective Date note under section 1320a-3 of this title.

Subsec. (n) effective with respect to contracts, agreements, etc., made on and after the first day of the fourth month beginning after Oct. 25, 1977, see section 8(e) of Pub. L. 95-142, set out as an Effective Date note under section 1320a-5 of this title.

Section 10(b) of Pub. L. 95-142 provided that: "The amendment made by subsection (a) [amending subsec. (a)(3)(B) of this section] shall apply with respect to calendar quarters beginning after the date of the enactment of this Act [Oct. 25, 1977]."

Section 11(c) of Pub. L. 95-142 provided that: "The amendment made by subsection (a) [adding subsecs. (*o*) and (p) of this section] shall apply with respect to medical assistance provided, under a State plan approved under title XIX of the Social Security Act [this subchapter], on and after January 1, 1978."

Section 17(e)(1) of Pub. L. 95-142 provided that: "The amendment made by subsection (a) [adding subsec. (a)(6) of this section and redesignating former subsec. (a)(6) of this section as (a)(7)] shall apply with respect to calendar quarters beginning after September 30, 1977."

Section 20(c) of Pub. L. 95-142, as amended by Pub. L. 95-292, § 8(e), June 13, 1978, 92 Stat. 316, provided that:

"(1) Except as provided in paragraph (2), the amendments made by this section [amending subsec. (g) of this section and section 1396a(a)(26) of this title] shall be effective on October 1, 1977, and the Secretary of Health, Education, and Welfare shall promptly adjust payments made to States under section 1903 of the Social Security Act [this section] to reflect the changes made by such amendments.

"(2) The amount of any reduction in the Federal medical assistance percentage of a State, otherwise required to be imposed under section 1903(g)(1) of the Social Security Act [subsec. (g)(1) of this section] because of an unsatisfactory or invalid showing made by the State with respect to a calendar quarter beginning on or after January 1, 1977, shall be determined under such section as amended by this section. Subparagraph (B) of paragraph (4) of section 1903(g) of such Act, as added by this section [subsec. (g)(4)(B) of this section], shall apply to any showing made by a State under such section with respect to a calendar quarter beginning on or after January 1, 1977."

Section 105(a)(3) of Pub. L. 95-83 provided that:

"The amendments made by paragraphs (1) and (2) [amending this section] shall apply with respect to payments under title XIX of the Social Security Act [this subchapter] to States for services provided—

"(A) after October 8, 1976, under contracts under such title [this subchapter] entered into or renegotiated after such date, or

"(B) after the expiration of the one-year period beginning on such date,

whichever occurs first."

EFFECTIVE DATE OF 1972 AMENDMENT

Section 249B of Pub. L. 92-603, as amended by Pub. L. 93-368, § 8, Aug. 7, 1974, 88 Stat. 422; Pub. L. 95-83, title III, § 309(b), Aug. 1, 1977, 91 Stat. 396, provided in part that the enactment of par. (4) of subsec. (a) and the concurrent redesignation of former par. (4) as par. (5) by section 249B of Pub. L. 92-603 shall be effective for the period beginning Oct. 1, 1972, and ending Sept. 30, 1980.

TERMINATION OF APPALACHIAN REGIONAL COMMISSION

The Appalachian Regional Commission, which was established by section 101 of the Appalachian Regional Development Act of 1965, Pub. L. 89-4, title I, Mar. 9, 1965, 79 Stat. 6, set out as section 101 of Title 40, App., Public Buildings, Property, and Works, was terminated on Oct. 1, 1979, pursuant to section 405 of such Act. See section 405 of Title 40, App.

PROMULGATION OF REGULATIONS FOR IMPLEMENTATION OF AMENDMENTS BY SECTION 17 OF PUB. L. 95-142

Section 17(e)(2) of Pub. L. 95-142 provided that: "The Secretary of Health, Education, and Welfare shall establish such regulations, not later than ninety days after the date of enactment of this Act [Oct. 25, 1977] as are necessary to carry out the amendments made by this section [enacting subsecs. (a)(6), (b)(3), and (q) of this section and section 1395b-1(a)(1)(j) of this title and redesignating former subsec. (a)(6) of this section as (a)(7)]."

DEFERRAL OF IMPLEMENTATION OF DECREASES IN MATCHING FUNDS

Section 6 of Pub. L. 95-59, June 30, 1977, 91 Stat. 255, provided that: "Notwithstanding the provisions of subsection (g) of section 1903 of the Social Security Act [subsec. (g) of this section], the amount payable to any State for the calendar quarters during the period commencing April 1, 1977, and ending September 30, 1977, on account of expenditures made under a State plan approved under title XIX of such Act [this subchapter], shall not be decreased by reason of the application of the provisions of such subsection with respect to any period for which such State plan was in operation prior to April 1, 1977."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 643, 1315, 1320c-20, 1396a of this title.

§ 1396d. Definitions

For purposes of this subchapter—

(a) Medical assistance

The term "medical assistance" means payment of part or all of the cost of the following care and services (if provided in or after the third month before the month in which the recipient makes application for assistance) for individuals, and, with respect to physicians' or dentists' services, at the option of the State, to individuals (other than individuals with respect to whom there is being paid, or who are eligible, or would be eligible if they were not in a medical institution, to have paid with respect to them a State supplementary payment and are eligible for medical assistance equal in amount, duration, and scope to the medical assistance made available to individuals described in section 1396a(a)(10)(A) of this title) not receiving aid or assistance under any plan of the State approved under subchapter I, X, XIV, or XVI, or part A of subchapter IV, and with respect to whom supplemental security income benefits are not being paid under subchapter XVI of this chapter, who are—

[*See main edition for text of* (*i*) *to* (*vii*)]

but whose income and resources are insufficient to meet all of such cost—

[*See main edition for text of* (*1*)]

(2)(A) outpatient hospital services, and (B) consistent with State law permitting such services, rural health clinic services (as defined in subsection (*l*) of this section) and any other ambulatory services which are offered by a rural health clinic (as defined in subsection (*l*) of this section) and which are otherwise included in the plan:

[*See main edition for text of* (*3*) *to* (*17*)]

except as otherwise provided in paragraph (16), such term does not include—

(A) any such payments with respect to care or services for any individual who is an inmate of a public institution (except as a patient in a medical institution); or

(B) any such payments with respect to care or services for any individual who has not attained 65 years of age and who is a patient in an institution for tuberculosis or mental diseases.

For purposes of clauses[1] (vi) of the preceding sentence, a person shall be considered essential to another individual if such person is the spouse of and is living with such individual, the needs of such person are taken into account in determining the amount of aid or assistance furnished to such individual (under a State plan approved under subchapter I, X, XIV, or XVI of this chapter), and such person is determined, under such a State plan, to be essential to the well being of such individual.

[*See main edition for text of* (*b*)]

(c) Intermediate care facility

For purposes of this subchapter the term "intermediate care facility" means an institution which (1) is licensed under State law to provide, on a regular basis, health-related care and services to individuals who do not require the degree of care and treatment which a hospital or skilled nursing facility is designed to provide, but who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, (2) meets such standards prescribed by the Secretary as he finds appropriate for the proper provision of such care, (3) meets such standards of safety and sanitation as are established under regulation of the Secretary in addition to those applicable to nursing facilities under State law, and (4) meets the requirements of section 1395x(j)(14) of this title with respect to protection of patients' personal funds. The term "intermediate care facility" also includes any skilled nursing facility or hospital which meets the requirements of the proceeding sentence. The term "intermediate care facility" also includes a Christian Science sanatorium operated, or listed and certified, by the First Church of Christ, Scientist, Boston, Massachusetts, but only with respect to institutional services deemed appropriate by the State. The term "intermediate care facility" also includes any institution which is located in a State or an Indian reservation and is certified by the Secretary as meeting the requirements of clauses (2), (3), and (4) of this subsection and providing the care and services required under clauses[1] (1). With respect to services furnished to individuals under age 65, the term "intermediate care facility" shall not include, except as provided in subsection (d) of this section, any public institution or distinct part thereof for mental diseases or mental defects.

[*See main edition for text of* (d) *to* (k)]

(*l*) Rural health clinics

The terms "rural health clinic services" and "rural health clinic" have the meanings given such terms in section 1395x(aa) of this title, except that (1) clause (ii) of section 1395x(aa)(2) of this title shall not apply to such terms, and (2) the physician arrangement required under section 1395x(aa)(2)(B) of this title shall only apply with respect to rural health clinic services and, with respect to other ambulatory care services, the physician arrangement required shall be only such as may be required under the State plan for those services.

(As amended Dec. 13, 1977, Pub. L. 95-210, § 2(a), (b), 91 Stat. 1488; June 13, 1978, Pub. L. 95-292, § 8(a), (b), 92 Stat. 316.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-292 added cl. (4) to the first sentence relating to a requirement that intermediate care facilities meet section 1395x(j)(14) of this title with respect to protection of patients' personal funds, and added reference to that cl. (4) in provisions covering intermediate care facilities on Indian reservations.

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[1] So in original. Probably should be "clause".

1977—Subsec. (a)(2). Pub. L. 95-210, § 2(a), designated existing provisions as cl. (A) and added cl. (B).

Subsec. (*l*). Pub. L. 95-210, § 2(b) added subsec. (*l*).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 8(d)(1) of Pub. L. 95-292 provided that: "The amendments made by subsections (a) and (b) [amending subsec. (c) of this section] shall become effective on July 1, 1978."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after the first day of the first calender quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95-210, set out as an Effective Date of 1977 Amendment note under section 1395cc of this title.

COSTS CHARGED TO PERSONAL FUNDS OF PATIENTS IN INTERMEDIATE CARE FACILITIES; COSTS INCLUDED IN CHARGES FOR SERVICES; REGULATIONS

Section 8(c) of Pub. L. 95-292 provided that:

"The Secretary of Health, Education, and Welfare shall, by regulation, define those costs which may be charged to the personal funds of patients in intermediate care facilities who are individuals receiving medical assistance under a State plan approved under the provisions of title XIX of the Social Security Act [this subchapter], and those costs which are to be included in the reasonable cost or reasonable charge for intermediate care facility services as determined under the provisions of such title [this subchapter]."

Section 8(d)(2) of Pub. L. 95-292 provided that:

"The Secretary of Health, Education, and Welfare shall issue the regulations required under subsection (c) within 90 days after the date of enactment of this Act [June 13, 1978] but not later than July 1, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1318, 1320c-1, 1320c-4, 1396a, 1396b, 3022, of this title.

§ 1396g. State programs for licensing of administrators of nursing homes

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1396a, 3022 of this title.

§ 1396h. Offenses and penalties

(a) Making or causing to be made false statements or representations

Whoever—

(1) knowingly and willfully makes or causes to be made any false statement or representation of a material fact in any application for any benefit or payment under a State plan approved under this subchapter,

(2) at any time knowingly and willfully makes or causes to be made any false statement or representation of a material fact for use in determining rights to such benefit or payment,

(3) having knowledge of the occurrence of any event affecting (A) his initial or continued right to any such benefit or payment, or (B) the initial or continued right to any such benefit or payment of any other individual in whose behalf he has applied for or is receiving such benefit or payment, conceals or fails to disclose such event with an intent fraudulently to secure such benefit or payment either in a greater amount or quantity than is due or when no such benefit or payment is authorized, or

(4) having made application to receive any such benefit or payment for the use and benefit of another and having received it, knowingly and willfully converts such benefit or payment or any part thereof to a use other than for the use and benefit of such other person,

shall (i) in the case of such a statement, representation, concealment, failure, or conversion by any person in connection with the furnishing (by that person) of items or services for which payment is or may be made under this subchapter, be guilty of a felony and upon conviction thereof fined not more than $25,000 or imprisoned for not more than five years or both, or (ii) in the case of such a statement, representation, concealment, failure, or conversion by any other person, be guilty of a misdemeanor and upon conviction thereof fined not more than $10,000 or imprisoned for not more than one year, or both. In addition, in any case where an individual who is otherwise eligible for assistance under a State plan approved under this subchapter is convicted of an offense under the preceding provisions of this subsection, the State may at its option (notwithstanding any other provision of this subchapter or of such plan) limit, restrict, or suspend the eligibility of that individual for such period (not exceeding one year) as it deems appropriate; but the imposition of a limitation, restriction, or suspension with respect to the eligibility of any individual under this sentence shall not affect the eligibility of any other person for assistance under the plan, regardless of the relationship between that individual and such other person.

(b) Illegal remunerations

(1) Whoever solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind—

(A) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this subchapter, or

(B) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this subchapter,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(2) Whoever offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person—

(A) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this subchapter, or

(B) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under this subchapter,

shall be guilty of a felony and upon conviction thereof, shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(3) Paragraphs (1) and (2) shall not apply to—

(A) a discount or other reduction in price obtained by a provider of services or other entity under this subchapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this subchapter; and

(B) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(c) False statements or representations with respect to condition or operation of institutions

Whoever knowingly and willfully makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operation of any institution or facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, skilled nursing facility, intermediate care facility, or home health agency (as those terms are employed in this subchapter) shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(d) Illegal patient admittance and retention practices

Whoever knowingly and willfully—

(1) charges, for any service provided to a patient under a State plan approved under this subchapter, money or other consideration at a rate in excess of the rates established by the State, or

(2) charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under a State plan approved under this subchapter, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient)—

(A) as a precondition of admitting a patient to a hospital, skilled nursing facility, or intermediate care facility, or

(B) as a requirement for the patient's continued stay in such a facility,

when the cost of the services provided therein to the patient is paid for (in whole or in part) under the State plan,

shall be guilty of a felony and upon conviction thereof shall be fined not more than $25,000 or imprisoned for not more than five years, or both.

(As amended Oct. 25, 1977, Pub. L. 95-142, § 4(b)), 91 Stat. 1181.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-142 designated existing provisions following par. (4) as cl. (ii) and, as so designated, added provisions relating to activities of other persons, and added provisions authorizing the State to limit, restrict, or suspend, the eligibility of any convicted persons for benefits, and added cl. (i).

Subsec. (b). Pub. L. 95-142 redesignated existing provisions as par. (1) and, as so redesignated, substituted provisions relating to solicitation or receiving of any remuneration in return for referring an individual to a person for the furnishing or arranging the furnishing of any item or service, or in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, etc., as constituting a felony punishable by a fine of not more than $25,000 and/or imprisonment for not more than five years, for provisions relating to furnishing items or services and soliciting, offering or receiving any kickback, bribe, or rebate in connection with furnishing, etc. items or services as constituting a misdemeanor punishable by a fine of not more than $10,000 and/or imprisonment for not more than one year, and added pars. (2) and (3).

Subsec. (c). Pub. L. 95-142 substituted provisions setting forth felony nature of criminal activities with a fine of not more than $25,000, or imprisonment for not more than five years, or both, for provisions setting forth misdemeanor nature of criminal activities with a fine of not more than $2,000, or imprisonment for not more than six months, or both.

Subsec. (d). Pub. L. 95-142 added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-142 applicable with respect to acts occurring and statements or representations made on or after Oct. 25, 1977, see section 4(d) of Pub. L. 95-142, set out as an Effective Date of 1977 Amendment note under section 1395nn of this title.

§ 1396i. Certification and approval of skilled nursing facilities and of rural health clinics

(a)(1) Whenever the Secretary certifies an institution in a State to be qualified as a skilled nursing facility under subchapter XVIII of this chapter, such institution shall be deemed to meet the standards for certification as a skilled nursing facility for purposes of section 1396a(a)(28) of this title.

(2) The Secretary shall notify the State agency administering the medical assistance plan of his approval or disapproval of any institution which has applied for certification by him as a qualified skilled nursing facility.

(b)(1) Whenever the Secretary certifies a facility in a State to be qualified as a rural health clinic under subchapter XVIII of this chapter, such facility shall be deemed to meet the standards for certification as a rural health clinic for purposes of providing rural health clinic services under this title.

(2) The Secretary shall notify the State agency administering the medical assistance plan of this approval or disapproval of any facility in that State which has applied for certification by him as a qualified rural health clinic.

(As amended Dec. 13, 1977, Pub. L. 95-210, § 2(d), 91 Stat. 1489.)

AMENDMENTS

1977—Pub. L. 95-210 redesignated existing subsecs. (a) and (b) as (a)(1) and (2), respectively, and added subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-210 applicable to medical assistance provided, under a State plan approved under subchapter XIX of this chapter, on and after the first day of the first calendar quarter that begins more than six months after Dec. 13, 1977, with exception for plans requiring State legislation, see section 2(f) of Pub. L. 95-210, set out as an Effective Date of 1977 Amendment note under section 1395cc of this title.

§ 1396k. Assignment, enforcement, and collection of rights of payments for medical care; establishment of procedures pursuant to State plan; amounts retained by State

(a) For the purpose of assisting in the collection of medical support payments and other payments for medical care owed to recipients of medical assistance under the State plan approved under this subchapter, a State plan for medical assistance may—

(1) provide that, as a condition of eligibility for medical assistance under the State plan to an individual who has the legal capacity to execute an assignment for himself, the individual is required—

(A) to assign the State any rights, of the individual or of any other person who is eligible for medical assistance under this subchapter and on whose behalf the individual has the legal authority to execute an assignment of such rights, to support (specified as support for the purpose of medical care by a court or administrative order) and to payment for medical care from any third party; and

(B) to cooperate with the State (i) in establishing the paternity of such person (referred to in subparagraph (A)) if the person is a child born out of wedlock, and (ii) in obtaining support and payments (described in subparagraph (A)) for himself and for such person, unless (in either case) the individual is found to have good cause for refusing to cooperate as determined by the State agency in accordance with standards prescribed by the Secretary, which standards shall take into consideration the best interests of the individuals involved; and

(2) provide for entering into cooperative arrangements (including financial arrangements), with any appropriate agency of any State (including, with respect to the enforcement and collection of rights of payment for medical care by or through a parent, with a State's agency established or designated under section 654(3) of this title) and with appropriate courts and law enforcement officials, to assist the agency or agencies administering the State plan with respect to (A) the enforcement and collection of rights to support or payment assigned under this section and (B) any other matters of common concern.

(b) Such part of any amount collected by the State under an assignment made under the provisions of this section shall be retained by the State as is necessary to reimburse it for medical assistance payments made on behalf of an individual with respect to whom such assignment was executed (with appropriate reimbursement of the Federal Government to the extent of its participation in the financing of such medical assistance), and the remainder of such amount collected shall be paid to such individual.

(Aug. 14, 1935, ch. 531, title XIX, § 1912, as added Oct. 25, 1977, Pub. L. 95-142, § 11(b), 91 Stat. 1196.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1396b of this title.

SUBCHAPTER XX—GRANTS TO STATES FOR SERVICES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 300a-26, 602, 622, 1315, 1316, 1320a-3, 1320a-5, 1766, 3013, 3020d, 3026, 3035b, 3035c, 3195 of this title; title 20 section 3286; title 25 section 1931.

§ 1397. Authorization of appropriations

EFFECTIVE DATE

Section 7 of Pub. L. 93-647, as amended by Pub. L. 94-120, § 3, Oct. 21, 1975, 89 Stat. 609; Pub. L. 94-401, § 2, Sept. 7, 1976, 90 Stat. 1215, eff. Feb. 1, 1976; Pub. L. 95-171, § 1(d), Nov. 12, 1977, 91 Stat. 1353; eff. Oct. 1, 1977, provided that:

"(a)(1) The amendments made by sections 2 and 5 of this Act [enacting this subchapter and amending sections 303, 603, 1203, 1353, and 1383 note of this title] shall be effective with respect to payments for quarters commencing after September 30, 1975.

[*See main edition for text of* (2)]

"(3) Notwithstanding paragraph (1) of this subsection or section 3(f) [set out as a note under section 1397a of this title], payments under title IV [subchapter IV of this chapter] or section 2002(a)(1) of the Social Security Act [section 1397a(a)(1) of this title] with respect to expenditures made prior to October 1, 1978, in connection with the provision of child day care services in day care centers and group day care homes, in the case of children between the ages of six weeks and six years, may be made without regard to the requirements relating to staffing standards which are imposed by or under section 2002(a)(9)(A)(ii) of such Act [section 1397a(a)(9)(A)(ii) of this title], so long as the staffing standards actually being applied in the provision of the services involved (A) comply with applicable State law (as in effect at the time the services are provided), (B) are no lower than the corresponding staffing standards which were imposed or required by applicable State law on September 15, 1975, and (C) are no lower, in the case of any day care center or group day care home, than the corresponding standards actually being applied in such center or home on September 15, 1975.

[*See main edition for text of* (b)]

§ 1397a. Payments to States; computation of amounts

(a)(1) From the sums appropriated therefor, the Secretary shall, subject to the provisions of this section and section 1397b of this title, pay to each State, for each quarter, an amount equal to 100 per centum of the expenditures during that quarter (which are not in excess of 2 per centum of the limitation applicable to that State under paragraph (2)(A) for the fiscal year in which such quarter occurs) for grants to qualified providers under section 1397e-1 of this title, 90 per centum of the total expenditures during that quarter for the provision of family planning services and 75 per centum of the total expenditures during that quarter for the provision of other services directed at the goal of—

[*See main edition for text of* (*A*) *to* (*E*)]

including expenditures for administration (including planning and evaluation) and personnel training and retraining directly related to the provision of those services (including both short- and long-term training at educational institutions through grants to such institutions or by direct financial assistance to students enrolled in such institutions). Services that are directed at these goals include, but are not limited to, child care services, protective services for children and adults, services for children and adults in foster care, services related to the management and maintenance of the home, day care services for adults, transportation services, training and related services, employment services, information, referral, and counseling services, the preparation and delivery of meals, health support services and appropriate combinations of services designed to meet the special needs of children, the aged, the mentally retarded, the blind, the emotionally disturbed, the physically handicapped, and alcoholics and drug addicts.

(2)(A)(i) No payment with respect to any expenditures other than expenditures for personnel training or retraining directly related to the provision of services may be made under this section to any State for any fiscal year in excess of an amount which bears the same ratio to the amount specified in clause (ii) as the population of that State bears to the population of the fifty States and the District of Columbia. The Secretary shall promulgate the limitation applicable to each State for each fiscal year under this paragraph prior to the first day of the third month of the preceding fiscal year, as determined on the basis of the most recent satisfactory data available from the Department of Commerce.

(ii) The amount specified for purposes of clause (i) is $2,500,000,000 for fiscal years prior to fiscal year 1979, $2,700,000,000 for fiscal year 1979, and $2,500,000,000 for fiscal years after fiscal year 1979.

[*See main edition for text of* (*B*) *to* (*D*); (*3*) *to* (*8*)]

(9)(A) No payment may be made under this section with respect to any expenditure in connection with the provision of any child day care service, unless—

[*See main edition for text of* (*i*)]

(ii) in the case of care provided outside the child's home, the care meets the Federal interagency day care requirements as approved by the Department of Health, Education, and Welfare and the Office of Economic Opportunity on September 23, 1968; except that (I) subdivision III of such requirements with respect to educational services shall be recommended to the States and not required, and staffing standards for school-age children in day care centers may be revised by the Secretary, (II) the staffing standards imposed with respect to such care in the case of children under age 3 shall conform to regulations prescribed by the Secretary, (III) the staffing standards imposed with respect to such care in the case of children aged 10 to 14 shall require at least one adult for each 20 children, and in the case of school-aged children under age 10 shall require at least one adult for each 15 children, and (IV) the State agency may waive the staffing standards otherwise applicable in the case of a day care center or group day care home in which not more than 20 per centum of the children in the facility (or, in the case of a day care center, not more than 5 children in the center) are children whose care is being paid for (wholly or in part) from funds made available to the State under this subchapter if such agency finds that it is not feasible to furnish day care for the children, whose care is so paid for, in a day care facility which complies with such staffing standards, and if the day care facility providing care for such children complies with applicable State standards,

except as provided in subparagraph (B).

(B) The Secretary shall submit to the President of the Senate and the Speaker of the House of Representatives, after December 31, 1976, and prior to April 1, 1978, an evaluation of the appropriateness of the requirements imposed by subparagraph (A), together with any recommendations he may have for modification of those requirements. No earlier than ninety days after the submission of that report, the Secretary may, by regulation, make such modifications in the requirements imposed by subparagraph (A) as he determines are appropriate.

[*See main edition for text of* (*C*), (*10*) *to* (*14*)]

(15) No payment may be made under this section with respect to any expenditure for the provision of any health related service if such service is provided by an entity which has failed to comply with a request made by the Secretary or State agency under section 1397b(d)(1)(J) of this title, for so long as such entity remains in noncompliance with such request.

(16) Any State may refuse to enter into a contract or other arrangement with a provider of services for purposes of participation under the program established by this subchapter, or otherwise to approve a provider for such purposes, if any person who has a direct or indirect ownership or control interest of 5 percent or more in such provider, or who is an officer, director, agent, or managing employee (as defined in section 1320a-5(b) of this title) of such provider, is a person described in section 1320a-5(a) of this title, and the State may terminate any such contract, arrangement, or approval if it determines that the provider did not fully and accurately make any disclosure required of it by section 1320a-5(a) of this title at the time the contract or arrangement was entered into or the approval was given.

[*See main edition for text of* (*b*)]

(As amended June 30, 1977, Pub. L. 95-59, § 5, 91 Stat. 255; Oct. 25, 1977, Pub. L. 95-142, §§ 3(d)(2), 8(d), 91 Stat. 1179, 1195; Nov. 6, 1978, Pub. L. 95-600, title VIII, § 801(a), 92 Stat. 2944; Jan. 2, 1980, Pub. L. 96-178, § 4(a), (c), 93 Stat. 1296, 1297.)

AMENDMENTS

1980—Subsec. (a)(1). Pub. L. 96-178, § 4(a), added "100 per centum of the expenditures during the quarter (which are not in excess of 2 per centum of the limitation applicable to that State under paragraph (2)(A) for the fiscal year in which such quarter occurs) for grants to qualified providers under section 1397e-1 of this title," following "an amount equal to".

Subsec. (a)(4)(C), (D), (5)(A). Pub. L. 96-178, § 4(c), substituted "section 2008(1)" for "section 2007(1)" in the original to reflect the renumbering of section 2007 of the Social Security Act as section 2008. Because the references to section 2007(1) had been translated as section 1397f(1) of this title, the amendment did not involve a change in the text.

1978—Subsec. (a)(2)(A). Pub. L. 95-600 designated existing provisions as cl. (i), and in cl. (i) as so designated, substituted "the amount specified in clause (ii)" for "$2,500,000,000", and added cl. (ii).

1977—Subsec. (a)(9)(B). Pub. L. 95-59 substituted "April 1, 1978" for "July 1, 1977".

Subsec. (a)(15). Pub. L. 95-142, § 3(d)(2), added par. (15).

Subsec. (a)(16). Pub. L. 95-142, § 8(d), added par. (16).

1976—Subsec. (a)(9)(A)(ii). Pub. L. 94-401, § 5(a), added cl. (IV), and also added cl. (V), which provided that, in determining whether applicable staffing standards were met in the case of day care provided in a family care home, the number of children being cared for in such home was to include a child of the mother operating the home only if such child were under the age of 6, the amendment adding cl. (V) effective until Sept. 30, 1978, this subsection reading on and after Oct. 1, 1978 as if such amendment was not made, pursuant to section 5(b) of Pub. L. 94-401, set out as an Effective and Termination Dates of 1976 Amendment note below.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE AND TERMINATION DATES OF 1980 AMENDMENT

Amendment by Pub. L. 96-178 effective Jan. 2, 1980, and applicable with respect to grants made to qualified providers of child day care services during the period beginning Oct. 1979, and ending Mar. 31, 1980, see section 4(d) of Pub. L. 96-178 set out as an Effective and Termination Date note under section 1397e-1 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (a)(15) by section 3(d)(2) of Pub. L. 95-142 effective Jan. 1, 1978, see section 3(e) of Pub. L. 95-142, set out as an Effective Date note under section 1320a-3 of this title.

Amendment of subsec. (a)(16) by section 8(d) of Pub. L. 95-142 applicable with respect to contracts, agreements, and arrangements entered into and approvals given pursuant to applications or requests made on or after the first day of the fourth month beginning after Oct. 25, 1977, see section 8(e) of Pub. L. 95-142, set out as an Effective Date note under section 1320a-5 of this title.

EFFECTIVE AND TERMINATION DATES OF 1976 AMENDMENT

Section 5(b) of Pub. L. 94-401, as amended by Pub. L. 95-171, § 1(b), Nov. 12, 1977, 91 Stat. 1353, eff. Oct. 1, 1977, provided that: "The amendments made by subsection (a) [amending subsec. (a)(9)(A)(ii)(IV) and (V) of this section] shall, insofar as such amendments add a new clause (V) to section 2002(a)(9)(A)(ii) of the Social Security Act [subsec. (a)(9)(A)(ii)(V) of this section], be effective for the period beginning October 1, 1975, and ending September 30, 1978; and on and after October 1, 1978, section 2002(a)(9)(A)(ii) of the Social Security Act [subsec. (a)(9)(A)(ii) of this section] shall read as it would if such amendments had not been made."

EFFECTIVE DATE OF 1975 AMENDMENT

Section 4(c) of Pub. L. 94-120 as amended by Pub. L. 94-401, § 6, eff. Feb. 1, 1976; Pub. L. 95-171, § 1(c), Nov. 12, 1977, 91 Stat. 1353, eff. Oct. 1, 1977; Pub. L. 96-178, § 5(a), Jan. 2, 1980, 93 Stat. 1297, provided that: "The amendments made by this section [amending this section and section 1397b of this title] shall be effective from and after October 1, 1975."

Section 5(b) of Pub. L. 96-178 provided that: "The amendment made by subsection (a) [amending this note] shall become effective on the date of the enactment of this Act [Jan. 2, 1980], and shall apply with respect to services provided during the period beginning October 1, 1978, and ending March 31, 1980."

REIMBURSEMENT OF EXPENDITURES FOR SOCIAL SERVICES PROVIDED BY STATES PRIOR TO OCTOBER 1, 1975; AUTHORIZATION OF APPROPRIATIONS; PROCEDURES APPLICABLE TO PAYMENT OF UNPAID CLAIMS OF STATES

Pub. L. 95-291, June 12, 1978, 92 Stat. 304, provided that:

"[Section 1.] (a) There is authorized to be appropriated for the fiscal year which ends on September 30, 1979, not to exceed $543,000,000, to remain available until expended, to enable the Secretary of the Treasury to pay to any State the amount determined by the Secretary of Health, Education, and Welfare (hereinafter in this Act [this note] referred to as the "Secretary"), in accordance with the succeeding provisions of this Act, to be payable to the State in settlement of the unpaid claim of the State against the United States for reimbursement of expenditures made by the State prior to October 1, 1975, with respect to services (and related administrative costs) which the State asserts were provided (or incurred) under an approved State plan pursuant to title I, IV-A, VI, X, XIV, or XVI of the Social Security Act [subchapter I, part A of subchapter IV, former subchapter VI, or subchapter X, XIV, or XVI of this chapter].

"(b) For purposes of this Act [this note], the term 'unpaid claim' of any State means (subject to the succeeding sentence) the total amount of Federal reimbursement for expenditures of the type specified in subsection (a) which has not been paid to such State prior to the date of enactment of this Act [June 12, 1978]. In determining such total amount in the case of any State, any portion thereof attributable to expenditures made in any fiscal year with respect to which the provisions of section 1130 of the Social Security Act (as then in effect) [former section 1320b of this title] were applicable shall be reduced (but not below zero) by the excess (if any) of (1) the aggregate of the portion of such total amount attributable to expenditures made in such year and the total amount of the Federal reimbursement paid prior to the date of enactment of this Act to such State with respect to expenditures made in such year, over (2) the State's allotment determined under such section 1130 for such year.

"Sec. 2. (a) In the case of that portion of the unpaid claim of a State that the Secretary determines was asserted against the United States, in the form and manner prescribed by the Secretary with respect to the filing of claims under titles I, IV-A, VI, X, XIV, and XVI of the Social Security Act [subchapter I, part A of subchapter IV, former subchapter VI, and subchapters X, XIV, and XVI of this chapter], prior to April 1, 1977, the Secretary shall certify to the Secretary of the Treasury for payments to the State the sum of—

"(1) an amount equal to 38 percent of so much of such portion as does not exceed $50,000,000;

"(2) an amount equal to 35 percent of so much of such portion as exceeds $50,000,000 but does not exceed $150,000,000; and

"(3) an amount equal to 21 percent of so much of such portion as exceeds $150,000,000;

except that the percentage specified in paragraph (1) shall be 58 percent and the percentage specified in paragraph (2) shall be 50 percent in the case of a State if the portion of the unpaid claim of such State referred to in the preceding provisions of this subsection equals or exceeds 85 percent of the sum of (A) such portion and (B) the total amount of Federal reimbursement for expenditures of the type specified in the first section of this Act [this note] which has been paid to such State prior to the date of enactment of this Act [June 12, 1978] but with respect to which formal steps have been initiated by the Secretary to recover such reimbursement.

"(b)(1) In the case of the portion of the unpaid claims of a State that the Secretary determines meets the requirements of subsection (a), except that the claim was asserted, in the form and manner prescribed by the Secretary, on or after April 1, 1977, but prior to the ninety-first day following the date upon which this Act is enacted [June 12, 1978], the Secretary shall certify to the Secretary of the Treasury for payment to the State, subject to paragraph (2), an amount equal to 15 percent of so much of such portion as he finds to be for the provision of services that he finds the State provided and for which he has not provided reimbursement, but the expenditures for which were reimbursable under title I, IV-A, VI, X, XIV, or XVI of the Social Security Act [subchapter I, part A of subchapter IV, former subchapter VI, or subchapter X, XIV, or XVI of this chapter] prior to April 1, 1977, or, if not services the expenditures for which were reimbursable, are services of a similar kind and are not otherwise reimbursable under this Act [this note].

"(2) The Secretary may not certify for payment to any State under the authority of this subsection an aggregate amount that exceeds 5 percent of that State's allotment for the fiscal year 1973 of social service funds under titles I, IV-A, X, XIV, and XVI of the Social Security Act [subchapter I, part A of subchapter IV, and subchapters X, XIV, and XVI of this chapter], as determined in accordance with section 1130(b) of such Act [former section 1320b(b) of this title], less the amount certified for payment to the State under subsection (a) of this section.

"(3) The Secretary shall have no authority, by regulations or otherwise, to extend the time period specified in paragraph (1) or to waive the time limit for assertion of a claim.

"Sec. 3. (a) Except with respect to amounts paid by the Secretary to a State prior to April 1, 1977, no State is entitled to reimbursement of expenditures described by the first section of this Act, except as provided by this Act [this note].

"(b) Neither the Secretary nor any other official of the Federal Government may seek to recover any amount paid to a State prior to April 1, 1977, or pursuant to this Act, as reimbursement of expenditures made by the State of the type described by the first section of this Act.

"Sec. 4. (a) The Secretary is authorized to enter into agreements with any State in accordance with the provisions of this Act [this note], and agreements entered into prior to the enactment of this Act [June 12, 1978], to the extent not inconsistent with the terms hereof, shall have the same force and effect as agreements entered into subsequent to enactment of this Act.

"(b) In the absence of an agreement, a State dissatisfied with a determination by the Secretary under this Act may, by application to the Secretary within 60 days after the date of notice to the State of that determination, obtain the Secretary's review of that determination. If the application requests a hearing, the Secretary shall conduct a hearing after reasonable notice to the State, and shall, on the basis of evidence adduced at the hearing, affirm, modify, or reverse his determination. If the Secretary does not preside at the reception of the evidence at the hearing, the decision of the presiding official or body shall be the decision of the Secretary.

"(c) No court of the United States has jurisdiction to entertain any action seeking the review of any determination or finding of the Secretary under this Act [this note], or otherwise seeking to compel a determination by the Secretary to certify for payment any claim described by the first section of this Act; except that the appropriate district court shall have jurisdiction over any action seeking enforcement of an agreement of the kind referred to in subsection (a).

"Sec. 5. (a) Amounts appropriated under the first section of this Act [this note] shall be first applied in settlement of the portions of unpaid claims described in section 2(a). If, after that payment, the amounts remaining are insufficient to pay the amounts established by section 2(b) with respect to the portions of unpaid claims asserted under section 2(b), the Secretary shall certify for payment with respect to each such portion an amount that bears the same relationship to that portion as the total of such remaining available amounts bears to the total of all portions of unpaid claims asserted under section 2(b).

"(b) A reduction effected by subsection (a) of this section in the amount payable to a State under section 2(b) does not give rise to an entitlement of the State to the difference between the amount payable under section 2(b) (without regard to subsection (a) of this section) and the amount payable under section 2(b) after application of subsection (a) of this section.

"(c) In the event that the amount appropriated pursuant to the first section of this Act [this note] exceeds the payable portions of unpaid claims under subsections (a) and (b) of section 2, the amount paid to any State receiving a payment computed with respect to paragraph (3) of section 2(a) shall be increased (to the extent of such excess) by an amount equal to the difference between the amount it received under section 2(a) and the amount it would have so received if the percentage in such paragraph had been 25 percent.

"Sec. 6. The Secretary of the Treasury shall pay to each State, out of amounts appropriated pursuant to the first section of this Act [this note], all amounts certified by the Secretary as payable to that State under the terms of this Act."

Payments to States for Fiscal Period Beginning July 1, 1976, and Ending September 30, 1976, and Fiscal Years Ending September 30, 1977, 1978, and 1979, Computation Amounts, Limitations, Etc.

Section 3 of Pub. L. 94-401, as amended by Pub. L. 95-171, § 1(a), Nov. 12, 1977, 91 Stat. 1353; Pub. L. 95-600, title VIII, § 801(b), Nov. 6, 1978, 92 Stat. 2944; Pub. L. 96-178, § 3(b)-(f), Jan. 2, 1980, 93 Stat. 1296, provided that:

"(a) For purposes of title XX of the Social Security Act [this subchapter], the amount of the limitation (imposed by section 2002(a)(2) of such Act) [subsec. (a)(2) of this section] which is applicable to any State for the fiscal period beginning July 1, 1976, and ending September 30, 1976, or which is applicable to any State for the fiscal year ending September 30, 1977, the fiscal year ending September 30, 1978, and the fiscal year ending September 30, 1979, shall be deemed to be equal to whichever of the following is the lesser:

"(1) an amount equal to—

"(A) 106.4 per centum of the amount of the limitation so imposed (as determined without regard to this section) in the case of such fiscal period, or

"(B) 108 per centum of the amount of the limitation so imposed (as determined without regard to this section) in the case of such fiscal year ending

September 30, 1977, and such fiscal year ending September 30, 1978, or

"(C) 107.407 per centum of the amount of the limitation so imposed (as determined without regard to this section) in the case of such fiscal year ending September 30, 1979, or

"(2) an amount equal to (A) 100 per centum of such limitation for such fiscal period or any such fiscal year (as determined without regard to this section), plus (B) an amount equal to the sum of (i) 75 per centum (in the case of such fiscal period) or 100 per centum (in the case of such fiscal year) of the total amount of expenditures (I) which are made during such fiscal period or year in connection with the provision of any child day care service, and (II) with respect to which payment is authorized to be made to the State under such title [this subchapter], for such fiscal period or year, and (ii) the aggregate of the amounts of the grants, made by the State during such fiscal period or year, to which the provisions of subsection (c)(1) are applicable.

"(b) The additional Federal funds which become payable to any State for the fiscal period or any fiscal year specified in subsection (a) by reason of the provisions of such subsection shall, to the maximum extent that the State determines to be feasible, be employed in such a way as to increase the employment of welfare recipients and other low-income persons in jobs related to the provision of child day care services.

"(c)(1) Subject to paragraph (2), sums granted by a State to a qualified provider of child day care services (as defined in paragraph (3)(A)) during the fiscal period or any fiscal year specified in subsection (a), to assist such provider in meeting its work incentive program expenses (as defined in paragraph (3)(B)) with respect to individuals employed in jobs related to the provision of child day care services in one or more child day care facilities of such provider, shall be deemed, for purposes of title XX of the Social Security Act [this subchapter], to constitute expenditures made by the State, in accordance with the requirements and conditions imposed by such Act [this chapter], for the provision of services directed at one or more of the goals set forth in clauses (A) through (E) of the first sentence of section 2002(a)(1) of such Act [subsec. (a)(1) of this section]. With respect to sums to which the preceding sentence is applicable (after application of the provisions of paragraph (2)), the figure '75' as contained in the first sentence of section 2002(a)(1) of such Act, shall be deemed to read '100'.

"(2) The provisions of paragraph (1) shall not be applicable—

"(A) to the amount, if any, by which the aggregate of the sums (as described in such paragraph) granted by any State during the fiscal period or any fiscal year specified in subsection (a) exceeds the amount by which such State's limitation (as referred to in subsection (a)) is increased pursuant to such subsection for such fiscal period or year, or

"(B) with respect to any grant made to a particular qualified provider of child day care services to the extent that (as determined by the Secretary) such grant is or will be used—

"(i) to pay wages to any employee at an annual rate in excess of $6,000, in the case of a public or nonprofit private provider, or

"(ii) to pay wages to any employee at an annual rate in excess of $5,000, or to pay more than 80 per centum of the wages of any employee, in the case of any other provider.

"(3) For purposes of this subsection—

[*See main edition for text of* (*A*)]

"(B) the term 'work incentive program expenses' means expenses of a qualified provider of child day care services which constitute work incentive program expenses as defined in section 50B(a)(1) of the Internal Revenue Code of 1954 [section 50B of Title 26, Internal Revenue Code] or which would constitute work incentive program expenses as so defined if the provider were a taxpayer entitled to a credit (with respect to the wages involved) under section 40 of such Code [section 40 of title 26].

"(d)(1) In the administration of title XX of the Social Security Act [this subchapter], the figure '75', as contained in the first sentence of section 2002(a)(1) of such Act [subsec. (a)(1) of this section], shall, subject to paragraph (2), be deemed to read '100' for purposes of applying such sentence to expenditures made by a State for the provision of child day care services during the fiscal year ending September 30, 1977, the fiscal year ending September 30, 1978, or the fiscal year ending September 30, 1979.

"(2) The total amount of Federal payments which may be paid to any State for any such fiscal year under title XX of the Social Security Act [this subchapter] at the rate specified in paragraph (1) shall not exceed an amount equal to the excess (if any) of—

[*See main edition for text of* (*A*) *and* (*B*)]

Section 3(f) of Pub. L. 96-178 provided that:

"(1) The amendments made by subsection (b) [amending section 3(c)(1) and (2)(A) of this note] shall become effective on the date of the enactment of this Act [Jan. 2, 1980], and shall apply with respect to grants made to qualified providers of child day care services on or after October 1, 1978.

"(2) The amendments made by subsections (c), (d) and (e) [amending section 3(c)(1), (2)(B), (3)(B) of this note] shall become effective on the date of the enactment of this Act [Jan. 2, 1980], and shall apply with respect to expenses paid or incurred after December 31, 1978."

PAYMENTS FOR EXPENDITURES MADE PRIOR TO OCTOBER 1, 1978 IN CONNECTION WITH PROVISION OF CHILD DAY CARE SERVICES

Payments for expenditures made prior to Oct. 1, 1978, in connection with the provision of child day care services to be made without regard to the requirements relating to staffing standards imposed by or under subsec. (a)(9)(A)(ii) of this section, see section 7(a)(3) of Pub. L. 93-647, as amended, set out as an Effective Date note under section 1397 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 603, 1315, 1397, 1397b, 1397c, 1397d, 1397e, 1397e-1 of this title.

§ 1397b. State programs for social services assistance

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Contents of State plans

(1) Each State which participates in the program established by this subchapter shall have a plan applicable to its program for the provision of the services described in section 1397a(a)(1) of this title which—

[*See main edition for text of* (*A*) *to* (*G*)]

(H) provides that the State's program for the provision of the services described in section 1397a(a)(1) of this title will be in effect in all political subdivisions of the State;

(I) provides for financial participation by the State in the provision of the services described in section 1397a(a)(1) of this title; and

(J) provides that any entity (other than an individual practitioner or a group of practitioners) receiving payments for the provision of health related services complies with the requirements of section 1320a-3 of this title, and supplies (within such period as may be specified in regulations by the Secretary or by the State agency which administers or supervises the administration of the plan) upon request specifically addressed to such entity by the Secretary or such State agency, respectively, (i) full and complete information as to the ownership of a subcontractor (as defined by the Secretary in regulations) with whom such entity has had, during the previous twelve months, business transactions in an aggregate amount in excess of $25,000, and (ii) full and complete information as to any significant business transactions (as defined by the Secretary in regulations), occurring during the five-year period ending on the date of such request, between such entity and any wholly owned supplier or between such entity and any subcontractor.

Notwithstanding clause (C), if on December 1, 1974, the State agency which administered or supervised the administration of the portion of the plan of the State for services to the aged, blind, or disabled approved under subchapter VI of this chapter which related to blind individuals was different from the agency which administered or supervised the administration of the rest of that plan, the State agency which administered or supervised the administration of the portion of the plan of the State for services to the aged, blind, or disabled related to blind individuals may be designated to administer or supervise the administration of the portion of the State's program for the provision of the services described in section 1397a(a)(1) of this title related to blind individuals and a separate State agency may be designated to administer or supervise the administration of the rest of the program; and in such case the part of the program which each agency administers, or the administration of which each agency supervises, shall be regarded as a separate program for the provision of the services described in section 1397a(a)(1) of this title for purposes of this subchapter. The date selected by the State pursuant to section 1397c(1) of this title as the beginning of the services program year for each of the separate programs shall be the same.

[*See main edition for text of* (*2*); (*e*)]

(As amended Oct. 25, 1977, Pub. L. 95-142, § 3(d)(1), 91 Stat. 1179.)

AMENDMENTS

1977—Subsec. (d)(1)(J). Pub. L. 95-142, added subpar. (J).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-142 effective Jan. 1, 1978, see section 3(e) of Pub. L. 95-142, set out as an Effective Date of 1977 Amendment note under section 1320a-3 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1397a of this title.

§ 1397e-1. Child day care services

(a) Sums granted for meeting work incentive program expenses

Subject to subsection (b) of this section, sums granted by a State to a qualified provider of child day care services (as defined in subsection (c) of this section) to assist such provider in meeting its work incentive program expenses (as defined in subsection (c) of this section) with respect to individuals employed in jobs related to the provision of child day care services in one or more child day care facilities of such provider, shall be deemed for purposes of section 1397a of this title to constitute expenditures made by the State in accordance with the provisions of this subchapter for the provision of child day care services.

(b) Wage payments not qualifying as child day care services expenditures

The provisions of subsection (a) of this section shall not be applicable with respect to any grant made to a particular qualified provider of child day care services to the extent that (as determined by the Secretary) such grant is or will be used to pay wages to any employee at an annual rate in excess of $6,000, in the case of a public or nonprofit private provider, or at an annual rate in excess of $5,000, or to pay more than 80 per centum of the wages of any employee, in the case of any other provider.

(c) Definitions

For purposes of this subsection—

(1) the term "qualified provider of child day care services", when used in reference to a recipient of a grant by a State, includes a provider of such services only if, of the total number of children receiving such services from such provider in the facility with respect to which the grant is made, at least 20 per centum thereof have some or all of the costs for the child day care services so furnished to them by such provider paid for under the State's services program conducted pursuant to this subchapter; and

(2) the term "work incentive program expenses" means expenses of a qualified provider of child day care services which constitute work incentive program expenses as defined in section 50B(a)(1) of the Internal Revenue Code of 1954, or which would constitute work incentive program expenses as so defined if the provider were a taxpayer entitled to a credit (with respect to the wages involved) under section 40 of such Code.

(Aug. 14, 1935, ch. 531, title XX, § 2007, as added Jan. 2, 1980, Pub. L. 96-178, § 4(b), 93 Stat. 1296.)

REFERENCES IN TEXT

Sections 40 and 50B of the Internal Revenue Code of 1954, referred to in subsec. (c)(2), are classified to sections 40 and 50B of Title 26, Internal Revenue Code.

PRIOR PROVISIONS

A prior section 2007 of act Aug. 14, 1935, was renumbered 2008 by Pub. L. 96-178, § 4(b), Jan. 2, 1980, 93 Stat. 1296, and is classified to section 1397f of this title.

EFFECTIVE AND TERMINATION DATE

Section 4(d) of Pub. L. 96-178 provided that: "The amendments made by this section [enacting this section and amending section 1397a of this title] shall become effective on the date of the enactment of this Act [Jan. 2, 1980], and shall apply with respect to grants made to qualified providers of child day care services during the period beginning October 1, 1979, and ending March 31, 1980."

Section Referred to in Other Sections

This section is referred to in section 1397a of this title.

§ 1397f. Definitions

[See main edition for text of section]

(Aug. 14, 1935, ch. 531, title XX, § 2008, formerly § 2007, as added Jan. 4, 1975, Pub. L. 93-647, § 2, 88 Stat. 2348, and renumbered Jan. 2, 1980, Pub. L. 96-178, § 4(b), 93 Stat. 1296.)

Section Referred to in Other Sections

This section is referred to in section 1397a of this title; title 26 section 50B.

CHAPTER 8—LOW-INCOME HOUSING

Sec.	
1437k.	Energy conservation [New].

Chapter Referred to in Other Sections

This chapter is referred to in sections 1434, 1439, 1457, 1490a, 1502, 1503, 1504, 1586, 1590, 1594c, 1766, 3013, 5153, 5515, 8003 of this title; title 12 sections 24, 84, 1701q, 1701z-3, 1701z-11, 1715*l*; title 20 sections 244, 633, 635, 645; title 25 section 640d-14.

§§ 1417a to 1422. Omitted

Retroactive Application of Policies or Procedures Established by Secretary of Housing and Urban Development to Rights of Owners of Leased Housing, Including Right of Renewal

Pub. L. 93-383, title II, § 208, Aug. 22, 1974, 88 Stat. 669, as amended by Pub. L. 95-128, title II, § 201(h), Oct. 12, 1977, 91 Stat. 1129, provided that: "Nothing in this title [for distribution of title II of Pub. L. 93-383, see Tables volume] or any other provision of law authorizes the Secretary of Housing and Urban Development to apply any policy or procedure established by him with respect to the rights of an owner under a lease entered into under section 23 of the United States Housing Act of 1937 [section 1421b of this title], including the right to renewal of such lease to the maximum term permitted by law, if such lease was entered into prior to the effective date of such policy or procedure."

§ 1437a. Definitions

When used in this chapter—

(1) The term, "low-income housing" means decent, safe, and sanitary dwellings within the financial reach of families of low income, and embraces all necessary appurtenances thereto. Except as otherwise provided in this section, income limits for occupancy and rents shall be fixed by the public housing agency and approved by the Secretary. The rental for any dwelling unit shall not exceed that portion of the resident family's income which the Secretary establishes on the basis of the relative level of income of the family, but such rental shall not exceed 25 per centum of family income in the case of a very low income family or, in the case of other families, 30 per centum of such income. Notwithstanding the preceding sentence, the rental for any dwelling unit shall not be less than the higher of (A) 5 per centum of the gross income of the family occupying the dwelling unit, and (B) if the family is receiving payments for welfare assistance from a public agency and a part of such payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of such payments which is so designated. At least 20 per centum of the dwelling units in any project placed under annual contributions contracts in any fiscal year beginning after the effective date of this section shall be occupied by very low-income families. In defining the income of any family for the purpose of this chapter, the Secretary shall consider income from all sources of each member of the family residing in the household, except that there shall be excluded—

[See main edition for text of (A) to (G)]

(2) The term "low-income families" means families of low income who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use. The term "very low-income families" means families whose incomes do not exceed 50 per centum of the median family income for the area, as determined by the Secretary with adjustments for smaller and larger families. The term "families" includes families consisting of a single person in the case of (A) a person who is at least sixty-two years of age or is under a disability as defined in section 423 of this title or in section 2691 of this title, or is handicapped, (B) a displaced person, (C) the remaining member of a tenant family and (D) other single persons in circumstances described in regulations of the Secretary: *Provided*, That in no event shall more than 15 percent of the units under the jurisdiction of any public housing agency be occupied by single persons under this clause (D): *Provided further*, That in determining priority for admission to housing under this chapter the Secretary shall give preference to those single persons who are elderly, handicapped, or displaced before those eligible under this clause (D); and the term "elderly families" means families whose heads (or their spouses), or whose sole members, are persons described in clause (A). A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (i) is expected to be of long-continued and indefinite duration, (ii) substantially impedes his ability to live independently, and (iii) is of such a nature that such ability could be improved by more suitable housing conditions. The term "displaced person" means a person displaced by governmental action, or a person whose dwelling has been extensively damaged or destroyed as a result of a disaster declared or otherwise formally recognized pursuant to Federal disaster relief laws. Notwithstanding the preceding provisions of this paragraph, the term "elderly families" includes two or more elderly, disabled, or handicapped individuals living together, or one or more such individuals living with another person who is determined under regulations of the Secretary to be a person essential to their care or well being.

[See main edition for text of (3) to (9)]

(As amended Oct. 31, 1978, Pub. L. 95-557, title II, § 206(c), 92 Stat. 2091; Dec. 21, 1979, Pub. L. 96-153, title II, § 202(a), 93 Stat. 1106.)

References in Text

Section 2691 of this title, referred to in subsec. (2)(A), was repealed by Pub. L. 94-103, title III, § 302(c), Oct. 4, 1975, 89 Stat. 507.

Amendments

1979—Par. (1). Pub. L. 96-153 substituted provisions that the rental for a dwelling shall not exceed certain portion of the resident family's income to be established by the Secretary, and that in the case of a very low income family 25 per centum and in other cases 30 per centum of family income for provisions that such rental shall not exceed one-fourth of the family's income as defined by the Secretary.

1978—Par. (2)(D). Pub. L. 95-557 substituted "15 per cent" for "10 per cent".

Effective Date of 1979 Amendment

Section 202(c) of Pub. L. 96-153 provided that: "The amendments made by subsections (a) and (b) [amending sections 1437a and 1437f of this title] shall become effective on January 1, 1980, except that the amount of the tenant contribution required of families whose occupancy of housing units assisted under the United States Housing Act of 1937 [this chapter] commenced prior to such date shall be determined in accordance with the provisions of such Act in effect on December 31, 1979, so long as such occupancy is continuous thereafter."

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-557 effective Oct. 1, 1978, see section 206(h) of Pub. L. 95-557 set out as an Effective Date of 1978 Amendment note under section 1437c of this title.

§ 1437c. Annual contributions for low-income housing projects

[*See main edition for text of* (a) *and* (b)]

(c) Limitation on aggregate contractual contributions; contracts for annual contributions for assistance to Indian tribes, bands, etc.; contracts for preliminary loans; payments of annual contributions; contracts for financing energy conservation in low-income housing projects

The Secretary is authorized to enter into contracts for annual contributions aggregating not more than $1,524,000,000 per annum, which limit shall be increased by $965,000,000 on July 1, 1974, by $662,300,000 on July 1, 1975, by $1,228,050,000 on October 1, 1976, by $1,159,995,000 on October 1, 1977, by $1,195,043,000 on October 1, 1978, and by $1,140,661,000 on October 1, 1979, except that the additional authority to enter into contracts for annual contributions provided on or after July 1, 1975, shall be effective only in such amounts as may be approved in appropriation Acts. The Secretary, in utilizing the additional authority to enter into contracts for annual contributions provided on October 1, 1976, and on and after October 1, 1978, shall administer the programs authorized by this chapter to provide assistance for new, substantially rehabilitated, and existing units, to the maximum extent practicable and consistent with section 1439(d) of this title, in accordance with the goals of units of general local government for such types of housing as reflected in their housing assistance plans prepared pursuant to section 5304(a)(4) of this title. Of the additional authority to enter into contracts for annual contributions provided on October 1, 1978, and approved in appropriation Acts, the Secretary shall make available not less than $50,000,000 for modernization of low-income housing projects. Of the additional authority authorized by the first sentence of this subsection on October 1, 1979, not more than $195,053,000 is authorized to be approved in appropriation Acts for units assisted under this chapter other than under section 1437f of this title (not less than $50,000,000 of which is authorized to be so approved for modernization of such units with a preference being given to the modernization of substandard vacant units). In no case may the Secretary, with respect to the additional authority made available on October 1, 1979, enter into annual contributions contracts aggregating more than $195,053,000 for units assisted under this chapter other than under section 1437f of this title. In addition, the Secretary shall enter into contracts for annual contributions, out of the aggregate amount of contracts for annual contributions authorized under this section to be entered into on or after July 1, 1974, aggregating at least $15,000,000 per annum, which amount shall be increased by not less than $15,000,000 per annum, on July 1, 1975, and by not less than $17,000,000 per annum on October 1, 1976, to assist in financing the development or acquisition cost of low-income housing for families who are members of any Indian tribe, band, pueblo, group, or community of Indians or Alaska Natives which is recognized by the Federal Government as eligible for service from the Bureau of Indian Affairs, or who are wards of any State government, except that none of the funds made available under this sentence shall be available for use under section 1437f of this title. For the purpose of the preceding sentence, the annual contributions for a project shall, notwithstanding any other provisions of this chapter, be equal to the difference between the sum of the total debt service payment plus approved operating costs, and the rental payments that tenants are required to make under section 1437a(1) of this title. The Secretary shall enter into only such new contracts for preliminary loans as are consistent with the number of dwelling units for which contracts for annual contributions may be entered into. The faith of the United States is solemnly pledged to the payment of all annual contributions contracted for pursuant to this section, and there are hereby authorized to be appropriated in each fiscal year, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such payments. All payments of annual contributions pursuant to this section shall be made out of any funds available for purposes of this chapter when such payments are due, except that funds obtained through the issuance of obligations pursuant to section 1437b(b) of this title (including repayments or other realizations of the principal of loans made out of such funds) shall not be available for the payment of such annual contributions. In addition to any other authority to enter into annual contribution contracts under this subsection, the Secretary may, subject to approval in appropriation Acts, enter into such contracts aggregating not more than $10,000,000 per annum for financing the purchase and installation of energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 1703(a) of title 12) in existing low-income housing projects, other than projects assisted under section 1437f of this title, which the Secretary determines have the greatest need for such improvements based on the energy consumption of the projects and the amount of such consumption which can be reduced by such improvements.

[*See main edition for text of* (*d*) *to* (*h*)]

(As amended Apr. 30, 1977, Pub. L. 95-24, title I, § 101(a), 91 Stat. 55; Oct. 12, 1977, Pub. L. 95-128, title II, § 201(a), (b), 91 Stat. 1128; Oct. 31, 1978, Pub. L. 95-557, title II, § 206(a), (b), 92 Stat. 2091; Nov. 9, 1978, Pub. L. 95-619, title II, § 251(a), 92 Stat. 3235; Dec. 21, 1979, Pub. L. 96-153, title II, § 201(a), (b), 93 Stat. 1105.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-153 authorized increase in aggregate contractual contributions by $1,140,661,000 on Oct. 1, 1979, and added requirements that out of such additional authority not more than $195,053,000 be authorized to be approved in appropriation acts for units assisted under this chapter other than under section 1437f of this title and that not less than $50,000,000 of the later amount be authorized to be approved for modernization of the units.

1978—Subsec. (c). Pub. L. 95-619 authorized the Secretary to enter into annual contribution contracts aggregating not more than $10,000,000 per annum for financing the purchase and installation of energy conserving improvement in existing low-income housing projects which the Secretary determined had the greatest need for such improvements.

Pub. L. 95-557 added "and by $1,195,043,000 on October 1, 1978" following "October 1, 1977", "and on and after October 1, 1978" after "October 1, 1976" and "Of the additional authority to enter into contracts for annual contributions provided on October 1, 1978, and approved in appropriation Acts, the Secretary shall make available not less than $50,000,000 for modernization of low-income housing projects" following "pursuant to section 5304(a)(4) of this title", and struck out provisions following "only such amounts as may be approved in appropriations Acts" mandating that of the additional authority to enter into contracts provided on October 1, 1976, at least $60,000,000 be made available for modernization of low-income housing projects and at least $140,000,000 to assist in financing low-income housing projects for ownership by public housing agencies other than under section 1437f, of which not less than $100,000,000 shall be available only for the purpose of financing the construction or rehabilitation of low-income housing projects, and provision following "plans prepared pursuant to section 5304(a)(4) of this title" mandating that of the additional authority to enter into contracts for annual contributions provided on Oct. 1, 1977, not less than $42,500,000 shall be made available for low-income housing projects, not less than $197,139,200 for low-income housing projects permanently financed by loans from State housing finance or State development agencies, and not less than $120,000,000 for low-income housing projects permanently financed by loans pursuant to section 1701q of title 12.

1977—Subsec. (c). Pub. L. 95-128 authorized increase in aggregate contractual contributions by $1,159,995,000 on Oct. 1, 1977, and required the Secretary to make available therefrom minimum amounts of $42,500,000 for modernization of low-income housing projects, $197,139,200 for such projects financed by loans from State housing finance or State development agencies, and $120,000,000 for such projects financed by loans pursuant to section 1701q of title 12.

Pub. L. 95-24 substituted "and by $1,228,050,000 on October 1, 1976" for "and by $850,000,000 on October 1, 1976".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 206(h) of Pub. L. 95-557 provided that: "The amendments made by this section [amending sections 1437a, 1437c, 1437f and 1437g of this title], except the amendment made by subsection (d) [adding subsec. (i) of section 1437f of this title], shall become effective on October 1, 1978."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437d, 1437f, 1437g, 1437i, 1437k of this title; title 12 section 1701s.

§ 1437d. Contract provisions and requirements; loans and annual contributions

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Revision of maximum income limits; certification of compliance with requirements; notification of eligibility; informal hearing; compliance with procedures for sound management

Every contract for annual contributions shall provide that—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) the public housing agency shall comply with such procedures and requirements as the Secretary may prescribe to assure that sound management practices will be followed in the operation of the project, including requirements pertaining to—

(A) the establishment of tenant selection criteria which gives preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance under this chapter and which is designed to assure that, within a reasonable period of time, the project will include families with a broad range of incomes and will avoid concentrations of low-income and deprived families with serious social problems, but this shall not permit maintenance of vacancies to await higher income tenants where lower income tenants are available;

[*See main edition for text of* (*B*) *to* (*D*); (*d*) *to* (*g*)]

(As amended Dec. 21, 1979, Pub. L. 96-153, title II, § 206(a), 93 Stat. 1108.)

AMENDMENTS

1979—Subsec. (c)(4)(A). Pub. L. 96-153 substituted "tenant selection criteria which gives preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance under this chapter and which is designed" for "tenant selection criteria designed".

STUDY OF PAYMENTS IN LIEU OF TAXES; REPORT TO CONGRESS

Pub. L. 95-128, title II, § 201(g), Oct. 12, 1977, 91 Stat. 1129, which provided that the Secretary of Housing and Urban Development conduct a study of payment in lieu of taxes made under subsec. (d) of this section and report to the Congress on the status and adequacy of such payments not later than 12 months after Oct. 12, 1977, was omitted from the Code as executed.

§ 1437e. Congregate housing; design, development and acquisition for displaced or elderly families; limitation on amounts for contracts; definition; central dining facility costs

The Secretary shall encourage public housing agencies, in providing housing predominantly for displaced or elderly families, to design, develop, or otherwise acquire such housing to meet the special needs of the occupants and, wherever practicable, for use in whole or in part as congregate housing: *Provided*, That no more than 10 per centum of the total amount of contracts for annual contributions entered into any fiscal year pursuant to the new authority granted under section 202 of the Housing and Urban Development Act of 1970, or under any law subsequently enacted shall be entered into with respect to units in congregate housing. As used in this section, the term "congregate housing" means (1) low-rent housing which, as of January 1, 1979, was built or under construction, with which there is connected a central dining facility where wholesome and economical meals can be served to such occupants; or (2) low-rent housing constructed after, but not under construction prior to, January 1, 1979, connected with which there is a central dining facility to provide wholesome and economical meals for such occupants. Such occupants of congregate housing may also be provided with other supportive services appropriate to their needs under title IV of the Housing and Community Development Amendments of 1978 [42 U.S.C. 8001 et seq.]. Expenditures incurred by a public agency in the operation of a central dining facility in connection with congregate housing (other than the cost of providing food and service) shall be considered one of the costs of operation of the project.

(As amended Oct. 31, 1978, Pub. L. 95-557, title IV, § 412, 92 Stat. 2110.)

REFERENCES IN TEXT

The Housing and Community Development Amendments of 1978, referred to in text, means Pub. L. 95-557, Oct. 31, 1978, 92 Stat. 2080. Title IV of the Housing and Community Development Amendments of 1978, known as the Congregate Housing Services Act of 1978, is classified principally to chapter 89 (§ 8001 et seq.) of this title. For complete classification of the Housing and Community Development Amendments of 1978 and the Congregate Housing Services Act of 1978 to the Code, see Short Title of 1978 Amendment and Short Title notes set out under sections 5301 and 8001, respectively, of this title and Tables.

AMENDMENTS

1978—Pub. L. 95-557 substituted "(1) low-rent housing which, as of January 1, 1979, was built or under construction, with which there is connected a central dining facility where wholesome and economical meals can be served to such occupants; or (2) low-rent housing constructed after, but not under construction prior to, January 1, 1979, connected with which there is a central dining facility to provide wholesome and economical meals for such occupants. Such occupants of congregate housing may also be provided with other supportive services appropriate to their needs under title IV of the Housing and Community Development Amendments of 1978" for "low-income housing (A) in which some or all of the dwelling units do not have kitchen facilities, and (B) connected with which there is a central dining facility to provide wholesome and economical meals for elderly and displaced families under terms and conditions prescribed by the public housing agency to permit a generally self-supporting operation".

§ 1437f. Lower-income housing assistance

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Contents and purposes of contracts for assistance payments; amount and scope of monthly assistance payments

(1) An assistance contract entered into pursuant to this section shall establish the maximum monthly rent (including utilities and all maintenance and management charges) which the owner is entitled to receive for each dwelling unit with respect to which such assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically but not less than annually for existing or newly constructed rental dwelling units of various sizes and types in the market area suitable for occupancy by persons assisted under this section, except that the maximum monthly rent may exceed the fair market rental by more than 10 but not more than 20 per centum where the Secretary determines that special circumstances warrant such higher maximum rent or that such higher rent is necessary to the implementation of a local housing assistance plan as defined in section 1439(a)(5) of this title. Proposed fair market rentals for an area shall be published in the Federal Register with reasonable time for public comment, and shall become effective upon the date of publication in final form in the Federal Register. Notwithstanding any other provision of this section, after October 12, 1977, the Secretary shall prohibit high-rise elevator projects for families with children unless there is no practical alternative.

[*See main edition for text of* (*2*)]

(3) The amount of the monthly assistance payment with respect to any dwelling unit shall be the difference between the maximum monthly rent which the contract provides that the owner is to receive for the unit and a portion of one-twelfth of the resident family's income which the Secretary establishes on the basis of the relative level of income of the family and on the basis of such other factors as the number of minor children in the household and the extent of medical and other unusual expenses incurred by the family. In carrying out the previous sentence, the Secretary shall provide that—

(A) in the case of a very low income family, the amount of such assistance payment shall be the difference between such rent and not less than 15 per centum but not more than 25 per centum of such family income, taking into consideration such relative level of income and such other factors;

(B) in the case of a large very low income family or a lower income family with exceptional medical or other expenses, as determined by the Secretary, the amount of such assistance payment shall be the difference between such rent and 15 per centum of such family income;

(C) in the case of a very large lower-income family, the amount of such assistance payment shall be the difference between such rent and 20 per centum of such family income; and

(D) in the case of other families, the amount of such assistance payment shall be the difference between such rent and not less than 20 per centum but not more than 30 per centum of such family income, taking into consideration such relative level of income and such other factors.

Reviews of family income shall be made no less frequently than annually (except that such reviews may be made at intervals no longer than two years in the case of families who are elderly families).

(4) The assistance contract shall provide that assistance payments may be made only with respect to a dwelling unit under lease for occupancy by a family determined to be a lower income family at the time it initially occupied such dwelling unit, except that such payments may be made with respect to unoccupied units for a period not exceeding sixty days (A) in the event that a family vacates a dwelling unit before the expiration date of the lease for occupancy or (B) where a good faith effort is being made to fill an unoccupied unit, and, subject to the provisions of the following sentence, such payments may be made, in the case of a newly constructed or substantially rehabilitated project, after such sixty-day period in an amount equal to the debt service attributable to such an unoccupied dwelling unit for a period not to exceed one year, if a good faith effort is being made to fill the unit and the unit provides decent, safe, and sanitary housing. No such payment may be made after such sixty-day period if the Secretary determines that the dwelling unit is in a project which provides the owner with revenues exceeding the costs incurred by such owner with respect to such project.

[*See main edition for text of* (*5*) *to* (*8*)]

(d) Required provisions and duration of contracts for assistance payments

(1) Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units shall provide (with respect to any unit) that—

(A) the selection of tenants for such unit shall be the function of the owner, subject to the provisions of the annual contributions contract between the Secretary and the agency, except that the tenant selection criteria used by the owner shall give preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance under this section;

[*See main edition for text of* (*B*) *to* (*D*), (*2*)]

(3) Notwithstanding any other provision of law, with the approval of the Secretary the public housing agency administering a contract under this section with respect to existing housing units may exercise all management and maintenance responsibilities with respect to those units pursuant to a contract between such agency and the owner of such units.

(e) Restrictions on contracts for assistance payments

(1) The Secretary shall not contract to make assistance payments with respect to a newly constructed or substantially rehabilitated dwelling unit for a term of less than two hundred and forty months or more than three hundred and sixty months, except that such term may not exceed two hundred and forty months in the case of a project financed with assistance of a loan made by, or insured, guaranteed or intended for purchase by, the Federal Government, other than pursuant to section 1715z-9 of title 12. Notwithstanding the preceding sentence, in the case of a project owned by, or financed by a loan or loan guarantee from, a State or local agency or the Farmers' Home Administration, the term may not exceed four hundred and eighty months.

(2) The contract between the Secretary and the owner with respect to newly constructed or substantially rehabilitated dwelling units shall provide that all ownership, management, and maintenance responsibilities, including the selection of tenants and the termination of tenancy, shall be assumed by the owner (or any entity, including a public housing agency, approved by the Secretary, with which the owner may contract for the performance of such responsibilities), except that the tenant selection criteria shall give preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking housing assistance under this section. In approving any public housing agency to assume all the management and maintenance responsibilities of any dwelling unit under the preceding sentence, the Secretary may do so without regard to whether such agency administers the housing assistance payment contract for that unit.

[*See main edition for text of* (*3*) *and* (*4*)]

(5) For the purpose of upgrading and thereby preserving the Nation's housing stock, the Secretary is authorized to make assistance payments under this section directly or through public housing agencies pursuant to contracts with owners or prospective owners who agree to upgrade housing so as to make and keep such housing decent, safe, and sanitary through upgrading which involves less than substantial rehabilitation, as such upgrading and rehabilitation are defined by the Secretary. The Secretary is authorized to prescribe such terms and conditions for contracts entered into under this section pursuant to this paragraph as the Secretary determines to be necessary and appropriate, except that such terms and conditions, to the maximum extent feasible, shall be consistent with terms and conditions otherwise applicable with respect to other dwelling units assisted under this section. The Secretary is also authorized to make assistance available under

this section pursuant to this paragraph to any unit in a housing project which, on an overall basis, reflects the need for such upgrading.

[*See main edition for text of (f) to (h)*]

(i) Contracts with respect to substantially rehabilitated dwelling units

In entering into contracts under this section with respect to substantially rehabilitated dwelling units, the Secretary shall provide that—

(1) the maximum monthly rent permitted for the assisted units be not greater than the amount permitted under subsection (c) of this section or a lesser amount which the Secretary determines is appropriate taking into consideration the investment of the owner in the assisted units and such other factors as the Secretary determines to be relevant;

(2) the assisted units be rehabilitated to a level which meets but does not exceed applicable codes and standards for decent, safe, and sanitary housing which are prescribed by the Secretary;

(3) all the dwelling units in the housing structure in which the assisted units are located meet applicable codes and standards prescribed by the Secretary for decent, safe, and sanitary housing;

(4) the term of any such contract does not exceed the maximum term permitted under subsection (e)(1) of this section or a shorter term which the Secretary determines is appropriate taking into consideration the amount of investment of the owner in the assisted units and such other factors as the Secretary determines to be relevant; and

(5) the assisted units meet cost-effective energy efficiency standards prescribed by the Secretary.

(j) Contributions contracts for rental assistance to mobile homeowners

(1) The Secretary may enter into annual contributions contracts under this subsection for the purpose of assisting lower income families by making rental assistance payments with respect to real property on which is located a mobile home which is owned by any such family and utilized by such family as its principal place of residence. In carrying out this subsection, the Secretary may (A) enter into annual contributions contracts with public housing agencies pursuant to which such agencies may enter into contracts to make such assistance payments to the owners of such real property, or (B) enter into such contracts directly with the owners of such real property.

(2) Contracts entered into pursuant to this subsection shall establish the maximum monthly rent (including maintenance and management charges) which the owner is entitled to receive for each space on which a mobile home is located and with respect to which assistance payments are to be made. The maximum monthly rent shall not exceed by more than 10 per centum the fair market rental established by the Secretary periodically (but not less than annually) with respect to the market area for the rental of real property suitable for occupancy by families assisted under this subsection. The provisions of subsection (c)(2) of this section shall apply to the adjustments of maximum monthly rents under this subsection.

(3) The amount of any monthly assistance payment with respect to any family assisted under this subsection shall be the difference between 25 per centum of one-twelfth of the annual income of such family and the sum of—

(A) the monthly payment made by such family to amortize the cost of purchasing the mobile home;

(B) monthly utility payments made by such family, subject to reasonable limitations prescribed by the Secretary; and

(C) the maximum monthly rent permitted with respect to the real property which is rented by such family for the purpose of locating its mobile home;

except that in no case may such assistance exceed the total amount of such maximum monthly rent.

(4) Each contract entered into under this subsection shall be for a term of not less than one month and not more than 180 months.

(5) The Secretary may prescribe other terms and conditions which are necessary for the purpose of carrying out the provisions of this subsection and which are consistent with the purposes of this subsection.

(k) Verification of income

The Secretary shall establish procedures which are appropriate and necessary to assure that income data provided to public housing agencies and owners by families applying for or receiving assistance under this section is complete and accurate. In establishing such procedures, the Secretary shall randomly, regularly, and periodically select a sample of families to authorize the Secretary to obtain information on these families for the purpose of income verification, or to allow those families to provide such information themselves. Such information may include, but is not limited to, data concerning unemployment compensation and Federal income taxation and data relating to benefits made available under the Social Security Act [42 U.S.C. 301 et seq.], the Food Stamp Act of 1977 [7 U.S.C. 2011 et seq.], or title 38. Any such information received pursuant to this subsection shall remain confidential and shall be used only for the purpose of verifying incomes in order to determine eligibility of families for benefits (and the amount of such benefits, if any) under this section.

(As amended Apr. 30, 1977, Pub. L. 95-24, title I, § 101(c), 91 Stat. 55; Oct. 12, 1977, Pub. L. 95-128, title II, § 201(c)-(e), 91 Stat. 1128, 1129; Oct. 31, 1978, Pub. L. 95-557, title II, § 206(d)(1), (e), (f), 92 Stat. 2091, 2092; Dec. 21, 1979, Pub. L. 96-153, title II, §§ 202(b), 206(b), 210, 211(b), 93 Stat. 1106, 1108-1110.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (k), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended, which is classified generally to chapter 7 (§ 301 et seq.) of this title. For complete classification of this Act to the Code see section 1305 of this title and Tables.

The Food Stamp Act of 1977, referred to in subsec. (k), is Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under 2011 of Title 7 and Tables.

AMENDMENTS

1979—Subsec. (c)(3). Pub. L. 96-153, § 202(b), substituted new provisions for computation of the amount of monthly assistance payments with respect to dwelling units and laid down criteria to be followed by the Secretary in regard to payments to families with different income levels.

Subsec. (d)(1)(A). Pub. L. 96-153, § 206(b)(1), substituted "Secretary and the agency, except that the tenant selection criteria used by the owner shall give preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking assistance under this section." for "Secretary and the agency;".

Subsec. (e)(1). Pub. L. 96-153, § 211(b), substituted "term of less than two hundred and forty months" for "term of less than one month".

Subsec. (e)(2). Pub. L. 96-153, § 206(b)(2), substituted "performance of such responsibilities), except that the tenant selection criteria shall give preference to families which occupy substandard housing or are involuntarily displaced at the time they are seeking housing assistance under this section" for "performance of such responsibilities)".

Subsec. (k). Pub. L. 96-153, § 210, added subsec. (k).

1978—Subsec. (e)(5). Pub. L. 95-557, § 206(e), added par. (5).

Subsec. (i). Pub. L. 95-557, § 206(d)(1), added subsec. (i).

Subsec. (j). Pub. L. 95-557, § 206(f), added subsec. (j).

1977—Subsec. (c), Pub. L. 95-128, § 201(c), (d), added in par. (1) prohibition against high-rise elevator projects for families with children after Oct. 12, 1977, and deleted from par. (4) provision which had prohibited payment after the sixty-day period if the unoccupied unit was in a project insured under the National Housing Act, except pursuant to section 1715z-9 of title 12.

Subsec. (d)(3). Pub. L. 95-128, § 201(e)(1), added par. (3).

Subsec. (e)(1). Pub. L. 95-24 substituted "three hundred and sixty months, except that such term may not exceed two hundred and forty months in the case of a project financed with assistance of a loan made by, or insured, guaranteed or intended for purchase by, the Federal Government, other than pursuant to section 1715z-9 of title 12" for "two hundred and forty months" and "Notwithstanding the preceding sentence, in the case of" for "In the case of".

Subsec. (e)(2). Pub. L. 95-128, § 201(e)(2), added provision respecting the Secretary's approval of any public housing agency for assumption of management and maintenance responsibilities of dwelling units under the preceding sentence.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment of subsec. (c)(3) by Pub. L. 96-153 effective on Jan. 1, 1980, except with respect to amount of tenant contribution required of families whose occupancy commenced prior to such date, see section 202(c) of Pub. L. 96-153, set out as an Effective Date of 1979 Amendment note under section 1437a of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (e)(5) and (j) of this section by section 206(e), (f) of Pub. L. 95-557 effective on Oct. 1, 1978, see section 206(h) of Pub. L. 95-557, set out as an Effective Date of 1978 Amendment note under section 1437c of this title.

Section 206(d)(2) of Pub. L. 95-557 provided that: "The amendment made by this subsection [adding subsec. (i) of this section] shall become effective with respect to contracts entered into on or after 270 days following the date of enactment of this Act [Oct. 31, 1978]."

STUDY BY SECRETARY CONCERNING FEASIBILITY OF MINIMUM RENT PAYMENT REQUIREMENTS

Section 212 of Pub. L. 96-153 provided that:

"(a) The Secretary of Housing and Urban Development shall conduct a study of the feasibility and financial desirability of requiring minimum rent payments from tenants in low-income housing assisted under the United States Housing Act of 1937 [this chapter]. The study shall examine (1) the extent to which tenants in such housing are not required to or do not pay rent, (2) the incentives for greater tenant care of such housing which minimum rents may create, (3) the administrative costs of assessing and collecting minimum rents, and (4) for each of the five fiscal years beginning on October 1, 1980, and ending September 30, 1984, the reductions in appropriations for the payment of annual contributions for assisted housing and for payments for the operation of low-income housing projects which several alternative specifications of minimum rent requirements would allow. The Secretary shall submit a report to the Congress containing the findings and conclusions of such study not later than ten days after the Budget for fiscal year 1981 is transmitted pursuant to section 201 of the Budget and Accounting Act, 1921 [31 U.S.C. 11].

"(b) The Secretary of Housing and Urban Development shall conduct a study to provide detailed comparisons between the rents paid by tenants occupying low-income housing assisted under the United States Housing Act of 1937 [this chapter], and the rents paid by tenants at the same income levels who are not in assisted housing. The comparisons shall be made for differing regions, income levels and family size, and shall include data on utility costs paid by tenants. Data on tenants not in assisted housing shall be further subdivided in accordance with various indicators of housing quality. The Secretary shall transmit a report on such study to the Congress not later than March 1, 1980."

STUDY OF ALTERNATIVE MEANS OF ENCOURAGING THE DEVELOPMENT OF HOUSING

Section 208 of Pub. L. 95-557 provided that:

"(a) The Secretary of Housing and Urban Development shall conduct a study for the purpose of examining alternative means of encouraging the development of housing to be assisted under section 8 of the United States Housing Act of 1937 [this section] for occupancy by large families which reside in areas with a low-vacancy rate in rental housing.

"(b) The Secretary shall report to the Congress no later than one year after the date of enactment of this Act [Oct. 31, 1978], for the purpose of providing legislative recommendations with respect to the study described in subsection (a)."

TAXATION OF INTEREST PAID ON OBLIGATIONS SECURED BY INSURED MORTGAGE AND ISSUED BY PUBLIC AGENCY

Pub. L. 93-383, § 319(b) provided that: "With respect to any obligation secured by a mortgage which is insured under section 221(d)(3) of the National Housing Act [section 1715*l*(d)(3) of Title 12, Banks and Banking] and issued by a public agency as mortgagor in connection with the financing of a project assisted under section 8 of the United States Housing Act of 1937 [this section], the interest paid on such obligation shall be included in gross income for purposes of chapter 1 of the Internal Revenue Code of 1954 [chapter 1 of Title 26, Internal Revenue Code]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437c, 1437g, 1437j, 1437k, 1472, 1483 of this title; title 12 sections 1701q, 1701s, 1701z-12, 1701z-13, 1715*l*, 1715z-1, 1717, 1723e; title 26 section 1250; title 29 section 825.

§ 1437g. Annual contributions for operation of low-income housing projects

(a) Determination of amounts; contract authorization; standards for payments; necessity of annual contribution contracts

(1) In addition to the contributions authorized to be made for the purposes specified in section 1437c of this title, the Secretary may make annual contributions to public housing agencies for the operation of low-income housing projects. The contributions payable annually under this section shall not exceed the amounts which the Secretary determines are required (A) to assure the low-income character of the projects involved, and (B) to achieve and maintain adequate operating services and reserve funds. The Secretary shall embody the provisions for such annual contributions in a contract guaranteeing their payment subject to the availability of funds, and such contract shall provide that no disposition of the low-income housing project, with respect to which the contract is entered into, shall occur during and for ten years after the period when contributions were made pursuant to such contract unless approved by the Secretary. For purposes of making payments under this section, the Secretary shall establish standards for costs of operation and reasonable projections of income, taking into account the character and location of the project and characteristics of the families served, or the costs of providing comparable services as determined in accordance with criteria or a formula representing the operations of a prototype well-managed project.

(2) The Secretary may not make assistance available under this section for any low-income housing project unless such project is being assisted by an annual contributions contract authorized by section 1437c(c) of this title but not subject to section 1437f of this title, except that after the duration of any such annual contributions contract with respect to a low-income housing project, the Secretary may provide assistance under this section with respect to such project as long as the low-income nature of such project is maintained.

[*See main edition for text of* (*b*)]

(c) Authorization of appropriation

There are authorized to be appropriated, for the purpose of providing annual contributions pursuant to this section not to exceed $535,000,000 on or after July 1, 1975, not to exceed $80,000,000 on or after July 1, 1976, not to exceed $595,600,000 on or after October 1, 1976, not to exceed $685,000,000 on or after October 1, 1977, not to exceed $729,000,000 on or after October 1, 1978, and not to exceed $741,500,000 on or after October 1, 1979.

(d) Distribution of remaining appropriated funds to housing projects incurring excessive costs

If, in any fiscal year beginning after September 30, 1979, any funds which have been appropriated for such year remain after applying the provisions of the second and fourth sentences of subsection (a)(1) of this section, the Secretary shall distribute such funds to low-income housing projects which incurred excessive costs which were beyond their control and the full extent of which was not taken into account in the original distribution of funds for such fiscal year.

(As amended Apr. 30, 1977, Pub. L. 95-24, title I, § 101(b), 91 Stat. 55; Oct. 12, 1977, Pub. L. 95-128, title II, § 201(f), 91 Stat. 1129; Oct. 31, 1978, Pub. L. 95-557, title II, § 206(g), 92 Stat. 2093; Dec. 21, 1979, Pub. L. 96-153, title II, §§ 201(c), 207, 211(a), 93 Stat. 1106, 1109, 1110.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-153, § 211(a), designated existing provisions as par. (1) and cls. (1) and (2) thereof as (A) and (B), and in par. (1) as so designated, added provisions that such contract shall provide that no disposition of low-income housing project, with respect to which the contract is entered into, shall occur during and for ten years after the period when contributions were made pursuant to such contract unless approved by the Secretary, and added par. (2).

Subsec. (c). Pub. L. 96-153, § 201(c), authorized appropriation for annual contributions of $741,500,000 on or after Oct. 1, 1979.

Subsec. (d). Pub. L. 96-153, § 207, added subsec. (d).

1978—Subsec. (c). Pub. L. 95-557 added "and not to exceed $729,000,000 on or after October 1, 1978".

1977—Subsec. (c). Pub. L. 95-128 authorized appropriation for annual contributions of $685,000,000 on or after Oct. 1, 1977.

Pub. L. 95-24 substituted "and not to exceed $595,600,000 on or after October 1, 1976" for "and not to exceed $576,000,000 on or after October 1, 1976".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-557 effective Oct. 1, 1978, see section 206(h) of Pub. L. 95-557, set out as an Effective Date of 1978 Amendment note under section 1437c of this title.

§ 1437k. Energy conservation

(a) In utilizing contract authority which is provided by section 1437c(c) of this title and has been approved in appropriation Acts for use in the modernization of low-income housing projects (other than projects assisted under section 1437f of this title) on or after October 1, 1979, the Secretary shall, to the maximum extent practicable, also take into consideration projects which will be modernized to a substantial extent with weatherization materials as defined in section 6862(9) of this title.

(b) The Secretary shall, to the maximum extent practicable, require that newly constructed and substantially rehabilitated projects assisted under this chapter with authority provided on or after October 1, 1979, shall be equipped with heating and cooling systems selected on the basis of criteria which include a life-cycle cost analysis of such systems.

(Sept. 1, 1937, ch. 896, § 13, as added Dec. 21, 1979, Pub. L. 96-153, title II, § 209, 93 Stat. 1109.)

PRIOR PROVISIONS

A prior section 13 of act Sept. 1, 1937, ch. 896, 50 Stat. 894, as amended, which enumerated powers of the Authority, was classified to section 1413 of this title prior to the revision of act Sept. 1, 1937 by Pub. L. 93-383.

§ 1438. Special low-income housing projects for elderly or handicapped; consultations; applicable design and equipment standards

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 1439. Local housing assistance plan

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Allocation and reservation of housing assistance funds; purposes; prohibition against reallocation of unutilized funds

(1) In allocating financial assistance (other than assistance approved in appropriation Acts for use on and after October 1, 1979, under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] for the purpose of modernization of low-income housing projects) under the provisions of law specified in subsection (a) of this section, the Secretary, so far as practicable, shall consider the relative needs of different areas and communities as reflected in data as to population, poverty, housing overcrowding, housing vacancies, amount of substandard housing, or other objectively measurable conditions, subject to such adjustments as may be necessary to assist in carrying out activities designed to meet lower income housing needs as described in approved housing assistance plans submitted by units of general local government or combinations of such units assisted under section 5307(a)(2) of this title. The Secretary shall assure, to the maximum extent practicable in carrying out the national housing and community development objectives, that funds available for each housing assistance program referred to in subsection (a) of this section shall be allocated or reserved in accordance with goals described in local, State, or other housing assistance plans approved by the Secretary pursuant to section 5304 of this title, and shall be utilized to meet needs reflected in data referred to in the preceding sentence. Any amounts allocated to a State or to areas or communities within a State which are not likely to be utilized within a fiscal year shall not be reallocated for use in another State unless the Secretary determines that other areas or communities within the same State cannot utilize the amounts in accordance with the appropriate housing assistance plans within that fiscal year. The amount of assistance allocated to nonmetropolitan areas pursuant to this section in any fiscal year shall not be less than 20 nor more than 25 per centum of the total amount of such assistance.

[*See main edition for text of* (*2*) *and* (*3*)]

(As amended Pub. L. 95-128, title II, § 207, Oct. 12, 1977, 91 Stat. 1130; Pub. L. 96-153, title II, § 204, Dec. 21, 1979, 93 Stat. 1108.)

REFERENCES IN TEXT

The United States Housing Act of 1937, as amended, referred to in subsecs. (a)(1) and (d)(1), is act Sept. 1, 1937, ch. 896, as added Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to this chapter (§ 1437 et seq.). For complete classification of this Act to the Code, see Short Title note under section 1437 of this title and Tables.

AMENDMENTS

1979—Subsec. (d)(1). Pub. L. 96-153 added provisions limiting allocation of assistance other than that approved in appropriation acts for use on and after Oct. 1, 1979 for modernization of low-income housing projects and added provision that any amounts allocated to a state or to areas or communities within a state which are not likely to be utilized within a fiscal year shall not be reallocated for use in another state unless the Secretary determines that other areas or communities within the same state cannot utilize the amounts in accordance with the appropriate housing assistance plans within that fiscal year.

1977—Subsec. (d)(1). Pub. L. 95-128 added provision requiring the Secretary to assure that funds available for subsec. (a) housing assistance programs shall be allocated or reserved in accordance with goals described in local, State, or other housing assistance plans approved by the Secretary pursuant to section 5304 of this title and shall be utilized to meet needs reflected in data referred to in the preceding sentence.

§ 1440. State housing finance and development agencies

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1437c of this title; title 12 sections 371, 1464.

CHAPTER 8A—SLUM CLEARANCE, URBAN RENEWAL, AND FARM HOUSING

SUBCHAPTER III—FARM HOUSING

Sec.	
1490h.	Taxation of Farmers Home Administration-held property [New].
1490i.	Minimum property standards for energy conservation [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1434, 1441a, 2985c, 5303 of this title; title 20 section 80g; title 48 sections 1408, 1408c.

SUBCHAPTER I—GENERAL PROVISIONS

§ 1441. Congressional declaration of national housing policy

NATIONAL COMMISSION ON NEIGHBORHOODS

Pub. L. 95-24, title II, §§ 201 to 208, Apr. 30, 1977, 91 Stat. 56-59, as amended by Pub. L. 95-557, title III, § 315, Oct. 31, 1978, 92 Stat. 2099, provided that:

"SHORT TITLE

"Sec. 201. This title may be cited as the 'National Neighborhood Policy Act'.

"FINDINGS AND PURPOSE

"Sec. 202. (a) The Congress finds and declares that existing city neighborhoods are a national resource to be conserved and revitalized wherever possible, and that public policy should promote that objective.

"(b) The Congress further finds that the tendency of public policy incentives to ignore the need to preserve the built environment can no longer be defended, either economically or socially, and must be replaced with explicit policy incentives encouraging conservation of existing neighborhoods. That objective will require a comprehensive review of existing laws, policies, and programs which affect neighborhoods, to assess their impact on neighborhoods, and to recommend modifications where necessary.

"ESTABLISHMENT OF COMMISSION

"Sec. 203. (a) There is hereby established a commission to be known as the National Commission on Neighborhoods (hereinafter referred to as the 'Commission').

"(b) The Commission shall be composed of twenty members, to be appointed as follows:

"(1) two Members of the Senate appointed by the President of the Senate;

"(2) two Members of the House of Representatives appointed by the Speaker of the House of Representatives; and

"(3) sixteen public members appointed by the President of the United States from among persons specially qualified by experience and training to perform the duties of the Commission, at least five of whom shall be elected officers of recognized neighborhood organizations engaged in development and revitalization programs, and at least five of whom shall be elected or appointed officials of local governments involved in preservation programs. The remaining members shall be drawn from outstanding individuals with demonstrated experience in neighborhood revitalization activities, from such fields as finance, business, philanthropic, civic, and educational organizations.

The individuals appointed by the President of the United States shall be selected so as to provide representation to a broad cross section of racial, ethnic, and geographic groups. The two members appointed pursuant to clause (1) may not be members of the same political party, nor may the two members appointed pursuant to clause (2) be members of the same political party. Not more than eight of the members appointed pursuant to clause (3) may be members of the same political party.

"(c) The Chairman shall be appointed by the President, by and with the advice and consent of the Senate, from among the public members.

"(d) The executive director shall be appointed by the President, by and with the advice and consent of the Senate, from among individuals recommended by the Commission.

"DUTIES

"Sec. 204. (a) The Commission shall undertake a comprehensive study and investigation of the factors contributing to the decline of city neighborhoods and of the factors necessary to neighborhood survival and revitalization. Such study and investigation shall include, but not be limited to—

"(1) an analysis of the impact of existing Federal, State, and local policies, programs, and laws on neighborhood survival and revitalization;

"(2) an identification of the administrative, legal, and fiscal obstacles to the well-being of neighborhoods;

"(3) an analysis of the patterns and trends of public and private investment in urban areas and the impact of such patterns and trends on the decline or revitalization of neighborhoods;

"(4) an assessment of the existing mechanisms of neighborhood governance and of the influence exercised by neighborhoods on local government;

"(5) an analysis of the impact of poverty and racial conflict on neighborhoods;

"(6) an assessment of local and regional development plans and their impact on neighborhoods; and

"(7) an evaluation of existing citizen-initiated neighborhood revitalization efforts and a determination of how public policy can best support such efforts.

"(b) The Commission shall make recommendations for modifications in Federal, State, and local laws, policies, and programs necessary to facilitate neighborhood preservation and revitalization. Such recommendations shall include, but not be limited to—

"(1) new mechanisms to promote reinvestment in existing city neighborhoods;

"(2) more effective means of community participation in local governance;

"(3) policies to encourage the survival of economically and socially diverse neighborhoods;

"(4) policies to prevent such destructive practices as blockbusting, redlining, resegregation, speculation in reviving neighborhoods, and to promote homeownership in urban communities;

"(5) policies to encourage better maintenance and management of existing rental housing;

"(6) policies to make maintenance and rehabilitation of existing structures at least as attractive from a tax viewpoint as demolition and development of new structures;

"(7) modification in local zoning and tax policies to facilitate preservation and revitalization of existing neighborhoods; and

"(8) reorientation of existing housing and community development programs and other tax and subsidy policies that affect neighborhoods, to better support neighborhood preservation efforts.

"(c) Not later than fifteen months after the date on which funds first become available to carry out this title, the Commission shall submit to the Congress and the President a comprehensive report on its study and investigation under this subsection which shall include its findings, conclusions, and recommendations and such proposals for legislation and administrative action as may be necessary to carry out its recommendations.

"COMPENSATION OF MEMBERS

"Sec. 205. (a) Members of the Commission who are Members of Congress or full-time officers or employees of the United States shall serve without additional compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Commission.

"(b) Members of the Commission, other than those referred to in subsection (a), shall receive compensation at the rate of $100 per day for each day they are engaged in the actual performance of the duties vested in the Commission and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred in the performance of such duties.

"ADMINISTRATIVE PROVISIONS

"Sec. 206. (a) The Commission shall have the power to appoint and fix the compensation of such personnel as it deems advisable, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, but at rates not in excess of a maximum rate for GS-18 of the General Schedule under section 5332 of such title.

"(b) The Commission may procure, in accordance with the provisions of section 3109 of title 5, United States Code, the temporary or intermittent services of experts or consultants. Persons so employed shall receive compensation at a rate to be fixed by the Commission but not in excess of $100 per day, including traveltime. While away from his or her home or regular place of business in the performance of services for the Commission, any such person may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

"(c) Each department, agency, and instrumentality of the United States is authorized and directed to furnish to the Commission, upon request made by the Chairman or Vice Chairman, on a reimbursable basis or otherwise, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title. The Chairman is further authorized to call upon the departments, agencies, and other offices of the several States to furnish, on a reimbursable basis or otherwise, such statistical data, reports, and other information as the Commission deems necessary to carry out its functions under this title.

"(d) The Commission may award contracts and grants for the purposes of evaluating existing neighborhood revitalization programs and the impact of existing laws on neighborhoods. Awards under this subsection may be made to—

"(1) representatives of legally chartered neighborhood organizations;

"(2) public interest organizations which have a demonstrated capability in the area of concern; and

"(3) universities and other not-for-profit educational organizations.

"(e) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title, hold hearings, take testimony, and administer oaths or affirmations to witnesses appearing before the Commission or any subcommittee or member thereof. Hearings by the Commission will be held in neighborhoods with testimony received from citizen leaders and public officials who are engaged in neighborhood revitalization programs.

"Authorizations of Appropriations

"Sec. 207. There are authorized to be appropriated not to exceed $1,000,000 to carry out this title.

"Expiration of the Commission

"Sec. 208. The Commission shall cease to exist thirty days after the submission of its report under section 204."

Section Referred to in Other Sections

This section is referred to in section 1476 of this title; title 12 section 1701t.

§ 1441c. Annual reports of the President to the Congress; contents

Not later than January 20 of each year, the President shall transmit to the Congress a report which—

(1) reviews the progress made in achieving housing production objectives during the preceding year, and in the event that proposed objectives are not achieved, identifies the reasons for the failure;

(2) projects the level, composition, and general location of production and rehabilitation activity during the current year, and reassesses the availability of required resources;

(3) specifies Federal programs and policies to be implemented or recommended in order to achieve the objective;

(4) updates estimates of the housing needs of lower income families, analyzing these needs, insofar as possible, by type of household, housing need, including households with specialized needs, and general location, and in addition, reassesses the capacity of each Federal housing program to serve the needs identified;

(5) reviews the progress made in achieving goals of conserving and upgrading older housing and neighborhoods, expanding home-ownership and equal housing opportunities, and assuring reasonable shelter costs;

(6) reports on progress made toward developing new methods for measuring and monitoring progress in achieving these goals; and

(7) identifies legislative and administrative actions which will or should be adopted or implemented during the current year to support achievement of the goals.

(As amended Pub. L. 95-557, title IX, § 906, Oct. 31, 1978, 92 Stat. 2127.)

Amendments

1978—Pub. L. 95-557 generally revised this section to reflect the expansion of the production and rehabilitation program.

SUBCHAPTER II—SLUM CLEARANCE AND URBAN RENEWAL

Part A—Urban Renewal Projects, Demolition Programs, and Code Enforcement Programs

§ 1450. Urban Renewal Fund

Ex. Ord. No. 12075. Interagency Coordinating Council

Ex. Ord. No. 12075, Aug. 16, 1978, 43 F.R. 36877, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for interagency coordination of the implementation of Federal urban and regional policy, it is hereby ordered as follows:

1.1. Establishment of the Council

1-101. There is established the Interagency Coordinating Council.

1-102. The Council shall be composed of the heads of the following agencies, or a designated representative, and such others as the President may designate:

(a) Department of the Treasury
(b) Department of Justice
(c) Department of the Interior
(d) Department of Agriculture
(e) Department of Commerce
(f) Department of Labor
(g) Department of Health, Education, and Welfare
(h) Department of Housing and Urban Development
(i) Department of Transportation
(j) Department of Energy
(k) Environmental Protection Agency
(*l*) Community Services Administration
(m) General Services Administration
(n) Small Business Administration
(o) ACTION
(p) Federal Emergency Management Agency

1-103. The President shall designate the Chairperson of the Council.

1-2. Functions of the Council

1-201. The Council shall work with Executive agencies to involve all sectors of the Nation, including State, county and local governments, regional bodies, the private sector, neighborhood groups, and volunteer and civic associations, in a partnership to conserve and strengthen America's communities.

1-202. The Council shall facilitate cooperation and coordination of urban and regional policy implementation among and between Executive agencies.

1-203. The Council shall assist Executive agencies in coordinating timely responses to State, county and local government and community development strategies.

1-204. The Council shall identify and seek to solve interagency and intergovernmental problems which impede the effective functioning of the Federal system.

1-205. The functions of the Council shall neither substitute for nor replace Executive Office of the President clearance, review and decisionmaking procedures.

1-3. Administrative Provisions

1-301. Executive agencies shall cooperate with and assist the Council in performing its functions.

1-302. The Chairperson shall be responsible for providing the Council with such administrative services or support as may be necessary or appropriate.

1-303. The Chairperson may establish working groups or subcommittees of the Council. The Chairman may invite representatives of nonmember agencies to participate from time to time in the functions of the Council.

1-304. The Chairperson shall report to the President on the performance of the Council's functions.

Jimmy Carter.

§ 1451. Local programs

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Requirements; exceptions; minimum standards housing code

No contract shall be entered into for any loan or capital grant under this subchapter, unless (1) there is presented to the Secretary by the locality, a workable program for community improvement (which shall include an official plan of action, as it exists from time to time, for effectively dealing with the problem of urban slums and blight within the community and for the establishment and preservation of a well-planned community with well-organized residential neighborhoods of decent homes and suitable living environment for adequate family life) for utilizing appropriate private and public resources to eliminate, and prevent the development or spread of, slums and urban blight, to encourage needed urban rehabilitation, to provide for the redevelopment of blighted, deteriorated, or slum areas, or to undertake such of the aforesaid activities or other feasible community activities as may be suitably employed to achieve the objectives of such a program, and (2) on the basis of his review of such program, the Secretary determines that such program meets the requirements of this subsection and certifies that the Federal assistance may be made available in such community: *Provided*, That commencing three years after September 2, 1964 or, in the case of an Indian tribe, band, or nation, commencing January 1, 1970, no workable program shall be certified or re-certified unless (A) the locality has had in effect, for at least six months prior to such certification or re-certification, a minimum standards housing code, related but not limited to health, sanitation, and occupancy requirements, which is deemed adequate by the Secretary, and (B) the Secretary is satisfied that the locality is carrying out an effective program of enforcement to achieve compliance with such housing code. Notwithstanding any other provision of law, in the case of a contract with an Indian tribe, band, or nation (or a public housing or other public agency for such tribe, band, or nation established under State or tribal law), the workable program and minimum standards housing code, referred to in the preceding sentence, may be presented to the Secretary by such tribe, band, or nation, and it shall be subject to the requirements of law with respect to such program and code only to the extent that such tribe, band, or nation has the legal jurisdiction and power to carry out such requirements.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended Apr. 30, 1977, Pub. L. 95-24, title I, § 105(a), 91 Stat. 56.)

Amendments

1977—Subsec. (c). Pub. L. 95-24 struck out "and no mortgage shall be insured, and no commitment to insure a mortgage shall be issued, under section 1715k of title 12," following "loan or capital grant under this subchapter," and proviso relating to the applicability of this subsection to the insurance of, or commitment to insure, a mortgage under section 1715k of title 12.

Section Referred to in Other Sections

This section is referred to in sections 1452, 1452b, 1460, 1462, 1466, 1467, 1468, 1468a, 1469c of this title; title 12 sections 1701z-11, 1715z-1a.

§ 1452b. Rehabilitation loans

(a) Considerations

The Secretary is authorized, through the utilization of local public and private agencies where feasible, to make loans as herein provided to the owners and tenants of property to finance the rehabilitation of such property. No loan shall be made under this section unless—

[*See main edition for text of* (*1*) *to* (*3*)]

The Secretary shall, in making loans under this section, give priority to applications by low- and moderate-income persons who own the property to be rehabilitated and will occupy such property upon completion of the rehabilitation, including applications by condominiums and cooperatives in which the residents are principally of low and moderate income. For the purpose of the preceding sentence, the term "low and moderate income" means income which does not exceed 95 per centum of the median income for the area.

[*See main edition for text of* (*b*)]

(c) Limitations

A rehabilitation loan made under this section shall be subject to the following limitations:

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The loan shall bear interest at such rate as the Secretary determines to be appropriate, but not to exceed 3 per centum per annum for loans to families with adjusted incomes of not more than 80 per centum of the median income for the area. For loans to families with adjusted incomes above 80 per centum of the median income for the area, as determined by the Secretary, the Secretary may establish interest rates based on adjusted family income, ranging from above 3 per centum to a rate determined by the Secretary, but in no case may any such rate exceed the current average market yield on outstanding marketable securities of the United States with remaining periods to maturity comparable to the terms of loans made pursuant to this section, adjusted to the nearest one-eighth of 1 per centum. The Secretary may prescribe such other charges adequate in the

judgment of the Secretary to cover administrative costs and possible losses under the program.

(4) The amount of the loan may not exceed—

(A) in the case of residential property, $27,000 per dwelling unit: *Provided*, That, within the limitations otherwise applicable on the amount of a loan, the loan may exceed the cost of rehabilitation in order to include an amount approved by the Secretary to refinance existing indebtedness secured by such property if such refinancing is necessary to enable the applicant to amortize, with a monthly payment of not more than 20 per centum of his average monthly income, such loan and any other indebtedness secured by his property, or if such refinancing is deemed necessary by the Secretary to minimize displacement of existing tenants of a multifamily property; and

(B) in the case of nonresidential property, whichever of the following is the least: $100,000, or the cost of rehabilitation, or an amount which when added to any outstanding indebtedness related to the property securing the loan creates a total outstanding indebtedness that the Secretary determines could be reasonably secured by a first mortgage on the property.

(5) A loan shall be secured as determined by the Secretary.

(d) Authorization of appropriations; revolving fund; limitations on loans for rehabilitation of multifamily properties

There is authorized to be appropriated not to exceed $150,000,000 for each fiscal year ending prior to July 1, 1975, not to exceed $100,000,000 for the fiscal year beginning on July 1, 1975, not to exceed $100,000,000 for the fiscal year beginning on October 1, 1976, not to exceed $60,000,000 for the fiscal year beginning on October 1, 1977, not to exceed $245,000,000 for the fiscal year beginning on October 1, 1978, and not to exceed $140,000,000 for the fiscal year beginning on October 1, 1979, which shall constitute a revolving fund to be used by the Secretary in carrying out this section. All moneys in such revolving fund shall be available for necessary expenses of servicing loans made pursuant to this section, including reimbursement or payment for services and facilities of the Government National Mortgage Association and of any public or private agency for the servicing of such loans. The amount of commitments to make loans pursuant to this section entered into after August 22, 1976, shall not exceed amounts approved in appropriation Acts. Of the amounts available for loans under this section during the fiscal year beginning October 1, 1978, the Secretary may utilize not more than $60,000,000 for rehabilitation loans for multifamily properties. Of the amounts available for loans under this section during any fiscal year beginning on or after October 1, 1979, the Secretary may utilize not more than $75,000,000 for rehabilitation loans for multifamily properties.

[*See main edition for text of* (*e*) *to* (*g*)]

(h) Termination date

No loan shall be made under this section after September 30, 1980, except pursuant to a contract, commitment, or other obligation entered into pursuant to this section prior to October 1, 1980.

(i) Cost-effective energy conservation standards

The Secretary may not, after 270 days following October 31, 1978, make any loan under this section with respect to any property unless the Secretary has determined that the improvements to such property, upon completion of the rehabilitation, will meet cost-effective energy conservation standards prescribed by the Secretary.

(j) Additional limitations and conditions on rehabilitation loans

Rehabilitation loans under this section for multifamily properties shall be subject to the following additional limitations and conditions:

(1) The property must meet the requirements of subsection (a) of this section and—

(A) be located in a low- or moderate-income neighborhood; or

(B) have a majority of tenants of low and moderate income.

All such loans must be consistent with an overall community development strategy developed pursuant to title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.].

(2) The property must have fewer than 100 units, except where the Secretary determines that a loan under this section is essential to meet the community development needs of a neighborhood and alternative sources of financing are not available.

(3) The Secretary shall enter into an agreement with the investor-owner of a multifamily property which is to be rehabilitated with a loan under this section to limit, for a period of at least five years, the increased rent caused by the rehabilitation.

(4) The Secretary shall minimize involuntary displacement caused by rehabilitation loans under this section with respect to multifamily properties.

(k) Report to Congress on rehabilitation loans program; interim report on use of funds for multifamily properties; recommendations

In conjunction with the annual report required under section 113(a) of the Housing and Community Development Act of 1974 [42 U.S.C. 5313(a)], the Secretary shall submit to the Congress a report on the rehabilitation loan program under this section. Such report shall include a summary of the use of funds under this section, particularly with regard to the types of neighborhoods and persons aided under this section, and an evaluation of progress made toward community development goals under this section. As soon as feasible, but not later than December 1, 1979, the Secretary shall submit to Congress an interim report evaluating the use of funds under this section for multifamily properties, with legislative recommendations for improving the overall effectiveness of Federal assistance for the rehabilitation of multifamily properties.

(As amended Pub. L. 95-128, title I, § 111, Oct. 12, 1977, 91 Stat. 1127; Pub. L. 95-557, title I, § 101(a), (b), Oct. 31, 1978, 92 Stat. 2080, 2081; Pub. L. 96-71, § 4, Sept. 28, 1979, 93 Stat. 502; Pub. L. 96-105, § 4, Nov. 8, 1979, 93 Stat. 795; Pub. L. 96-153, title I, § 101, Dec. 21, 1979, 93 Stat. 1101.)

References in Text

The Housing and Community Development Act of 1974, referred to in subsecs. (a)(1)(D), (j)(1), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

Amendments

1979—Subsec. (d). Pub. L. 96-153, § 101(a), authorized appropriation for fiscal year beginning Oct. 1, 1979 of an amount not exceeding $140,000,000 and added provision that of the amounts available for loans under this section during any fiscal year beginning on or after Oct. 1, 1979, the Secretary may utilize not more than $75,000,000 for rehabilitation loans for multifamily properties.

Subsec. (h). Pub. L. 96-153, § 101(b), substituted "September 30, 1980" and "October 1, 1980" for "November 30, 1979" and December 1, 1979" respectively.

Pub. L. 96-105 substituted "November 30, 1979" and "December 1, 1979" for "October 31, 1979" and "November 1, 1979", respectively.

Pub. L. 96-71 substituted "October 31, 1979" and "November 1, 1979" for "September 30, 1979" and "October 1, 1979", respectively.

Subsec. (i). Pub. L. 96-153, § 101(c), redesignated subsec. (i) relating to additional limitations and conditions as added by Pub. L. 95-557 as (j).

Subsec. (j). Pub. L. 96-153, § 101(c), redesignated former subsec. (i) as (j). Subsec. (j) was redesignated (k).

Subsec. (k). Pub. L. 96-153, § 101(c), redesignated former subsec. (j) as (k).

1978—Subsec. (a). Pub. L. 95-557, § 101(a)(1), substituted provisions that priority be given to low- and moderate-income persons owning and occupying the property, including applications by condominiums and cooperatives in which residents are principally of low and moderate income, such term meaning income not exceeding 95 per centum of the median income of the area, for provisions that priority be given to persons whose annual income is within limitations for occupants of projects financed with below-market interest rate mortgages insured under section 221(d)(3) of the National Housing Act.

Subsec. (c)(3). Pub. L. 95-557, § 101(a)(2), substituted provisions limiting the interest at not to exceed 3 per centum per annum for loans to families with adjusted incomes of not more than 80 per centum of the median income of the area, and establishment of interest rates based on adjusted family income for families with adjusted incomes above 80 per centum, ranging from above 3 per centum to a rate determined by the Secretary, in no case to exceed the current average market yields on outstanding marketable securities with comparable remaining periods of maturity, adjusted to the nearest one-eighth of 1 per centum, and authorizing the Secretary to prescribe other charges to cover administrative costs and losses, for provisions setting the interest at rates determined by the Secretary to be appropriate but not to exceed 3 per centum per annum of the principal amount outstanding at any one time and authorizing the Secretary to prescribe such other necessary charges including service charges and appraisal and inspection fees.

Subsec. (c)(4)(A). Pub. L. 95-557, § 101(a)(3), added ", or if such refinancing is deemed necessary by the Secretary to minimize displacement of existing tenants of a multifamily property" following "indebtedness secured by his property".

Subsec. (c)(4)(B). Pub. L. 95-557, § 101(a)(4), substituted "$100,000" for "$50,000".

Subsec. (d). Pub. L. 95-557, § 101(a)(5), (6), added provision relating to the authorization of appropriations of not to exceed $245,000,000 for the fiscal year beginning on October 1, 1978, and provision restricting to $60,000,000 the amount which may be utilized for multifamily properties during the fiscal year beginning October 1, 1978.

Subsec. (i). Pub. L. 95-557, § 101(a)(7), added subsec. (i).

Subsecs. (i), (j). Pub. L. 95-557, § 101(b), added subsecs. (i), relating to additional limitations and conditions and (j).

1977—Subsec. (c)(4)(A). Pub. L. 95-128, § 111(a), substituted "$27,000 per dwelling unit" for "the amount of a loan which could be insured by the Secretary of Housing and Urban Development under section 1715k(h) of title 12" and in proviso "amount of a loan" for "amount of a loan under such section".

Subsec. (d). Pub. L. 95-128, § 111(b), authorized appropriation of $60,000,000 for fiscal year beginning Oct. 1, 1977.

Subsec. (h). Pub. L. 95-128, § 111(c), substituted "1979" for "1977" wherever appearing.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-557 effective Oct. 1, 1978, see section 104 of Pub. L. 95-557, set out as an Effective Date of 1978 Amendment note under section 1709 of Title 12, Banks and Banking.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as an Effective Date of 1977 Amendment note under section 5301 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1453a, 1460, 5306 of this title; title 12 section's 1701z-4, 1701z-13.

§ 1460. Definitions

Section Referred to in Other Sections

This section is referred to in sections 1452, 1453, 1456, 1457, 1462, 1463, 1469b, 1469c of this title; title 12 sections 24, 84, 1701z-4, 1715k, 1715*l*; title 15 section 637; title 48 section 1408c.

§ 1469. Declaration of purpose

National Commission on Neighborhoods

Establishment of National Commission on Neighborhoods to assess existing policies, laws, and programs having an impact on neighborhoods and to make recommendations with regard to modifications, see title II of Pub. L. 95-24, set out as a note under section 1441 of this title.

SUBCHAPTER III—FARM HOUSING

§ 1471. Financial assistance by Secretary of Agriculture

(a) Authorization and purposes of assistance

The Secretary of Agriculture (hereinafter referred to as the "Secretary") is authorized, subject to the terms and conditions of this subchapter, to extend financial assistance, through the Farmers Home Administration, (1) to owners of farms in the United States and in the Territories of Alaska and Hawaii and in the Commonwealth of Puerto Rico, the Virgin Islands, the territories and possessions of the United States, and the Trust Territory of the Pacific Islands, to enable them to construct, improve, alter, repair, or replace dwellings and other farm buildings on their farms, and to purchase buildings and land constituting a minimum adequate site, in order to provide them, their tenants, lessees, sharecroppers, and laborers with decent, safe, and sanitary living conditions and adequate farm buildings as specified in this subchapter, and (2) to owners of other real estate in rural areas for the construction, improvement, alteration, or repair of dwellings, related facilities, and farm buildings and to rural residents for such purposes and for the purchase of buildings and the purchase of land constituting a minimum adequate site, in order to enable them to provide dwellings and related facilities for their own use and buildings adequate for their farming operations, and (3) to elderly or handicapped persons or families who are or will be the owners of land in rural areas for the construction, improvement, alteration, or repair of dwellings and related facilities, the purchase of dwellings and related facilities and the purchase of land constituting a minimum adequate site, in order to provide them with adequate dwellings and related facilities for their own use, and (4) to an owner described in clause (1), (2), or (3) for refinancing indebtedness which—

(A) was incurred for an eligible purpose described in such clause, and

(B)(i) if not refinanced, is likely to result (because of circumstances beyond the control of the applicant) at an early date in the loss of the applicant's necessary dwelling or essential farm service buildings, or

(ii) if combined (in the case of a dwelling that the Secretary finds not to be decent, safe, and sanitary) with a loan for improvement, rehabilitation, or repairs and not refinanced, is likely to result in the applicant's continuing to be deprived of a decent, safe, and sanitary dwelling.

(C) Repealed. Pub. L. 96-153, title V, § 506, Dec. 21, 1979, 93 Stat. 1136

(b) Definitions

[*See main edition for text of (1) and (2)*]

(3) For the purposes of this subchapter, the term "elderly or handicapped persons or families" means families which consist of two or more persons, the head of which (or his or her spouse) is at least sixty-two years of age or is handicapped. Such term also means a single person who is at least sixty-two years of age or is handicapped. A person shall be considered handicapped if such person is determined, pursuant to regulations issued by the Secretary, to have an impairment which (A) is expected to be of long-continued and indefinite duration, (B) substantially impedes his ability to live independently, and (C) is of such a nature that such ability could be improved by more suitable housing conditions, or if such person is a developmentally disabled individual as defined in section 6001(7) of this title. The Secretary shall prescribe such regulations as may be necessary to prevent abuses in determining, under the definitions contained in this paragraph, eligibility of families and persons for admission to and occupancy of housing constructed with assistance under this subchapter. Notwithstanding the preceding provisions of this paragraph, such term also includes two or more elderly (sixty-two years of age or over) or handicapped persons living together, one or more such persons living with another person who is determined (under regulations prescribed by the Secretary) to be essential to the care or well-being of such persons, and the surviving member or members of any family described in the first sentence of this paragraph who were living, in a unit assisted under this subchapter, with the deceased member of the family at the time of his or her death.

(4) For the purpose of this subchapter, the term "persons of low income" and the term "persons and families of low income" means families and persons whose income do not exceed 80 per centum of the median income for the area, as determined by the Secretary with adjustments for smaller and larger families, except that (A) if the Secretary determines that it is impracticable to use the median income for any area, the Secretary may use for such area the median income of all the nonmetropolitan areas in the State, and (B) the Secretary may establish income ceilings higher or lower than 80 per centum of median income on the basis of his findings that such variations are necessary because of prevailing levels of construction costs, unusually high or low family incomes, or other factors.

(5) For the purpose of this subchapter, the term "income" means income from all sources of each member of a household, as determined in accordance with criteria prescribed by the Secretary.

(c) Conditions of eligibility

In order to be eligible for the assistance authorized by subsection (a) of this section, the applicant must show (1) that he is the owner of a farm which is without a decent, safe, and sanitary dwelling for himself and his family and necessary resident farm labor, or for the family of the operating tenant, lessee, or sharecropper, or without other farm buildings adequate for the type of farming in which he engages or desires to engage, or that he is the owner of other real estate in a rural area or a rural resident without an adequate dwelling or related facilities for his own use or buildings adequate for his farming operations, or that the applicant is an elderly or handicapped person or family in a rural area without an adequate dwelling or related facility for its own use, or that he is the owner of a farm or other real estate in a rural area who needs refinancing of indebtedness described in clause (4) of subsection (a) of this section; (2) that he is without sufficient resources to provide the necessary housing and buildings on his own account; and (3) that he is unable to secure the credit necessary for such housing and buildings from other sources upon terms and conditions which he could reasonably be expected to fulfill. If an applicant is a State or local public agency—

[*See main edition for text of* (*A*) *and* (*B*); (*d*)]

(e) Prepayment of taxes, insurance, and other expenses; advances to account of borrower: interest, time for repayment

The Secretary may establish procedures whereby borrowers under this subchapter may make periodic payments for the purpose of taxes, insurance, and such other necessary expenses as the Secretary may deem appropriate. Such payments shall be disbursed by the Secretary at the appropriate time or times for the purposes for which such payments are made, and after October 1, 1977, if the prepayments made by the borrower are not sufficient to pay the amount due, advances may be made by the Secretary to pay these costs in full, which advances shall be charged to the account of the borrower and bear interest and be payable in a timely fashion not to exceed two years, as determined by the Secretary. The Secretary shall notify a borrower in writing when his loan payments are delinquent.

(f) Increase in loan limits

With respect to any limitation on the amount of any loan which may be made, insured, or guaranteed under this subchapter for the purchase of a dwelling unit, the Secretary may increase such amount by up to 20 percent if such increase is necessary to account for the increased cost of the dwelling unit due to the installation of a solar energy system (as defined in subparagraph (3) of the last paragraph of section 1703(a) of title 12) therein.

(As amended Oct. 12, 1977, Pub. L. 95-128, title V, §§ 503, 507(a) (1), (2), (b), 91 Stat. 1139-1141; Nov. 9, 1978, Pub. L. 95-619, title II, § 248(c), 92 Stat. 3235; Dec. 21, 1979, Pub. L. 96-153, title V, §§ 502(b), 506, 93 Stat. 1134, 1136.)

AMENDMENTS

1979—Subsec. (a)(4). Pub. L. 96-153, § 506, struck out subpar. (C), and revised and redesignated existing provisions of subpar. (B) as (B)(i) and (B)(ii).

Subsec. (b). Pub. L. 96-153, § 502(b), added pars. (4) and (5).

1978—Subsec. (f). Pub. L. 95-619 added subsec. (f).

1977—Subsec. (a)(3). Pub. L. 95-128, § 507(a)(1), substitued "elderly or handicapped persons or families" for "elderly persons".

Subsec. (b)(3). Pub. L. 95-128, § 507(b), substituted definition of "elderly or handicapped persons or families" for prior definition of "elderly persons" as persons who are 62 years of age or over.

Subsec. (c)(1). Pub. L. 95-128, § 507(a)(2), substituted "the applicant is an elderly or handicapped person or family in a rural area without an adequate dwelling or related facility for its own use" for "he is an elderly person in a rural area without an adequate dwelling or related facilities for his own use".

Subsec. (e). Pub. L. 95-128, § 503, substituted as a second sentence "Such payments shall be disbursed by the Secretary at the appropriate time or times for the purposes for which such payments are made, and after October 1, 1977, if the prepayments made by the borrower are not sufficient to pay the amount due, advances may be made by the Secretary to pay these costs in full, which advances shall be charged to the account of the borrower and bear interest and be payable in a timely fashion not to exceed two years, as determined by the Secretary" for "Such payments shall be held in escrow by the Secretary and paid out by him at the appropriate time or times for the purposes for which such payments are made".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1472, 1476, 1477, 1478, 1483, 1484, 1487 of this title; title 7 section 1933; title 38 section 1811.

§ 1472. Loans for housing and buildings on adequate farms

[*See main edition for text of* (*a*)]

(b) Provisions of loan instrument

The instruments under which the loan is made and the security given shall—

[*See main edition for text of* (*1*)]

(2) provide for the repayment of principal and interest in accordance with schedules and repayment plans prescribed by the Secretary, except that any prepayment of a loan made or insured under section 1484 or 1485 of this title shall be subject to the provisions of subsection (c) of this section;

(3) except for guaranteed loans, contain the agreement of the borrower that he will, at the request of the Secretary, proceed with diligence to refinance the balance of the indebtedness through cooperative or other responsible private credit sources whenever the Secretary determines, in the light of the borrower's circumstances, including his earning capacity and the income from the farm, that he is able to do so upon reasonable terms and conditions;

[*See main edition for text of* (*4*)]

(c) Prepayment and refinancing provisions

(1) Except as provided in paragraph (2), the Secretary may not accept an offer to prepay, or request refinancing in accordance with subsection (b)(3) of this section of, any loan made or insured under section 1484 or 1485 of this title pursuant to a contract entered into before or after December 21, 1979, unless the Secretary takes appropriate action which will obligate the borrower (and successors in interest thereof) to utilize the assisted housing and related facilities for the purposes specified in section 1484 or 1485 of this title, as the case may be, for a period of—

(A) fifteen years from the date on which the loan was made in the case of a loan made or insured pursuant to a contract entered into before or after December 21, 1979, and utilized for housing and related facilities which have not received assistance under section 1490a(a)(1)(B) or (a)(2) of this title or section 1437f of this title; or

(B) twenty years from the date on which the loan was made in the case of any other such loan;

or until the Secretary determines (prior to the end of such period) that there is no longer a need for such housing and related facilities to be so utilized or that Federal or other financial assistance provided to the residents of such housing will no longer be provided.

(2) In the case of any such loan made or insured pursuant to a contract entered into before December 21, 1979, the Secretary, after examining an offer to prepay such loan and the

likely consequences of accepting such offer, shall accept such offer without taking the appropriate action described in paragraph (1) unless, after such examination, the Secretary determines that—

(A) due to a change in the use of such housing and related facilities, or to an increase in rental or other charges, likely to occur as a result of prepayment, the low and moderate income and elderly tenants occupying the assisted housing and related facilities at the time of such offer cannot reasonably be expected to remain in occupancy for the applicable period described in paragraph (1), but notwithstanding such a determination, the Secretary shall accept such an offer without taking such appropriate action if such tenants who are likely to be displaced as a result of such changes or increases will be provided with affordable, decent, safe, sanitary, and available alternative housing; or

(B) in the case of housing and related facilities containing more than ten dwelling units, the changes likely to occur as a result of such prepayment will have a substantial, adverse effect on the supply of affordable, decent, safe, and sanitary housing available to low and moderate income and elderly persons in the area in which such housing and related facilities are located.

(As amended Oct. 12, 1977, Pub. L. 95-128, title V, § 502(a), 91 Stat. 1139; Dec. 21, 1979, Pub. L. 96-153, title V, § 503, 93 Stat. 1134.)

AMENDMENTS

1979—Subsec. (b)(2). Pub. L. 96-153, § 503(a), added provisions that prepayment of loans made or insured under section 1484 or 1485 of this title shall be subject to the provisions of subsec. (c) of this section.

Subsec. (c). Pub. L. 96-153, § 503(b), added subsec. (c).

1977—Subsec. (b)(3). Pub. L. 95-128 inserted introductory phrase "except for guaranteed loans,".

§ 1473. Loans for housing and buildings on potentially adequate farms; conditions and terms

[*See main edition for text of first par.*]

Except as provided in title 11, this agreement with respect to credits or principal and interest upon the borrower's indebtedness shall not be assignable nor accrue to the benefit of any third party without the written consent of the Secretary and the Secretary shall have the right, at his option, to cancel the agreement upon the sale of the farm or the execution or creation of any lien thereon subsequent to the lien given to the Secretary, or to refuse to release the lien given to the Secretary except upon payment in cash of the entire original principal plus accrued interest thereon less actual cash payments of principal and interest when the Secretary determines that the release of the lien would permit the benefits of this section to accrue to a person not eligible to receive such benefits.

(As amended Nov. 6, 1978, Pub. L. 95-598, title III, § 329, 92 Stat. 2679.)

AMENDMENTS

1978—Pub. L. 95-598 inserted introductory phrase "Except as provided in title 11".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 1474. Loans and grants for repairs or improvements of rural dwellings; purposes of repairs or improvements; maximum amount; terms; repayment; establishment of weatherization program

(a) In the event the Secretary determines that an eligible applicant cannot qualify for a loan under the provisions of sections 1472 and 1473 of this title and that repairs or improvements should be made to a rural dwelling occupied by him in order to make such dwelling safe and sanitary and remove hazards to the health of the occupant, his family, or the community, and that repairs should be made to farm buildings in order to remove hazards and make such buildings safe, the Secretary may make a grant or a combined loan and grant to the applicant to cover the cost of improvements or additions, such as repairing roofs, providing toilet facilities, providing a convenient and sanitary water supply, supplying screens, repairing or providing structural supports, or making similar repairs, additions, or improvements, including all preliminary and installation costs in obtaining central water and sewer service. No assistance shall be extended to any individual or family under this subsection in the form of a grant in excess of $5,000, and no assistance shall be extended to any individual or family under this subsection in the form of a loan or a combined loan and grant in excess of $7,500. Any portion of the sums advanced to the borrower treated as a loan shall be secured and be repayable within twenty years in accordance with the principles and conditions set forth in this subchapter, except that a loan for less than $2,500 need be evidenced only by a promissory note. Sums made available by grant may be made subject to the conditions set forth in this subchapter for the protection of the Government with respect to contributions made on loans made by the Secretary.

[*See main edition for text of* (*b*)]

(c)(1) In addition to other duties specified in this section, the Secretary shall develop and conduct a weatherization program for the purpose of making grants to finance the purchase or installation, or both, of weatherization materials in dwelling units occupied by low-income families. Such grants shall be made to low-income families who own dwelling units or, subject to the provisions of paragraph (2), to owners of such units for the benefit of the low-income tenants residing therein. In making grants under this subsection, the Secretary shall give priority to the weatherization of dwelling units occupied by low-income elderly or handicapped persons. The Secretary shall, in carrying out this section, consult with the Director of the Community Services Administration and the Secretary of Energy for the purpose of coordinating the weatherization program under this subsection, section 2809(a)(12) of this title, and part A of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6861 et seq.].

(2) In the case of any grant made under this subsection to an owner of a rental dwelling unit the Secretary shall provide that (A) the benefits of weatherization assistance in connection with such unit will accrue primarily to the low-income family residing therein, (B) the rents on such dwelling unit will not be raised because of any increase in value thereof due solely to weatherization assistance provided under this subsection, and (C) no undue or excessive enhancement will occur to the value of such unit.

(3) In carrying out this subsection, the Secretary shall (A) implement the weatherization standards described in paragraphs (2)(A) and (3) of section 413(b) of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6863(b)], and (B) provide that, with respect to any dwelling unit, not more than $800 of any grant made under this section be expended on weatherization materials and related matters described in section 415(c) of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6865(c)], except that the Secretary shall increase such amount to not more than $1,500 to cover labor costs in areas where the Secretary, in consultation with the Secretary of Labor, determines there is an insufficient number of volunteers and training participants and public service employment workers, assisted pursuant to the Comprehensive Employment and Training Act of 1973 [29 U.S.C. 801 et seq.] or the Older American Community Service Employment Act [42 U.S.C. 3056 et seq.], available to work on weatherization projects under the supervision of qualified supervisors.

(4) For purposes of this subsection, the terms "elderly," "handicapped person," "low income," and "weatherization materials" shall have the same meanings given such terms in paragraphs (3), (5), (7), and (9), respectively, of section 412 of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6862].

(As amended Nov. 9, 1978, Pub. L. 95-619, title II, § 232(a), 92 Stat. 3226; Dec. 21, 1979, Pub. L. 96-153, title V, § 510, 93 Stat. 1137.)

REFERENCES IN TEXT

Section 2809(a)(12) of this title, referred to in subsec. (c)(1), was redesignated 2809(a)(5) by Pub. L. 95-568, § 5(a)(2)(E), Nov. 2, 1978, 92 Stat. 2426.

The Energy Conservation in Existing Buildings Act of 1976, referred to in subsec. (c)(1), is title IV of Pub. L. 94-385, Aug. 14, 1976, 90 Stat. 1150, as amended. Part A of the Energy Conservation in Existing Buildings Act of 1976 is classified generally to Part A (§ 6861 et seq.) of subchapter III of chapter 81 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

The Comprehensive Employment and Training Act of 1973, referred to in subsec. (c)(3), is Pub. L. 92-203, Dec. 28, 1973, 87 Stat. 839, as amended, now known as the Comprehensive Employment and Training Act, which is classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 29 and Tables.

The Older American Community Service Employment Act, referred to in subsec. (c)(3), is title IX of Pub. L. 89-73, as added Pub. L. 94-135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 720 and amended, which is classified generally to subchapter IX (§ 3056 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 3001 of this title and Tables.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-153 substituted provisions limiting the assistance in the form of grants to any individual or family to $5,000 and in the form of loans or combined loans and grants to $7,500 for provisions limiting loans, grants, or combined loans and grants to $5,000 in the case of assistance to individuals.

1978—Subsec. (c). Pub. L. 95-619 added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1471, 1472, 1477, 1480, 1483, 6863, 6873 of this title; title 38 section 1811.

§ 1476. Buildings and repairs

[*See main edition for text of* (*a*)]

(b) Research and technical studies for reduction of costs and adaptation and development of fixtures and appurtenances

The Secretary is further authorized and directed to conduct research, technical studies, and demonstrations relating to the mission and programs of the Farmers Home Administration and the national housing goals defined in section 1441 of this title. In connection with such activities, the Secretary shall seek to promote the construction of adequate farm and other rural housing, with particular attention to the housing needs of the elderly, handicapped, migrant and seasonal farmworkers, Indians and other identifiable groups with special needs. The Secretary shall conduct such activities for the purposes of stimulating construction and improving the architectural design and utility of dwellings and buildings.

[*See main edition for text of* (*c*)]

(d) Research capacity within the Farmers Home Administration; establishment; authority

In order to carry out this section, the Secretary shall establish a research capacity within the Farmers Home Administration which shall have authority to undertake, or to contract with any public or private body to undertake, research authorized by this section.

[*See main edition for text of* (*e*)]

(f) Study of housing available for migrant and settled farmworkers

(1) The Secretary shall conduct a study of housing which is available for migrant and settled farmworkers. In conducting such study, the Secretary shall—

(A) determine the location, number, quality, and condition of housing units which are available to such farmworkers and the cost assessed such farmworkers for occupying such units;

(B) recommend legislative, administrative, and other action (including the need for new authority for such action) which may be taken for the purpose of improving both the availability and the condition of such housing units; and

(C) determine the possible roles which individual farmworkers, farmworker associations, individual farmers, farmer associations, and public and private nonprofit agencies can perform in imporving the housing conditions of farmworkers.

(2) The Secretary shall transmit the results of the study described in paragraph (1) to each House of the Congress within one year after October 31, 1978.

(As amended Oct. 12, 1977, Pub. L. 95-128, title V, § 510, 91 Stat. 1142; Oct. 31, 1978, Pub. L. 95-557, title V, § 502, 92 Stat. 2111.)

Amendments

1978—Subsec. (b). Pub. L. 95-557, § 502(a), revised the provisions of this subsection to bring particular attention to the housing needs of the elderly, handicapped, migrant and seasonal farmworkers, Indians and other identifiable groups.

Subsec. (f). Pub. L. 95-557, § 502(b), added subsec. (f).

1977—Subsec. (d). Pub. L. 95-128 substituted provision respecting establishment and authority of a research capacity within the Farmers Home Administration for provision to carry out subsec. (b) and (c) research and study programs through grants by the Secretary to land-grant colleges on such terms, conditions, and standards as he may prescribe or through such other agencies as he may elect.

Study of Emergency Potable Water and Sewage Program

Section 508 of Pub. L. 95-557 which provided that the Secretary of Agriculture to determine the approximate number of rural housing units without access to sanitary toilet facilities or potable water, prepare a projection of the cost providing such facilities and supplies, and report to the Congress not later than six months after Oct. 31, 1978, was omitted from the Code as executed.

Section Referred to in Other Sections

This section is referred to in title 38 section 1811.

§ 1477. Preferences for veterans and families of deceased servicemen

As between eligible applicants seeking assistance under sections 1471 to 1474, inclusive, of this title, the Secretary shall give preference to veterans and the families of deceased servicemen. As used herein, a "veteran" shall mean a person who served in the military forces of the United States during any war between the United States and any other nation or during the period beginning June 27, 1950, and ending on such date as shall be determined by Presidential proclamation or concurrent resolution of Congress, or during the period beginning after January 31, 1955, and ending on August 4, 1964, or during the Vietnam era (as defined in section 101(29) of title 38), and who was discharged or released therefrom on conditions other than dishonorable. "Deceased servicemen" shall mean persons who served in the military forces of the United States during any war between the United States and any other nation or during the period beginning June 27, 1950, and ending on such date as shall be determined by Presidential proclamation or concurrent resolution of Congress, or during the period beginning after January 31, 1955, and ending on August 4, 1964, or during the Vietnam era (as defined in section 101(29) of title 38), and who died in service before the termination of such war or such period or era.

(July 15, 1949, ch. 338, title V, § 507, 63 Stat. 435; June 30, 1953, ch. 174, § 3, 67 Stat. 132; June 30, 1961, Pub. L. 87-70, title VIII, § 804(b)(2), 75 Stat. 188; Aug. 22, 1974, Pub. L. 93-383, title V, § 507, 88 Stat. 694.)

Codification

Section is set out in this supplement to correct a typographical error in the main edition.

§ 1479. General powers of Secretary

(a) Standards of adequate farm housing and other buildings; criteria

The Secretary, for the purposes of this subchapter, shall have the power to determine and prescribe the standards of adequate farm housing and other buildings, by farms or localities, taking into consideration, among other factors, the type of housing which will provide decent, safe, and sanitary dwelling for the needs of the family using the housing, the type and character of the farming operations to be conducted, and the size and earning capacity of the land.

(b) Terms or conditions of leases or occupancy agreements subject to change with approval of Secretary

The Secretary may require any recipient of a loan or grant to agree that the availability of improvements constructed or repaired with the proceeds of the loan or grant under this subchapter shall not be a justification for directly or indirectly changing the terms or conditions of the lease or occupancy agreement with the occupants of such farms to the latter's disadvantage without the approval of the Secretary.

(c) Rural Housing Insurance Fund for payment of expenditures respecting construction defects; judicial review prohibition

The Secretary is authorized, after October 1, 1977, with respect to any unit or dwelling newly constructed during the period beginning eighteen months prior to October 12, 1977, and purchased with financial assistance authorized by this subchapter which he finds to have structural defects to make expenditures for (1) correcting such defects, (2) paying the claims of the owner of the property arising from such defects, or (3) acquiring title to the property, if such assistance is requested by the owner of the property within thirty-six months after financial assistance under this subchapter is rendered to the owner of the property or, in the case of property with respect to which assistance was made available within eighteen months prior to October 12, 1977, within thirty-six months after October 12, 1977. Expenditures pursuant to this subsection may be paid from the Rural Housing Insurance Fund. Decisions by the Secretary regarding such expenditures or payments under this subsection, and the terms and conditions under which the same are approved or disapproved, shall not be subject to judicial review.

(d) Terms and conditions; regulations

The Secretary shall, by regulation, prescribe the terms and conditions under which expenditures and payments may be made under the provisions of this section.

(As amended Oct. 12, 1977, Pub. L. 95-128, title V, § 504, 91 Stat. 1139; Dec. 21, 1979, Pub. L. 96-153, title V, § 508, 93 Stat. 1136.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-153 substituted "within thirty-six months after October 12, 1977" for "within eighteen months after October 12, 1977".

1977—Subsecs. (c), (d). Pub. L. 95-128 added subsecs. (c) and (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1487 of this title; title 38 section 1811.

§ 1480. Administrative powers of Secretary

In carrying out the provisions of this subchapter, the Secretary shall have the power to—

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Purchase of pledged or mortgaged property at foreclosure or other sales; operation, sale or disposition of said property

bid for and purchase at any foreclosure or other sale or otherwise to acquire the property pledged or mortgaged to secure a loan or other indebtedness owing under this subchapter, to accept title to any property so purchased or acquired, to operate or lease such property for such period as may be necessary or advisable, to protect the interest of the United States therein, to repair and rehabilitate such property, and to sell or otherwise dispose of the property so purchased or acquired by such terms and for such considerations as the Secretary shall determine to be reasonable and to make loans as provided herein to provide adequate farm dwellings and buildings for the purchasers of such property; except that the Secretary may not sell or otherwise dispose of such property unless (1) the Secretary assures that such property will meet decent, safe, and sanitary standards, (2) the recipient of the property is obligated, as a condition of the sale or other disposition of the property, to meet such standards with respect to the property before such property is occupied, or (3) such recipient is precluded, as a condition of the sale or other disposition of the property, from using the property for residential purposes;

[*See main edition for text of* (*f*)]

(g) Rules and regulations for written notice of denial or reduction of assistance

issue rules and regulations which assure that applicants denied assistance under this subchapter or persons or organizations whose assistance under this subchapter is being substantially reduced or terminated are given written notice of the reasons for denial, reduction or termination and are provided at least an opportunity to appeal an adverse decision and to present additional information relevant to that decision to a person, other than the person making the original determination, who has authority to reverse the decision;

(h) Assistance in connection with transfers and assumptions of property for nonrural areas

notwithstanding that an area ceases, or has ceased, to be "rural", in a "rural area", or an eligible area, make assistance under this subchapter available in connection with transfers and assumptions of property securing any loan made, insured, or held by the Secretary or in connection with any property held by the Secretary under this subchapter on the same basis as though the area were still rural;

(i) Utilization of indebtedness

utilize with respect to the indebtedness arising from loans and payments made under this subchapter, all the powers and authorities given to him under sections 1150 to 1150b of title 12;

(j) Rules and regulations

make such rules and regulations as he deems necessary to carry out the purposes of this subchapter.

(As amended Oct. 31, 1978, Pub. L. 95-557, title V, § 503, 92 Stat. 2112; Dec. 21, 1979, Pub. L. 96-153, title V, § 507, 93 Stat. 1136.)

AMENDMENTS

1979—Subsec. (e). Pub. L. 96-153 substituted "United States therein, to repair and rehabilitate such property, and to sell" for "United States therein and to sell", and added provision that the Secretary may not sell or otherwise dispose of such property unless the conditions in cls. (1) to (3) are satisfied.

1978—Subsecs. (g) to (j). Pub. L. 95-557, redesignated subsecs. (g), (h) and (i) as (h), (i) and (j), respectively, and added subsec. (g).

STUDY OF PROBLEMS CAUSED BY REMOTE CLAIMS

Section 509 of title V of Pub. L. 95-557 which provided that the Secretary of Agriculture make a detailed study of the problems associated with obtaining title insurance by persons in rural areas with respect to real property encumbered by remote claims and that the Secretary make a final report to the Congress with respect to such study not later than one year after Oct. 31, 1978, was omitted from the Code as executed.

§ 1481. Issuance of notes and obligations for loan funds; amount; limitation; security; form and denomination; interest; purchase and sale by Treasury; public debt transaction

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1483, 1484 of this title; title 38 section 1811.

§ 1483. Appropriations

(a) The Secretary may, as approved in appropriation Acts, insure and guarantee loans under the authorities provided in this subchapter in an aggregate principal amount not to exceed $4,484,000,000 with respect to fiscal year ending September 30, 1980; except that—

(1) not less than $3,070,000,000 of any amount so approved in appropriation Acts for such year shall be made available for loans insured or guaranteed on behalf of borrowers receiving assistance pursuant to subparagraph (B) or (C) of section 1490a(a)(1) of this title;

(2) not more than $38,000,000 of such amount so approved for such fiscal year may

be made available for loans insured under section 1484 of this title; and

(3) not more than $5,000,000 of such amount so approved shall be available for making advances under section 1471(e) of this title for such fiscal year.

(b) There are authorized to be appropriated—

(1) such sums as may be necessary to meet payments on notes or other obligations issued by the Secretary under section 1481 of this title equal to (A) the aggregate of the contributions made by the Secretary in the form of credits on principal due on loans made pursuant to section 1473 of this title, and (B) the interest due on a similar sum represented by notes or other obligations issued by the Secretary;

(2) not to exceed $48,000,000 for loans and grants pursuant to section 1474 of this title for the fiscal year ending September 30, 1980;

(3) not to exceed $30,000,000 for financial assistance pursuant to section 1486 of this title for the fiscal year ending September 30, 1980;

(4) not to exceed $1,500,000 for the purposes of section 1490e(a) of this title, of which not less than $750,000 shall be used for counseling purchasers and delinquent borrowers, and not to exceed $1,000,000 for the purposes of section 1490e(b) of this title for the fiscal year ending September 30, 1980; and

(5) such sums as may be required by the Secretary to administer the provisions of sections 1715z and 1715z-1 of title 12 and section 1437f of this title.

(As amended June 30, 1977, Pub. L. 95-60, § 4(a), 91 Stat. 258; July 31, 1977, Pub. L. 95-80, § 4(a), 91 Stat. 340; Oct. 12, 1977, Pub. L. 95-128, title V, § 501(a), 91 Stat. 1138; Sept. 30, 1978, Pub. L. 95-406, § 7(a), 92 Stat. 880; Oct. 31, 1978, Pub. L. 95-557, title V, § 501(a)-(c), 92 Stat. 2110, 2111; Nov. 9, 1978, Pub. L. 95-619, title II, § 232(b), 92 Stat. 3227; Sept. 28, 1979, Pub. L. 96-71, § 5(a), 93 Stat. 502; Nov. 8, 1979, Pub. L. 96-105, § 5(a), 93 Stat. 795; Dec. 21, 1979, Pub. L. 96-153, title V, § 501(a), 93 Stat. 1132.)

AMENDMENTS

1979—Pub. L. 96-153 amended section generally, added authorization of appropriations for fiscal year ending Sept. 30, 1980 for guaranteeing loans under this subchapter and laid down maximum limits for certain programs, authorized appropriation of $48,000,000 for fiscal year ending Sept. 30, 1980 for purposes of section 1481 of this title, of $30,000,000 for fiscal year ending Sept. 30, 1980 for purposes of section 1486 of this title, of $1,500,000 for fiscal year ending Sept. 30, 1980 for purposes of section 1490e(a) of this title, of $1,000,000 for purposes of section 1490e(b) of this title, added reference to section 1437f of this title, and eliminated authorization of appropriations for research and study programs.

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979" wherever appearing in cls. (b) to (d).

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979" wherever appearing in cls. (b) to (d).

1978—Pub. L. 95-619 in cl. (b) added requirement that not less than $25,000,000 of any amount authorized to be appropriated for the fiscal year ending Sept. 30, 1979, was to be appropriated for the purpose of making grants pursuant to section 1474(c) of this title.

Pub. L. 95-557, added in cl. (b) "and not to exceed $48,000,000 for the fiscal year ending September 30, 1979", and in cl. (c) "and not to exceed $38,000,000 for the fiscal year ending September 30, 1979", and substituted in cl. (d) "not to exceed $10,000,000 for research and study programs pursuant to subsections (b), (c), and (d) of section 1476 of this title for the fiscal year ending September 30, 1979" for "not to exceed $250,000 per year for research and study programs pursuant to subsection (b), (c), and (d) of section 1476 of this title during the period beginning July 1, 1961, and ending June 30, 1974, and not to exceed $1,000,000 per year for such programs during the period beginning October 1, 1974, and ending October 31, 1978".

Pub. L. 95-406 substituted in cls. (b) to (d) "October 31, 1978" for "September 30, 1978".

1977—Pub. L. 95-128 substituted in cls. (b) to (d) "September 30, 1978" for "September 30, 1977" and in cls. (b) and (c) "$105,000,000" for "$80,000,000".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977" wherever appearing therein.

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977" in cls. (b) to (d).

§ 1484. Insurance of loans for housing and related facilities for domestic farm labor

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Repealed. Pub. L. 96-153, title V, § 501(b), Dec. 21, 1979, 93 Stat. 1133

[*See main edition for text of* (*e*)]

(f) Definitions

As used in this section—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) the term "domestic farm labor" means persons who receive a substantial portion (as determined by the Secretary) of their income as laborers on farms situated in the United States, Puerto Rico, or the Virgin Islands and either (A) are citizens of the United States, or (B) reside in the United States, Puerto Rico, or the Virgin Islands after being legally admitted for permanent residence therein.

(g) Waiver of interest rate limitations

The Secretary may waive the interest rate limitation contained in subsection (a)(2) of this section and the requirement of section 1471(c)(3) of this title in any case in which the Secretary determines that qualified public or private nonprofit sponsors are not currently available and are not likely to become available within a reasonable period of time and such waiver is necessary to permit farmers to provide housing and related facilities for migrant domestic farm laborers, except that the benefits resulting from such waiver shall accrue to the tenants, and the interest rate on a loan insured under this section and for which the Secretary permits such waiver shall be no less than one-eighth of 1 per centum above the average interest rate on notes or other obligations which are issued under section 1481 of this title and have maturities comparable to such a loan.

(As amended Oct. 12, 1977, Pub. L. 95-128, title V, § 505, 91 Stat. 1140; Oct. 31, 1978, Pub. L. 95-557, title V, §§ 501(d), 504, 92 Stat. 2111, 2112; Dec. 21, 1979, Pub. L. 96-153, title V, § 501(b), 93 Stat. 1133.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-153 repealed subsec. (d), which provided for a maximum of $38,000,000 for the aggregate amount of principal obligations of loans insured under this section.

1978—Subsec. (d). Pub. L. 95-557, § 501(d), substituted "$38,000,000 (subject to approval in an appropriation Act)" for "$25,000,000".

Subsec. (g). Pub. L. 95-557, § 504, added subsec. (g).

1977—Subsec. (f)(3). Pub. L. 95-128 extended term "domestic farm labor" to include laborers on farms situated in Puerto Rico and the Virgin Islands and the residents of the islands after being legally admitted for permanent residence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1472, 1483, 1487, 1490a of this title.

§ 1485. Housing and related facilities for elderly or handicapped persons or families or other persons and families of low income

(a) Direct loans; authorization; terms and conditions; revolving fund; appropriation

The Secretary is authorized to make loans to private nonprofit corporations and consumer cooperatives to provide rental or cooperative housing and related facilities for elderly or handicapped persons or families of low or moderate income or other persons and families of low income in rural areas, in accordance with terms and conditions substantially identical with those specified in section 1472 of this title; except that—

[*See main edition for text of (1) to (3)*]

There is authorized to be appropriated not to exceed $50,000,000, which shall constitute a revolving fund to be used by the Secretary in carrying out this subsection.

(b) Insurance of loans; authorization; terms and conditions; utilization of Agricultural Credit Insurance Fund expiration date

The Secretary is authorized to insure and make commitments to insure loans made to any individual, corporation, association, trust, or partnership to provide rental or cooperative housing and related facilities for elderly or handicapped persons or families or other persons and families of moderate income in rural areas, in accordance with terms and conditions substantially identical with those specified in section 1472 of this title; except that—

[*See main edition for text of (1) to (4)*]

(5) no loan shall be insured under this subsection after September 30, 1980.

(c) Construction requirements

No loan shall be made or insured under subsection (a) or (b) of this section unless the Secretary finds that the construction involved will be undertaken in an economical manner and will not be of elaborate or extravagant design or materials. However, specifically designed equipment required by elderly or handicapped persons or families shall not be considered elaborate or extravagant.

(d) Definitions

As used in this section—

(1) the term "housing" means new or existing housing suitable for dwelling use by occupants eligible under this section; and such term also means congregate housing facilities for elderly or handicapped persons or families who require some supervision and central services but are otherwise able to care for themselves; such housing for the handicapped may be utilized in conjunction with educational and training facilities;

[*See main edition for text of (2)*]

(3) the term "congregate housing" means housing in which (A) some of the units may not have kitchen facilities, and (B) there is a central dining facility to provide wholesome and economic meals for elderly or handicapped persons or families.

[*See main edition for text of (4); (e)*]

(As amended June 30, 1977, Pub. L. 95-60, § 4(b), 91 Stat. 258; July 31, 1977, Pub. L. 95-80, § 4(b), 91 Stat. 340; Oct. 12, 1977, Pub. L. 95-128, title V, §§ 501(b), 507(a)(3), 508, 91 Stat. 1138, 1140, 1141; Sept. 30, 1978, Pub. L. 95-406, § 7(b), 92 Stat. 881; Oct. 31, 1978, Pub. L. 95-557, title V, § 501(e), 92 Stat. 2111; Sept. 28, 1979, Pub. L. 96-71, § 5(b), 93 Stat. 502; Nov. 8, 1979, Pub. L. 96-105, § 5(b), 93 Stat. 795; Dec. 21, 1979, Pub. L. 96-153, title V, § 501(f), 93 Stat. 1134.)

AMENDMENTS

1979—Subsec. (b)(5). Pub. L. 96-153 substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979".

1978—Subsec. (b)(5). Pub. L. 95-557 substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (a). Pub. L. 95-128, § 507(a)(3), authorized loans for housing of handicapped persons or families.

Subsec. (b). Pub. L. 95-128, §§ 501(b), 507(a)(3), substituted "elderly or handicapped persons or families" for "elderly persons and elderly families" in provision preceding par. (1) and "September 30, 1978" for "September 30, 1977" in par. (5).

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977" in par. (5).

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977" in par. (5).

Subsec. (c). Pub. L. 95-128, § 508(a), provided that specifically designed equipment required by elderly or handicapped persons or families shall not be considered elaborate or extravagant.

Subsec. (d)(1). Pub. L. 95-128, § 508(b), defined "housing" to also mean congregate housing facilities for elderly or handicapped persons or families who require some supervision and central services but are otherwise able to care for themselves and authorized such housing for the handicapped to be utilized in conjunction with educational and training facilities.

Subsec. (d)(3). Pub. L. 95-128, § 508(c), substituted definition of "congregate housing" for prior definition of "elderly persons" as persons 62 years of age or over and "elderly families" as families the head of which (or his spouse) is 62 years of age or over.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1472, 1486, 1487, 1490a, 1490f of this title.

§ 1486. Financial assistance to provide low-rent housing for domestic farm labor

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Regulations for prevention of waste

The Secretary shall prescribe regulations to insure that Federal funds expended under this section are not wasted or dissipated. The Secretary shall not give priority for funding under this section to any one of the groups listed in subsection (a) of this section over any of the others so listed.

[*See main edition for text of* (*f*) *and* (*g*)]

(h) Migrant farmworker housing

Notwithstanding the provisions of subsection (a)(3) of this section, the Secretary may, upon a finding of persistent need for migrant farmworker housing in any area, provide assistance to eligible applicants for 90 per centum of the development costs of such housing in such area to be used solely by migrant farmworkers while they are away from their residence. Such housing shall be constructed in such a manner as to be safe and weatherproof for the time it is to be occupied, be equipped with potable water and modern sanitation facilities (including a kitchen sink, toilet, and bathing facilities), and meet such other requirements as the Secretary may prescribe.

(As amended Oct. 31, 1978, Pub. L. 95-557, title V, § 505, 92 Stat. 2112; Dec. 21, 1979, Pub. L. 96-153, title V, § 509, 93 Stat. 1136.)

AMENDMENTS

1979—Subsec. (h). Pub. L. 96-153 added subsec. (h).

1978—Subsec. (e). Pub. L. 95-557 added "The Secretary shall not give priority for funding under this section to any one of the groups listed in subsection (a) of this section over any of the others so listed".

§ 1487. Rural Housing Insurance Fund

(a) Authority to make and insure loans for housing and buildings on adequate farms; restrictions

The Secretary may insure loans meeting the requirements of section 1472 of this title, and may make loans in accordance with the requirements of such section to be sold and insured; except that such loans shall—

(1) if the borrowers are persons of low or moderate income (as defined by the Secretary), (A) not exceed amounts necessary to provide adequate housing, modest in size, design, and cost (as determined by the Secretary), and (B) bear interest at a rate not to exceed 5 per centum per annum; but no loan under this paragraph shall be insured or made after September 30, 1980, except pursuant to a commitment entered into before that date; and

[*See main edition for text of* (*2*); (*b*) *to* (*d*)]

(e) Rural Housing Insurance Fund; creation; authorization of appropriations; separate operation of guaranteed and insured loan programs: transfer of funds

There is hereby created the Rural Housing Insurance Fund (hereinafter referred to as the "Fund") which shall be used by the Secretary as a revolving fund for carrying out the provisions of this section. There are authorized to be appropriated to the Secretary such sums as may be necessary for the purposes of the Fund. The guaranteed loan program under this subchapter shall be operated separately from the insured loan program operated under this subchapter and no funds designated for one program may be transferred to another program.

[*See main edition for text of* (*f*) *to* (*i*)]

(j) Additional uses of Fund moneys

The Secretary may also utilize the Fund—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) to pay taxes, insurance, prior liens, expenses necessary to make fiscal adjustments in connection with the application and transmittal of collections or necessary to obtain credit reports on applicants or borrowers, and other services customary in the industry, construction inspections, commercial appraisals, servicing of loans, and other related program services and expenses, and other expenses and advances to protect the security for loans which are insured under this section or held in the Fund, and to acquire such security property at foreclosure sale or otherwise;

(4) to make assistance payments authorized by section 1490a(a) of this title;

(5) after October 1, 1977, and as approved in appropriations Acts, to make advances authorized by section 1471(e) of this title; and

(6) after October 1, 1977, and as approved in appropriations Acts, to make the expenditures authorized by section 1479(c) of this title.

[*See main edition for text of* (*k*) *to* (*m*)]

(n) Loans to borrowers with above-moderate incomes

Loans guaranteed under this section shall be made only to borrowers with above-moderate incomes.

(o) Loans to persons of low income; minimum amount

(1) At least 60 per centum of the amount of loans made pursuant to sections 1472 and 1485 of this title shall benefit persons of low income.

(2) At least 30 per centum of the assistance made available in any area of any State pursuant to this subchapter in any fiscal year shall, to the extent practicable, benefit persons with incomes below 50 per centum of the median income which is determined for that area in accordance with section 1471(b)(4) of this title.

(As amended June 30, 1977, Pub. L. 95-60, § 4(c), 91 Stat. 258; July 31, 1977, Pub. L. 95-80, § 4(c), 91 Stat. 340; Oct. 12, 1977, Pub. L. 95-128, title V, §§ 501(c), 502(b), (c), 506, 509, 91 Stat. 1139-1141; Sept. 30, 1978, Pub. L. 95-406, § 7(c), 92 Stat. 881; Oct. 31, 1978, Pub. L. 95-557, title V, §§ 501(f), 506(b), 92 Stat. 2111, 2113; Sept. 28, 1979, Pub. L. 96-71, § 5(c), 93 Stat. 502; Nov. 8, 1979, Pub. L. 96-105, § 5(c), 93 Stat. 795; Dec. 21, 1979, Pub. L. 96-153, title V, §§ 501(g), 511, 93 Stat. 1134, 1137.)

AMENDMENTS

1979—Subsec. (a)(1). Pub. L. 96-153, § 501(g), substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "November 30, 1979" for "October 31, 1979".

Pub. L. 96-71 substituted "October 31, 1979" for "September 30, 1979".

Subsec. (*o*). Pub. L. 96-153, § 511, redesignated existing provisions as par. (1) and added par. (2).

1978—Subsec. (a)(1). Pub. L. 95-557, § 501(f), substituted "September 30, 1979" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

Subsec. (j)(4). Pub. L. 95-557, § 506(b), substituted "1490a(a)" for "1490a(a)(2)".

1977—Subsec. (a)(1). Pub. L. 95-128, § 501(c), substituted "September 30, 1978" for "September 30, 1977".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977".

Subsec. (e). Pub. L. 95-128, § 502(b), required separate operation of guaranteed loan program and insured loan program and prohibited transfer of funds from one program to the other.

Subsec. (j)(5), (6). Pub. L. 95-128, § 506, added pars. (5) and (6).

Subsec. (n). Pub. L. 95-128, § 502(c), added subsec. (n).

Subsec. (*o*). Pub. L. 95-128, § 509, added subsec. (*o*).

§ 1490a. Loans to provide occupant owned, rental, and cooperative housing for low and moderate income, elderly or handicapped persons or families

(a) Interest rates; credits; determination of eligibility; recoupment; multi-family housing projects; assistance payments to owners; amount limitations; recordkeeping and payment requirements for owners

(1)(A) Notwithstanding the provisions of sections 1472, 1487(a) and 1485 of this title, loans to persons of low or moderate income under section 1472 or 1487(a)(1) of this title, loans under section 1485 of this title to provide rental or cooperative housing and related facilities for persons and families of low or moderate income or elderly or handicapped persons or families and loans under section 1490f of this title to provide condominium housing for persons and families of low or moderate income, shall bear interest at a rate prescribed by the Secretary at not less than a rate determined by the Secretary of the Treasury upon the request of the Secretary taking into consideration the current average market yield on outstanding marketable obligations of the United States with remaining periods to maturity comparable to the average maturities of such loans, adjusted to the nearest one-eighth of 1 per centum, except that such loans to provide housing and related facilities for persons or families of moderate income shall bear interest at the rate established by the Secretary of Housing and Urban Development under section 1709-1 of title 12 with respect to maximum interest rates established for mortgages insured under section 1709(b) of title 12 if the Secretary determines that the borrower can afford such higher interest charges. Any loan guaranteed under this subchapter shall bear interest at such rate as may be agreed upon by the borrower and the lender.

(B) From the interest rate so determined, the Secretary may provide the borrower with assistance in the form of credits so as to reduce the effective interest rate to a rate not less than 1 per centum per annum for such periods of time as the Secretary may determine for applicants described in subparagraph (A) if without such assistance such applicants could not afford the dwelling or make payments on the indebtedness of the rental or cooperative housing.

(C) For persons of low income under section 1472 or 1487(a) of this title who the Secretary determines are unable to afford a dwelling with the assistance provided under subparagraph (B) and when the Secretary determines that assisted rental housing programs (as authorized under this subchapter, the National Housing Act [12 U.S.C. 1701 et seq.], and the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.]) would be unsuitable in the area in which such persons reside, the Secretary may provide additional assistance, pursuant to amounts approved in appropriation Acts and for such periods of time as the Secretary may determine, which may be in an amount not to exceed the difference between (i) the amount determined by the Secretary to be necessary to pay the principal indebtedness, interest, taxes, insurance, utilities, and maintenance, and (ii) 25 per centum of the income of such applicant. The amount of such additional assistance which may be approved in appropriation Acts may not exceed an aggregate amount of $985,000,000 for contracts entered into with respect to fiscal year 1979 and an aggregate amount of $500,000,000 for contracts entered into with respect to fiscal year 1980. Such additional assistance may not be so approved with respect to any fiscal year after fiscal year 1980.

(D) With respect to borrowers under section 1472 or 1487(a) of this title who have received assistance under subparagraph (B) or (C), the Secretary shall provide for the recapture of all or a portion of such assistance rendered upon the disposition or nonoccupancy of the property by the borrower. In providing for such recapture, the Secretary shall make provisions to provide incentives for the borrower to maintain the property in a marketable condition. Notwithstanding any other provision of law, any such assistance whenever rendered shall constitute a debt secured by the security instruments given by the borrower to the Secretary to the extent that the Secretary may provide for recapture of such assistance.

(E) Except for Federal or State laws relating to taxation, the assistance rendered to any borrower under subparagraphs (B) and (C) shall not be considered to be income or resources for any purpose under any Federal or State laws including, but not limited to, laws relating to welfare and public assistance programs.

(F) Loans subject to the interest rates and assistance provided under this paragraph (1) may be made only when the Secretary determines the needs of the applicant for necessary housing cannot be met with financial assistance from other sources including assistance under the National Housing Act [12 U.S.C. 1701 et seq.] and the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.].

(G) Interest on loans under section 1472 or 1487(a) of this title to victims of a natural disaster shall not exceed the rate which would be applicable to such loans under section 1472 of this title without regard to this section.

(H) Repealed. Pub. L. 96-153, title V, § 501(c)(3), Dec. 21, 1979, 93 Stat. 1133.

(2)(A) The Secretary shall make and insure loans under this section and sections 1484, 1485, and 1487 of this title to provide rental or cooperative housing and related facilities for persons and families of low income in multifamily housing projects, and shall make, and contract to make, assistance payments to the owners of such rental, congregate, or cooperative housing in order to make available to low-income occupants of such housing rentals at rates commensurate to income and not exceeding 25 per centum of income. Such assistance payments shall be made on a unit basis and shall not be made for more than 70 per centum of the units in any one project, except that (i) when the project is financed by a loan under section 1485 of this title for elderly or handicapped housing, by a loan under section 1484 of this title to a public or private nonprofit owner, or by a loan under section 1484 of this title and a grant under section 1486 of this title, such assistance may be made for up to 100 per centum of the units, and (ii) when the Secretary determines such action is necessary or feasible, he shall make such payments with respect to more than 70 per centum of the units. In approving projects for assistance under this paragraph, the Secretary shall give a priority to projects in which assistance is provided to 40 per centum or fewer of the units contained in the project.

[*See main edition for text of* (*B*) *and* (*C*); (*b*)]

(c) Reimbursement of Rural Housing Insurance Fund

There shall be reimbursed to the Rural Housing Insurance Fund by annual appropriations (1) the amounts by which nonprincipal payments made from the fund during each fiscal year to the holders of insured loans described in subsection (a)(1) of this section exceed interest due from the borrowers during each year, and (2) the amount of assistance payments described in subsection (a)(2) of this section. There are authorized to be appropriated to the Rural Housing Insurance Fund such sums as may be necessary to reimburse such fund for the amount of assistance payments described in subsection (a)(1)(C) of this section. The Secretary may from time to time issue notes to the Secretary of the Treasury under section 1487(h) and of this title and section 1490f of this title to obtain amounts equal to such unreimbursed payments, pending the annual reimbursement by appropriation.

(As amended Oct. 12, 1977, Pub. L. 95-128, title V, §§ 502(d), 507(a)(4), (5), 511, 91 Stat. 1139, 1140, 1142; Oct. 31, 1978, Pub. L. 95-557, title V, §§ 506(a), 507, 92 Stat. 2112, 2113; Dec. 21, 1979, Pub. L. 96-153, title V, §§ 501(c), 502(a), 504, 93 Stat. 1133-1135.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (a)(1)(C), (F), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

The United States Housing Act of 1937, referred to in subsecs. (a)(1)(C), (F), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653 and amended, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

AMENDMENTS

1979—Subsec. (a)(1)(A). Pub. L. 96-153, § 502(a), added exception that loans to provide housing and related facilities for persons or families of moderate income shall bear interest at the rate established by the Secretary under certain provisions of title 12.

Subsec. (a)(1)(C). Pub. L. 96-153, § 501(c)(1), added provisions that the amount of such additional assistance which may be approved in appropriation acts may not exceed an aggregate amount of $985,000,000 for contracts entered into with respect to fiscal year 1979 and an aggregate amount of $500,000,000 for contracts entered into with respect to fiscal year 1980 and that such additional assistance may not be so approved with respect to any fiscal year after fiscal year 1980.

Subsec. (a)(1)(H). Pub. L. 96-153, § 501(c)(3), repealed subpar. (H), which provided that the aggregate principal amount of loans made to borrowers receiving assistance pursuant to subpar. (C) shall not exceed $440,000,000.

Subsec. (a)(2)(A). Pub. L. 96-153, § 504, substituted "assistance payments to the owners of" for "assistance payments to public and private nonprofit owners of", "70 per centum" for "20 per centum" in two places, "by a loan under section 1484 of this title to a public or private nonprofit owner" for "by a loan under section 1484 of this title", the first time section 1484 of this title appeared in cl. (i), and added provisions that in approving projects for assistance under this paragraph, the Secretary shall give priority to projects in which assistance is provided to 40 per centum or fewer of the units contained in the project.

Subsec. (c). Pub. L. 96-153, § 501(c)(2), added authorization of appropriation to the Rural Housing Insurance Fund of such sums as may be necessary to reimburse the fund for the amount of assistance payments under subsec. (a)(1)(C) of this section.

1978—Subsec. (a)(1)(A) to (H). Pub. L. 95-557, § 506(a), designated existing provisions as par. (1)(A), and in par. (1)(A) as so designated, struck out "less not to exceed the difference between the adjusted rate determined by the Secretary of the Treasury and 1 per cent per annum: Provided, That such a loan may be made only when the Secretary determines that the needs of the applicant for necessary housing cannot be met with financial assistance from other sources including assistance under section 1715z or 1715z-1 of title 12: Provided further, That interest on loans under section 1472 or 1487(a) of this title to victims of natural disaster shall not exceed the rate which would be applicable to such loans under section 1472 of this title without regard to this section", following "one-eighth of 1 per centum," and added pars. (B) to (H).

Subsec. (a)(2)(A). Pub. L. 95-557, § 507, substituted "public and private nonprofit owners" for "the owners", added "congregate, or cooperative" following "rental" and added "by a loan under section 1484 of this title" following "section 1485 of this title for elderly or handicapped housing".

1977—Subsec. (a)(1). Pub. L. 95-128, §§ 502(d), 507(a)(4), provided that any loan guaranteed under this subchapter shall bear interest at the rate as may be agreed upon by the borrower and the lender and provided loans for housing of handicapped persons or families.

Subsec. (a)(2)(A). Pub. L. 95-128, §§ 507(a)(5), 511, included handicapped housing in cl. (i) and substituted "shall" for "may" wherever appearing, except in cl. (i).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1472, 1483, 1487, 1490c of this title.

§ 1490b. Housing for rural trainees

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 1490c. Mutual and self-help housing

[*See main edition for text of* (*a*)]

(b) Contract authority; establishment of Self-Help Housing Land Development Fund; authorization to make loans; conditions of loan

In order to carry out the purposes of this section, the Secretary of Agriculture (in this section referred to as the "Secretary") is authorized—

(1) [*See main edition for text of* (*A*)]

(B) to establish the Self-Help Housing Land Development Fund, referred to herein as the Self-Help Fund, to be used by the Secretary as a revolving fund for making loans, on such terms and conditions and in such amounts as he deems necessary, to public or private nonprofit organizations for the acquisition and development of land as building sites to be subdivided and sold to families, nonprofit organizations, and cooperatives eligible for assistance under section 1715z or 1715z-1 of title 12 or section 1490a of this title. Such a loan, with interest at a rate not to exceed 3 percent per annum, shall be repaid within a period not to exceed two years from the making of the loan, or within such additional period as may be authorized by the Secretary in any case as being necessary to carry out the purposes hereof: *Provided*, That the Secretary may advance funds under this paragraph to organizations receiving assistance under clause (A) to enable them to establish revolving accounts for the purchase of land options and any such advances may bear interest at a rate determined by the Secretary and shall be repaid to the Secretary at the expiration of the period for which the grant to the organization involved was made;

(2) to make grants to, or contract with, national or regional private nonprofit corporations to provide training and technical assistance to public or private nonprofit corporations, agencies, institutions, organizations, and other associations eligible to receive assistance under this section in order to expand the use of authorities contained in this section and to improve performance; and

(3) to make loans, on such terms and conditions and in such amounts as he deems necessary, to needy low-income individuals participating in programs of mutual or self-help housing approved by him, for the acquisition and development of land and for the purchase of such other building materials as may be necessary in order to enable them, by providing substantially all of their own labor, and by cooperating with others participating in such programs, to carry out to completion the construction of decent, safe, and sanitary dwellings for such individuals and their families, subject to the following limitations:

(A) there is reasonable assurance of repayment of the loan;

(B) the amount of the loan, together with other funds which may be available, is adequate to achieve the purpose for which the loan is made;

(C) the credit assistance is not otherwise available on like terms or conditions from private sources or through other Federal, State, or local programs;

(D) the loan bears interest at a rate not to exceed 3 per centum per annum on the unpaid balance of principal, plus such additional charge, if any, toward covering other costs of the loan program as the Secretary may determine to be consistent with its purposes; and

(E) the loan is repayable within not more than thirty-three years.

[*See main edition for text of* (*c*) *to* (*e*)]

(f) Authorization of appropriations; termination date

There is authorized to be appropriated an amount to carry out this section not to exceed $5,000,000 for the fiscal year ending September 30, 1980. No grant or loan may be made or contract entered into under the authority of this section after September 30, 1980, except pursuant to a commitment or other obligation entered into pursuant to this section before that date.

(g) Authorization of appropriations for purposes of subsection (b)(1)(B) of this section; deposit in Self-Help Fund; instruments and property acquired as assets of fund; deposit of repayments

There are hereby authorized to be appropriated for the purposes of subsection (b)(1)(B) of this section not to exceed $1,000,000 for the fiscal year ending June 30, 1969, and not to exceed $2,000,000 for the fiscal year ending June 30, 1970, not to exceed $3,000,000 for the fiscal year ending September 30, 1979, and not to exceed $1,000,000 for the fiscal year ending September 30, 1980. Any amount so authorized to be appropriated for any fiscal year which is not appropriated may be appropriated for any succeeding fiscal year or years. Amounts appropriated under this subsection shall be deposited in the Self-Help Fund, which shall be available without fiscal year limitation for making loans under subsection (b)(1)(B) of this section. Instruments and property acquired by the Secretary in or as a result of making such loans shall be assets of the Self-Help Fund. Sums received from the repayment of such loans shall be deposited in and be a part of the Self-Help Fund.

[*See main edition for text of* (*h*)]

(As amended June 30, 1977, Pub. L. 95-60, § 4(d), 91 Stat. 258; July 31, 1977, Pub. L. 95-80, § 4(d), 91 Stat. 340; Oct. 12, 1977, Pub. L. 95-128, title V, § 501(d), 91 Stat. 1139; Sept. 30, 1978, Pub. L. 95-406, § 7(d), 92 Stat. 881; Oct. 31, 1978, Pub. L. 95-557, title V, § 501(g), (h), 92 Stat.

2111; Sept. 28, 1979, Pub. L. 96-71, § 5(d), 93 Stat. 502; Nov. 8, 1979, Pub. L. 96-105, § 5(d), 93 Stat. 795; Dec. 21, 1979, Pub. L. 96-153, title V, §§ 501(d), (e), 505, 93 Stat. 1133, 1135.)

Amendments

1979—Subsec. (b). Pub. L. 96-153, § 505, redesignated existing par. (2) as (3), and added par. (2).

Subsec. (f). Pub. L. 96-153, § 501(d), substituted authorization of appropriation of $5,000,000 for fiscal year ending Sept. 30, 1980, for provisions containing authorization of appropriation for fiscal years commencing June 30, 1968 to Oct. 1, 1978, and substituted "September 30, 1980" for "November 30, 1979".

Pub. L. 96-105 substituted "December 1, 1979" and "November 30, 1979" for "November 1, 1979" and "October 31, 1979", respectively.

Pub. L. 96-71 substituted "November 1, 1979" and "October 31, 1979" for "October 1, 1979" and "September 30, 1979", respectively.

Subsec. (g). Pub. L. 96-153, § 501(e), added authorization of appropriation of $1,000,000 for fiscal year ending September 30, 1980.

1978—Subsec. (f). Pub. L. 95-557, § 501(g), substituted "October 1, 1979" for "November 1, 1978", "September 30, 1979" for "October 31, 1978", and "$16,500,000" for "$10,000,000".

Pub. L. 95-406 substituted "November 1, 1978" for "October 1, 1978" and "October 31, 1978" for "September 30, 1978".

Subsec. (g). Pub. L. 95-557, § 501(h), added "and not to exceed $3,000,000 for the fiscal year ending September 30, 1979", following "June 30, 1970".

1977—Subsec. (f). Pub. L. 95-128 substituted "1978" for "1977" wherever appearing.

Pub. L. 95-80 substituted "October 1, 1977" for "August 1, 1977" and "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "August 1, 1977" for "July 1, 1977" and "July 31, 1977" for "June 30, 1977".

§ 1490e. Programs of technical and supervisory assistance for low-income individuals and families in rural areas

[*See main edition for text of* (a) *and* (b)]

(c) Authorization of appropriations; availability of amounts

There are authorized to be appropriated for the fiscal years ending June 30, 1975, and June 30, 1976, not to exceed $5,000,000 for the purposes of subsection (a) of this section and not to exceed $5,000,000 for the purposes of subsection (b) of this section. There are also authorized to be appropriated for the fiscal year ending September 30, 1979, not to exceed $5,000,000 for the purposes of subsection (a) of this section and not to exceed $5,000,000 for the purposes of subsection (b) of this section. Any amounts so appropriated shall remain available until expended, and any amounts authorized for any fiscal year under this subsection but not appropriated may be appropriated for any succeeding fiscal year.

[*See main edition for text of* (d)]

(As amended Oct. 31, 1978, Pub. L. 95-557, title V, § 501(i), 92 Stat. 2111.)

Amendments

1978—Subsec. (c). Pub. L. 95-557 added "There are also authorized to be appropriated for the fiscal year ending September 30, 1979, not to exceed $5,000,000 for the purposes of subsection (a) of this section and not to exceed $5,000,000 for the purposes of subsection (b) of this section."

Section Referred to in Other Sections

This section is referred to in section 1483 of this title.

§ 1490h. Taxation of Farmers Home Administration-held property

All property subject to a lien held by the United States or the title to which is acquired or held by the Secretary under this subchapter other than property used for administrative purposes shall be subject to taxation by a State, Commonwealth, territory, possession, district, and local political subdivisions in the same manner and to the same extent as other property is taxed: *Provided*, That no tax shall be imposed or collected on or with respect to any instrument if the tax is based on—

(1) the value of any notes or mortgages or other lien instruments held by or transferred to the Secretary;

(2) any notes or lien instruments administered under this subchapter which are made, assigned, or held by a person otherwise liable for such tax; or

(3) the value of any property conveyed or transferred to the Secretary, whether as a tax on the instrument, the privilege of conveying or transferring, or the recordation thereof; nor shall the failure to pay or collect any such tax be a ground for refusal to record or file such instruments, or for failure to impart notice, or prevent the enforcement of its provisions in any State or Federal court.

(July 15, 1949, ch. 338, title V, § 528, as added Oct. 12, 1977, Pub. L. 95-128, title V, § 512(a), 91 Stat. 1142.)

Effective Date

Section 512(c) of Pub. L. 95-128 provided that: "The amendment made by subsection (a) [enacting this section] shall become effective as of January 1, 1977."

Refund of Tax Payments Prior to October 12, 1977, Barred; Federal Officers or Employees Not Liable for Such Payments

Section 512(b) of Pub. L. 95-128 provided that: "Notwithstanding any other provision of law, no State, Commonwealth, territory, possession, district, or local political subdivision which has received, prior to the date of enactment of this Act [Oct. 12, 1977], tax payments from the Department of Agriculture based on property held by the Farmers Home Administration shall be liable for, or be obligated to refund, the amount of any such payment, which, if it had been made after the date of enactment of this Act, would have been authorized by the provisions of section 528 of the Housing Act of 1949 [this section], and no officer or employee of the United States shall incur or be under any liability by reason of having made or authorized any such payments."

§ 1490i. Minimum property standards for energy conservation

To the maximum extent feasible, the Secretary of Agriculture shall promote the use of energy saving techniques through minimum property standards established by such Secretary for newly constructed residential housing assisted under this subchapter. Such property standards shall, insofar as is practicable, be consistent with the standards established pursuant to section 1735f-4 of title 12 and shall incorporate the energy performance requirements developed pursuant to such section. Such property standards shall be implemented as soon as practicable after November 9, 1978.

(July 15, 1949, ch. 338, title V, § 529, as added Nov. 9, 1978, Pub. L. 95-619, title II, § 252(b), 92 Stat. 3236.)

CHAPTER 8B—PUBLIC WORKS OR FACILITIES

Chapter Referred to in Other Sections

This chapter is referred to in sections 3338, 3914, 5153, 5306, 5316 of this title; title 12 section 1749d; title 49 section 1602-1.

§ 1492. Public projects

[See main edition for text of (a)]

(b) Restrictions and limitations; interest

The powers granted in subsection (a) of this section shall be subject to the following restrictions and limitations:

[See main edition for text of (1) to (3)]

(4) No financial assistance shall be extended under clause (1) of subsection (a) of this section (A) to any municipality or other political subdivision having a population of fifty thousand or more (one hundred fifty thousand or more in the case of a community situated in an area designated as a redevelopment area under the Area Redevelopment Act or any Act supplementary thereto) according to the most recent decennial census, or; (B) to any public agency or instrumentality serving one or more municipalities, political subdivisions, or unincorporated areas in one or more States, unless each municipality, political subdivision, or unincorporated area to be served by the specific public work or facility for which assistance is sought under this section has a population less than the applicable figure under clause (A) according to such census. This paragraph shall not apply to any financial assistance to be extended under subsection (a) of this section for the purpose of financing any project for public works or facilities (i) in a community in or near which is located a research or development installation of the National Aeronautics and Space Administration, or (ii) to be initiated or accelerated as the result of a grant-in-aid from an allocation made by the President under section 2642 of this title, or (iii) to be provided in connection with the establishment of a new community approved under section 1749cc-1 of title 12 or under title IV, of the Housing and Urban Development Act of 1968 [42 U.S.C. 3901 et seq.] or under part B of the Urban Growth and New Community Development Act of 1970 [42 U.S.C. 4511 et seq.].

[See main edition for text of (c) to (f); credits]

Codification

Subsection (b)(4) of this section is set out in this supplement to correct typographical error in the main edition.

Section Referred to in Other Sections

This section is referred to in section 1493 of this title; title 49 section 1602-1.

CHAPTER 8C—OPEN-SPACE LAND

Chapter Referred to in Other Sections

This chapter is referred to in sections 3914, 4519, 5306, 5316 of this title; title 16 sections 460*l*-8, 1247.

CHAPTER 9—HOUSING OF PERSONS ENGAGED IN NATIONAL DEFENSE

SUBCHAPTER II—DEFENSE HOUSING

§ 1522. Definitions; actions to recover developed property

Transfer of Functions

The Coast Guard was transferred to the Department of Transportation and all functions, powers, and duties, relating to the Coast Guard, of the Secretary of the Treasury and of other offices and officers of the Department of the Treasury were transferred to the Secretary of Transportation by Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, which created the Department of Transportation. See section 1655 of Title 49, Transportation. Section 1655 of title 49, however, provided that notwithstanding such transfer of functions, the Coast Guard shall operate as part of the Navy in time of war or when the President directs as provided in section 3 of Title 14, Coast Guard.

SUBCHAPTER IX—DEFENSE HOUSING AND COMMUNITY FACILITIES AND SERVICES

§ 1592m. Transfer of functions and funds in certain cases

Ex. Ord. No. 10296. Performance of Defense Housing Functions

Ex. Ord. No. 10296, Oct. 2, 1951, 16 F.R. 10103, as amended by Ex. Ord. No. 10461, June 17, 1953, 18 F.R. 3513; Ex. Ord. No. 10593, Jan. 27, 1955, 20 F.R. 599; Ex. Ord. No. 10773, July 1, 1958, 23 F.R. 5061; Ex. Ord. No. 10782, Sept. 6, 1958, 23 F.R. 6971; Ex. Ord. No. 11051, Sept. 27, 1962, 27 F.R. 9683; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

1. [Revoked by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239.]

2. [Revoked by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239.]

[See main edition for Secs. 3 to 12]

§ 1592n. Definitions

Transfer of Functions

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 1592*o*. Powers of Surgeon General of Public Health Service

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER XI—HOUSING FOR MILITARY PERSONNEL

§ 1594g. Repealed. Pub. L. 85-241, title IV, § 406(b), Aug. 30, 1957, 71 Stat. 556

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 85-241 effective July 1, 1958.

§ 1594h-2. Improvement of single family housing units; cost limitation

None of the funds authorized by this or any other Act may be expended for the improvement of any single family housing unit, or for the improvement of two or more housing units, when such units are to be converted into or used as a single family housing unit, the costs of which exceed $20,000 per unit including costs of repairs undertaken in connection therewith, and including any costs in connection with (1) the furnishing of electricity, gas, water and sewage disposal; (2) roads and walks; and (3) grading and drainage, unless such improvement in connection with such unit or units is specifically authorized by law. As used in this section the term "improvement" includes alteration, expansion, extension, or rehabilitation of any housing unit or units, including that maintenance and repair which is to be accomplished concurrently with an improvement project. The provisions of this section shall not apply to projects authorized for restoration or replacement of housing units damaged or destroyed.

(As amended Pub. L. 95-356, title V, § 502(b), Sept. 8, 1978, 92 Stat. 578.)

AMENDMENTS

1978—Pub. L. 95-356 substituted "$20,000" for "$15,000".

CHAPTER 13—SCHOOL LUNCH PROGRAMS

Sec.
1769. Pilot projects [New].
  (a) Statement of purpose; project contents.
  (b) Study.
  (c) Report to Congress; contents.
  (d) Free lunches without regard for income of family; reimbursement of school food authorities.
1769a. Reduction of paperwork; report to Congress [New].
1769b. Department of Defense overseas dependents' schools [New].
  (a) Purpose of program; availability of payments and commodities.
  (b) Administration of program; eligibility determinations and regulations.
  (c) Nutritional standards for meals; noncompliance with standards.
  (d) Authorization of appropriations.
  (e) Technical assistance for administration of program.
1769c. Study of menu choice [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1774, 1776, 1776a, 1776b, 1779, 1782 of this title; title 7 section 1431c; title 40 section 474; title 48 section 1666.

§ 1751. Congressional declaration of policy

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-627, § 1, Nov. 10, 1978, 92 Stat. 3603 provided: "That this Act [which enacted section 1769c of this title, amended sections 1755, 1757, 1758, 1759a to 1761, 1762a, 1766, 1769, 1772 to 1774, 1776, 1784 and 1786 of this title, and enacted provisions set out as notes under sections 1755, 1773 and 1786 of this title] may be cited as the 'Child Nutrition Amendments of 1978'."

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-166, § 1, Nov. 10, 1977, 91 Stat. 1325, provided: "That this Act [which enacted sections 1769, 1769a, and 1788 of this title, amended sections 1754 to 1758, 1759a, 1760, 1761, 1762a, 1763, 1766, 1772 to 1774, 1776, 1779, 1784, and 1786 of this title, and enacted provisions set out as notes under sections 1755 and 1772 of this title] may be cited as the 'National School Lunch Act and Child Nutrition Amendments of 1977'."

§ 1753. Availability of appropriations; food assistance payments

CODIFICATION

June 4, 1946, ch. 281, § 5, 60 Stat. 231, cited in the credits to this section, should read June 4, 1946, ch. 281, § 4, 60 Stat. 230.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1754, 1755, 1756, 1757, 1759a, 1760, 1766, 1769, 1773, 1776 of this title.

§ 1754. Food service equipment assistance; amount; apportionment

Of the sums appropriated for any fiscal year pursuant to the authorization contained in section 1752 of this title, $10,000,000 shall be available to the Secretary for the purpose of providing, during such fiscal year, food service equipment assistance for the school-lunch program pursuant to the provisions of this chapter. The Secretary shall apportion among the States during each fiscal year the aforesaid sum of $10,000,000, and such apportionment among the States shall be on the basis of the factors, and in accordance with the standards, set forth in section 1753 of this title with respect to the apportionment for agricultural commodities and other foods.

(June 4, 1946, ch. 281, § 5, 60 Stat. 231, amended July 12, 1952, ch. 669, § 1(b), 66 Stat. 591; Sept. 25, 1962, Pub. L. 87-688, § 3(a), 76 Stat. 587; Oct. 15, 1962, Pub. L. 87-823, § 3(a), 76 Stat. 945; Nov. 10, 1977, Pub. L. 95-166, § 3, 91 Stat. 1332.)

AMENDMENTS

1977—Pub. L. 95-166 substituted "food service equipment assistance" for "nonfood assistance".

§ 1755. Direct expenditures for agricultural commodities and other foods

(a) Administrative expenses; nutritional education; pilot projects; cash-in-lieu of commodities study; refusal of commodities and receipt of other commodities available to the State in lieu of the refused commodities

The funds provided by appropriation or transfer from other accounts for any fiscal year for carrying out the provisions of this chapter, and for carrying out the provisions of the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], other than section 3 thereof [42 U.S.C. 1772] less

[*See main edition for text of* (*1*) *and* (*2*)]

(3) not to exceed 1 per centum of the funds provided for carrying out the programs under this chapter and the programs under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], other than section 3 [42 U.S.C. 1772], which per centum is hereby made available to the Secretary to supplement the nutritional benefits of these programs through grants to States and other means for nutritional training and education for workers, cooperators, and participants in these programs, for pilot projects and the cash-in-lieu of commodities study required to be carried out under section 1769 of this title, and for necessary surveys and studies of requirements for food service programs in furtherance of the purposes expressed in section 1751 of this title, and section 2 of the Child Nutrition Act of 1966 [42 U.S.C. 1771],

shall be available to the Secretary during such year for direct expenditure by him for agricultural commodities and other foods to be distributed among the States and schools and service institutions participating in the food service programs under this chapter and under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] in accordance with the needs as determined by the local school and service institution authorities. Any school participating in food service programs under this chapter may refuse to accept delivery of not more than 20 percent of the total value of agricultural commodities and other foods tendered to it in any school year; and if a school so refuses, that school may receive, in lieu of the refused commodities, other commodities to the extent that other commodities are available to the State during that year. The provisions of law contained in the proviso of section 713c of title 15, facilitating operations with respect to the purchase and disposition of surplus agricultural commodities under section 612c of title 7, shall, to the extent not inconsistent with the provision of this chapter, also be applicable to expenditures of funds by the Secretary under this chapter. In making purchases of such agricultural commodities and other foods, the Secretary shall not issue specifications which restrict participation of local producers unless such specifications will result in significant advantages to the food service programs authorized by this chapter and the Child Nutrition Act of 1966.

(b) Cash donations in lieu of commodity donations during school year for school food service programs; funds for States administered by Secretary: withholding; disbursement for breakfasts and lunches

Not later than May 15 of each school year, the Secretary shall make an estimate of the value of agricultural commodities and other foods that will be delivered during that school year to States for the school lunch program. If such estimated value is less than the total level of assistance authorized under subsection (e) of this section, the Secretary shall pay to each State educational agency, not later than June 15 of that school year, an amount of funds that is equal to the difference between the value of such deliveries as then programed for such State and the total level of assistance authorized under subsection (e) of this section. In any State in which the Secretary directly administers the school lunch program in any of the schools of the State, the Secretary shall withhold from the funds to be paid to such State under the provisions of this subsection an amount that bears the same ratio to the total of such payment as the number of lunches served in schools in which the school lunch program is directly administered by the Secretary during that school year bears to the total of such lunches served under the school lunch program in all the schools in such State in such school year. Each State educational agency, and the Secretary in the case of private schools in which the Secretary directly administers the school lunch program, shall promptly and equitably disburse, such funds to schools participating in the school lunch program, and such disbursements shall be used by such schools to purchase United States agricultural commodities and other foods for their food service program. Such foods shall be limited to the requirements for lunches and breakfasts for children as provided for in regulations issued by the Secretary.

[*See main edition for text of* (c) *and* (d)]

(e) Level of commodity assistance; computation of index; emphasis on high protein foods

For the fiscal year ending June 30, 1975, and subsequent school years, the national average value of donated foods, or cash payments in lieu thereof, shall not be less than 10 cents per lunch, and that amount shall be adjusted on an annual basis each school year after June 30, 1975, to reflect changes in the Price Index for Food Used in Schools and Institutions. The Index shall be computed using five major food components in the Bureau of Labor Statistics' Producer Price Index (cereal and bakery products, meats, poultry and fish, dairy products, processed fruits and vegetables, and fats and oils). Each component shall be weighted using the same relative weight as determined by the Bureau of Labor Statistics. The value of food assistance for each meal shall be adjusted each July 1 by the annual percentage change in a three-month simple average value of the Price Index for Foods Used in Schools and Institutions for March, April, and May each year. Such adjustment shall be computed to the nearest one-fourth cent. Among those commodities delivered under this section, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates (which may include domestic seafood commodities and their products). Notwithstanding any other provision of this section, not less than 75 per centum of the assistance provided under this subsection (e) shall be in the form of donated foods for the school lunch program.

(As amended Nov. 10, 1977, Pub. L. 95-166, §§ 5, 7, 10(1), 19(a), 91 Stat. 1334-1336, 1345; Nov. 10, 1978, Pub. L. 95-627, §§ 5(b), 12(a), 92 Stat. 3619, 3625.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a), (a)(1), and (a)(3), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

CODIFICATION

Amendment by section 12(a) of Pub. L. 95-627 providing for the insertion of "(which may include domestic seafood commodities and their products)" after "alternatives" in the second sentence of subsec. (e) has been executed after "alternates" as the probable intent of Congress since subsec. (e) does not contain the word "alternatives".

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-627 substituted provision relating to the Price Index for Food Used in Schools and Institutions for provision relating to the Consumer Price Index and inserted "(which may include domestic seafood commodities and their products)" following "and meat alternatives".

1977—Subsec. (a). Pub. L. 95-166, §§ 7, 10(1), inserted provision which authorized refusal of commodities and receipt of other commodities available to the State, in lieu of the refused commodities, and in cl. (3) authorized grants for pilot projects and the cash-in-lieu of commodities study required to be carried out under section 1769 of this title.

Subsec. (b). Pub. L. 95-166, § 5, in revising the subsection, changed the commodity distribution program to a school year from a fiscal year basis, and among other changes, extended the deadline for estimated valuation and payment to May 15 and June 15 from February 15 and March 15, and deleted provision respecting apportionment among State educational agencies on basis of meals served in all the States during the fiscal year and specific reference to regulations of the Department of Agriculture under title 7, subtitle (b), chapter II, subchapter (a), parts 210 and 220.

Subsec. (e). Pub. L. 95-166, § 19(a), substituted "school years" and "school year after June 30, 1975" for "fiscal years" and "fiscal year after June 30, 1975".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 14 of Pub. L. 95-627 provided that: "The provisions of this Act [enacting section 1769c of this title, amending subsec. (e) of this section, relating to domestic seafood commodities, and sections 1757, 1760, 1761(a), (k), 1762a, 1766, 1769, 1773, 1774, 1776, 1784 and 1786 of this title and enacting provisions set out as notes under this section, sections 1773 and 1786 of this title], except sections 4, 5, and 8, shall become effective October 1, 1978. The provisions of section 4 of this Act [amending section 1759a(a) of this title by substituting "20" for "10" and adding provision relating to a 20 cents charge for reduced price lunches] shall become effective Jan[u]ary 1, 1979. The provisions of sections 5 [amending subsec. (e) of this section, relating to the Price Index for food, and sections 1759a(a), relating to urban consumers, 1761(b) and 1772 of this title] and 8 [amending section 1758 of this title] of this Act shall become effective July 1, 1979, except that the Secretary may make the necessary changes in the income poverty guidelines for the special supplemental food program under section 17 of the Child Nutrition Act of 1966 [section 1786 of this title] not earlier than October 1, 1978, and not later than July 1, 1979."

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (e) by section 19(a) of Pub. L. 95-166 effective July 1, 1977, see section 19 of Pub. L. 95-166.

§ 1756. Payments to States; matching payments by States; makeup and disbursement of State revenue

Funds appropriated to carry out section 1753 or 1754 of this title during any fiscal year shall be available for payment to the States for disbursement by State educational agencies, in accordance with such agreements, not inconsistent with the provisions of this chapter, as may be entered into by the Secretary and such State educational agencies, for the purpose of assisting schools of the States in supplying (1) agricultural commodities and other foods for consumption by children and (2) food service equipment assistance in furtherance of the school lunch program authorized under this chapter. Such payments to any State in any fiscal year during the period 1947 to 1950, inclusive, shall be made upon condition that each dollar thereof will be matched during such year by $1 from sources within the State determined by the Secretary to have been expended in connection with the school-lunch program under this chapter. Such payments in any fiscal year during the period 1951 to 1955, inclusive, shall be made upon condition that each dollar thereof will be so matched by one and one-half dollars; and for any fiscal or school year thereafter, such payments shall be made upon condition that each dollar will be so matched by $3. In the case of any State whose per capita income is less than the per capita income of the United States, the matching required for any fiscal or school year shall be decreased by the percentage which the State per capita income is below the per capita income of the United States. For the purpose of determining whether the matching requirements of this section and section 1759 of this title, respectively, have been met, the reasonable value of donated services, supplies, facilities, and equipment as certified, respectively, by the State educational agency and in case of schools receiving funds pursuant to section 1759 of this title, by such schools (but not the cost or value of land, of the acquisition, construction, or alteration of buildings of commodities donated by the Secretary, or of Federal contributions), may be regarded as funds from sources within the State expended in connection with the school-lunch program. For the school year beginning in 1976, State revenue (other than revenues derived from the program) appropriated or used specifically for program purposes (other than salaries and administrative expenses at the State, as distinguished from local, level) shall constitute at least 8 percent of the matching requirement for the preceding school year, or, at the discretion of the Secretary, fiscal year, and for each school year thereafter, at least 10 percent of the matching requirement for the preceding school year. The State revenues made available pursuant to the preceding sentence shall be disbursed to schools, to the extent the State deems practicable, in such manner that each school receives the same proportionate share of such revenues as it receives of the funds apportioned to the State for the same year under sections 1753 and 1759a of this title and sections 1773 and 1774 of this title. The requirement in

this section that each dollar of Federal assistance be matched by $3 from sources within the State (with adjustments for the per capita income of the State) shall not be applicable with respect to the payments made to participating schools under section 1753 of this title for free and reduced price lunches: *Provided*, That the foregoing provision shall not affect the level of State matching required by the sixth sentence of this section. The Secretary shall certify to the Secretary of the Treasury from time to time the amounts to be paid to any State under this section and the time or times such amounts are to be paid; and the Secretary of the Treasury shall pay to the State at the time or times fixed by the Secretary the amounts so certified.

(As amended Nov. 10, 1977, Pub. L. 95-166, § 19(b), 91 Stat. 1345.)

AMENDMENTS

1977—Pub. L. 95-166, among other changes, substituted in first sentence "Funds appropriated to carry out" and "food service equipment assistance" for "Funds apportioned to any State pursuant to" and "nonfood assistance"; substituted in third sentence "fiscal or school year thereafter" for "fiscal year thereafter"; substituted in fourth sentence "fiscal or school year" for "fiscal year"; and substituted the sixth sentence "For the school year beginning in 1976, State revenue (other than revenues derived from the program) appropriated or used specifically for program purposes (other than salaries and administrative expenses at the State, as distinguished from local, level) shall constitute at least 8 percent of the matching requirement for the preceding school year, or, at the discretion of the Secretary, fiscal year, and for each school year thereafter, at least 10 percent of the matching requirement for the preceding school year" for "For the fiscal year beginning July 1, 1971, and the fiscal year beginning July 1, 1972, State revenue (other than revenues derived from the program) appropriated or utilized specifically for program purposes (other than salaries and administrative expenses at the State, as distinguished from local, level) shall constitute at least 4 per centum of the matching requirement for the preceding fiscal year; for each of the two succeeding fiscal years, at least 6 per centum of the matching requirement for the preceding fiscal year; for each of the subsequent two fiscal years, at least 8 per centum of the matching requirement for the preceding fiscal year; and for each fiscal year thereafter at least 10 per centum of the matching requirement for the preceding fiscal year".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of first, third, fourth, and sixth sentences by section 19(b) of Pub. L. 95-166 effective July 1, 1977, see section 19 of Pub. L. 95-166.

§ 1757. State disbursement to schools; purpose; child and children defined; food costs; limitation

Funds paid to any State during any fiscal year pursuant to sections 1753 or 1754 of this title shall be disbursed by the State educational agency, in accordance with such agreements approved by the Secretary, as may be entered into by such State agency and the schools in the State, to those schools in the State which the State educational agency, taking into account need and attendance, determines are eligible to participate in the school-lunch program. Such disbursement to any school shall be made only for the purpose of assisting it to finance the cost of obtaining agricultural commodities and other foods for consumption by children in the school-lunch program and food service equipment assistance in connection with such program. The terms "child" and "children" as used in this chapter shall be deemed to include persons regardless of age who are determined by the State educational agency, in accordance with regulations prescribed by the Secretary, to be mentally or physically handicapped and who are attending any child care institution as defined in section 1766 of this title or any nonresidential public or nonprofit private school of high school grade or under for the purpose of participating in a school program established for mentally or physically handicapped: *Provided*, That no institution that is not otherwise eligible to participate in the program under section 1766 of this title shall be deemed so eligible because of this sentence. Such food costs may include, in addition to the purchase price of agricultural commodities and other foods, the cost of processing, distributing, transporting, storing or handling thereof. In no event shall such disbursement for food to any school for any fiscal year exceed an amount determined by multiplying the number of lunches served in the school in the school-lunch program under this chapter during such year by the maximum Federal food-cost contribution rate for the State, for the type of lunch served, as prescribed by the Secretary. In any fiscal year in which the national average payment per lunch determined under section 1753 of this title is increased above the amount prescribed in the previous fiscal year, the maximum Federal food-cost contribution rate, for the type of lunch served, shall be increased by a like amount. Lunch assistance disbursements to schools under this section and under section 1759a of this title may be made in advance or by way of reimbursement in accordance with procedures prescribed by the Secretary.

(As amended Nov. 10, 1977, Pub. L. 95-166, § 3, 91 Stat. 1332; Nov. 10, 1978, Pub. L. 95-627, § 10(d)(1), 92 Stat. 3624.)

AMENDMENTS

1978—Pub. L. 95-627 added provision relating to definition of "child" and "children".

1977—Pub. L. 95-166 substituted "food service equipment assistance" for "nonfood assistance".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

§ 1758. Program requirements

(a) Nutritional standards; medical and special dietary needs of individual students; diminution of food waste; acceptance of offered foods

Lunches served by schools participating in the school-lunch program under this chapter shall meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research; except that such minimum nutritional requirements shall not be construed to prohibit the substitution of foods to accommodate the medical or other special dietary needs of individual students. The Secretary shall establish, in cooperation with State educational agencies, administrative procedures, which shall include local educational agency and student participation, designed to diminish waste of foods which are served by schools participating in the school lunch program under this chapter without endangering the nutritional integrity of the lunches served by such schools. Students in senior high schools that participate in the school lunch program under this chapter (and, when approved by the local school district or nonprofit private schools, students in any other grade level in any junior high school or middle school) shall not be required to accept offered foods they do not intend to consume, and any such failure to accept offered foods shall not affect the full charge to the student for a lunch meeting the requirements of this subsection or the amount of payments made under this chapter to any such school for such lunch.

(b) Eligibility criteria for free and reduced price lunches; income poverty guidelines; discrimination and overt identification prohibited; income guidelines for reduced price lunches; free or reduced price lunches for children of unemployed parent or guardian

(1) No later than June 1 of each fiscal year, the Secretary shall issue revised income poverty guidelines for use during the subsequent 12-month period from July through June. The income poverty guidelines shall be the nonfarm income poverty guidelines prescribed by the Office of Management and Budget adjusted annually under section 2971d of this title: *Provided*, That the income poverty guidelines for the period commencing July 1, 1978, shall be made as up to date as possible by multiplying the nonfarm income poverty guidelines based on the average 1977 Consumer Price Index, by the change between the average 1977 Consumer Price Index and the Consumer Price Index of March 1978, using the most current procedures of the Office of Management and Budget. The income poverty guidelines for future periods shall be similarly adjusted. Any child who is a member of a household which has an annual income not above the applicable family-size income level set forth in the income poverty guidelines prescribed by the Secretary shall be served a free lunch. Following the announcement by the Secretary of the income poverty guidelines for each 12-month period, each State educational agency shall prescribe the income guidelines, by family size, to be used by schools in the State during such 12-month period in making determinations of those eligible for a free lunch as prescribed in this section. The income guidelines for free lunches shall be prescribed at 25 percent above the applicable family size income levels in the income poverty guidelines prescribed by the Secretary. Each fiscal year, each State educational agency shall also prescribe income guidelines, by family size, to be used by schools in the State during the 12-month period from July through June in making determinations of those children eligible for a lunch at a reduced price, not to exceed 20 cents. Such income guidelines for reduced-price lunches shall be prescribed at 95 per centum above the applicable family size income levels in the income poverty guidelines prescribed by the Secretary. Any child who is a member of a household, if that household has an annual income which falls between (A) the applicable family size income level of the income guidelines for free lunches prescribed by the State educational agency and (B) 95 per centum above the applicable family size income levels in the income poverty guidelines prescribed by the Secretary, shall be served a reduced price lunch at a price not to exceed 20 cents. Local school authorities shall publicly announce such income guidelines on or about the opening of school each fiscal year, and shall make determinations with respect to the annual incomes of any household solely on the basis of a statement executed in such form as the Secretary may prescribe by an adult member of such household: *Provided*, That such local school authorities may for cause seek verification of the data in such application. No physical segregation of or other discrimination against any child eligible for a free lunch or a reduced price lunch shall be made by the school nor shall there be any overt identification of any child by special tokens or tickets, announced or published lists of names, or by other means. For purposes of this subsection, "Consumer Price Index" means the Consumer Price Index published each month by the Bureau of Labor Statistics of the Department of Labor.

[*See main edition for text of* (*2*); (c)]

(As amended Nov. 10, 1977, Pub. L. 95-166, § 8, 91 Stat. 1335; Nov. 10, 1978, Pub. L. 95-627, § 8, 92 Stat. 3622.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-627 substituted guidelines prescribed by the Office of Management and Budget for the Consumer Price Index for purposes of determining the income poverty guidelines.

1977—Subsec. (a). Pub. L. 95-166 inserted parenthetical text authorizing students in any grade level in any junior high school or middle school, when approved by the local school district or nonprofit private school, to refuse to accept offered foods they do not intend to consume.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective July 1, 1979, except as specifically provided, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1753, 1759a, 1760, 1766, 1769, 1773, 1774, 1786 of this title.

§ 1759a. Special assistance funds

(a) Formula for computation of payments; computation of lunches to eligible children in schools funding service to ineligible children from non-Federal sources; special-assistance factors; semiannual adjustments based on changes in series for food away from home of Consumer Price Index; base period for adjustments

Except as provided in section 1759 of this title, in each fiscal year each State educational agency shall receive special assistance payments in an amount equal to the sum of the product obtained by multiplying the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary pursuant to section 1758(a) of this title) served free to children eligible for such lunches in schools within that State during such fiscal year by the special-assistance factor for free lunches prescribed by the Secretary for such fiscal year and the product obtained by multiplying the number of lunches served at a reduced price to children eligible for such reduced-price lunches in schools within that State during such fiscal year by the special-assistance factor for reduced-price lunches prescribed by the Secretary for such fiscal year. In the case of any school which determines that at least 80 percent of the children in attendance during a school year (hereinafter in this sentence referred to as the "first school year") are eligible for free lunches or reduced-price lunches, special-assistance payments shall be paid to the State educational agency with respect to that school, if that school so requests for the school year following the first school year, on the basis of the number of free lunches or reduced-price lunches, as the case may be, that are served by that school during the school year for which the request is made, to those children who were determined to be so eligible in the first school year and the number of free lunches and reduced-price lunches served during that year to other children determined for that year to be eligible for such lunches. In the case of any school that (1) elects to serve all children in that school free lunches under the school lunch program during any period of three successive school years and (2) pays, from sources other than Federal funds, for the costs of serving such lunches which are in excess of the value of assistance received under this chapter with respect to the number of lunches served during that period, special-assistance payments shall be paid to the State educational agency with respect to that school during that period on the basis of the number of lunches determined under the succeeding sentence. For purposes of making special-assistance payments in accordance with the preceding sentence, the number of lunches served by a school to children eligible for free lunches and reduced-price lunches during each school year of the three-school-year period shall be deemed to be the number of lunches served by that school to children eligible for free lunches and reduced-price lunches during the first school year of such period, unless that school elects, for purposes of computing the amount of such payments, to determine on a more frequent basis the number of children eligible for free and reduced-price lunches who are served lunches during such period. For the fiscal year beginning July 1, 1973, the Secretary shall prescribe a special-assistance factor for free lunches of not less than 45 cents and a special-assistance factor for reduced-price lunches which shall be 20 cents less than the special-assistance factor for free lunches: *Provided*, That if in any State all schools charge students a uniform price for reduced-price lunches, and such price is less than 20 cents, the special assistance factor prescribed for reduced-price lunches in such State shall be equal to the special assistance factor for free lunches reduced by either 10 cents or the price charged for reduced-price lunches in such State, whichever is greater. The Secretary shall prescribe on July 1 of each fiscal year, and on January 1, of each fiscal year, semi-annual adjustments in the national average rates for lunches served under section 1753 of this title and the special-assistance factor for the lunches served under this section and the national average rates for breakfasts served under section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773], that shall reflect changes in the cost of operating a school lunch and breakfast program under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], as indicated by the change in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor: *Provided*, That the initial such adjustment shall reflect the change in the series for food away from home during the period September 1973, through November 1973: *Provided further*, That each subsequent adjustment shall reflect the changes in the series for food away from home for the most recent six-month period for which such data are available: *Provided further*, That such adjustments shall be computed to the nearest one-fourth cent. Notwithstanding the foregoing two sentences, (1) for the fiscal year beginning July 1, 1973, no special assistance factor under this section shall, for any State, be less than the average reimbursement paid for each free lunch (in the case of the special assistance factor for free lunches), or for each reduced price lunch (in the case of the special assistance factor for reduced price lunches), in such State under this section in the fiscal year beginning July 1, 1972; and (2) adjustments required by the sentence immediately preceding this sentence shall be based on the special assistance factors for the fiscal year beginning July 1, 1973, as determined without regard to any increase required by the application of this sentence.

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended Nov. 10, 1977, Pub. L. 95-166, § 9, 91 Stat. 1336; Nov. 10, 1978, Pub. L. 95-627, §§ 4, 5(c), 92 Stat. 3619, 3620.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-627 substituted "20 cents" for "10 cents" following "which shall be", inserted "for All Urban Consumers" following "Consumer Price Index", and added provision relating to the special assistance factor prescribed for reduced-price lunches in any State in which all schools charge students a uniform price for lunches.

1977—Subsec. (a). Pub. L. 95-166 provided for special-assistance payments to the State educational agency where 80 percent of children in attendance during the school year are eligible for free lunches or reduced-price lunches and for determination of number of lunches served to children eligible for free lunches and reduced-price lunches where the school serves all students, eligible and noneligible, and funds for noneligible students are from other than Federal funds.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsec. (a) by section 4 of Pub. L. 95-627, substituting "20" for "10" and adding provision relating to a 20 cents charge for reduced price lunches, effective Jan. 1, 1979, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

Amendment of subsec. (a) by section 5(c) of Pub. L. 95-627, relating to urban consumers, effective July 1, 1979, except as specifically provided, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1755, 1756, 1757, 1760, 1766, 1769, 1773, 1776 of this title.

§ 1760. State accounts and records; inspection and audit; period of retention; definition

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Definitions

For the purposes of this chapter—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) "Food service equipment assistance" means equipment used by schools in storing, preparing, or serving food for school children.

[*See main edition for text of* (*4*) *to* (*6*)]

(7) "School year" means the annual period from July 1 through June 30.

[*See main edition for text of* (*e*)]

(f) Adjustment of national average payment rate for Alaska, Hawaii, territories and possessions, etc.

In providing assistance for school breakfasts and lunches served in Alaska, Hawaii, Guam, American Samoa, Puerto Rico, the Virgin Islands of the United States, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands, the Secretary may establish appropriate adjustments for each such State to the national average payment rates prescribed under sections 1753 and 1759a of this title and section 1773 of this title, to reflect the differences between the costs of providing lunches and breakfasts in those States and the costs of providing lunches and breakfasts in all other States.

(g) Criminal penalties

Whoever embezzles, willfully misapplies, steals, or obtains by fraud any funds, assets, or property that are the subject of a grant or other form of assistance under this chapter or the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], whether received directly or indirectly from the United States Department of Agriculture, or whoever receives, conceals, or retains such funds, assets, or property to his use or gain, knowing such funds, assets, or property have been embezzled, willfully misapplied, stolen, or obtained by fraud shall, if such funds, assets, or property are of the value of $100 or more, be fined not more than $10,000 or imprisoned not more than five years, or both, or, if such funds, assets, or property are of a value of less than $100, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(h) Combined allocation for breakfast and lunch; net cost of operating limitation

No provision of this chapter or of the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] shall require any school receiving funds under this chapter and the Child Nutrition Act of 1966 to account separately for the cost incurred in the school lunch and school breakfast programs. In no event, however, shall reimbursement to school food authorities exceed the net cost of operating both the lunch and breakfast programs, taking into account the total costs and total incomes of both programs.

(As amended Nov. 10, 1977, Pub. L. 95-166, §§ 3, 19(c), 91 Stat. 1332, 1345; Nov. 10, 1978, Pub. L. 95-627, §§ 6(a), 10(a), (b), 92 Stat. 3620, 3623.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (g) and (h), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

AMENDMENTS

1978—Subsec. (d)(7). Pub. L. 95-627, § 10(b), substituted "from July 1 through June 30" for "determined in accordance with regulations issued by the Secretary".

Subsecs. (f), (g). Pub. L. 95-627, § 10(a), added subsecs. (f) and (g).

Subsec. (h). Pub. L. 95-627, § 6(a), added subsec. (h).

1977—Subsec. (d)(3). Pub. L. 95-166, § 3, substituted "food service equipment assistance" for "nonfood assistance".

Subsec. (d)(7). Pub. L. 95-166, § 19(c), added par. (7).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Enactment of subsec. (d)(7) by section 19(c) of Pub. L. 95-166 effective July 1, 1977, see section 19 of Pub. L. 95-166.

§ 1761. Summer food service programs for children in service institutions

(a) Assistance to States; definitions; facilities to be used; eligible service institutions; order of priority in participation; assistance to rural area eligible service institutions to participate in the programs; reimbursement of camps, limitation

(1) The Secretary is authorized to carry out a program to assist States, through grants-in-aid and other means, to initiate, maintain, and expand nonprofit food service programs for children in service institutions. For purposes of this section, (A) "program" means the summer food service program for children authorized by this section; (B) "service institutions" means nonresidential public or private nonprofit institutions, and residential public or private nonprofit summer camps, that develop special summer or school vacation programs providing food service similar to that made available to children during the school year under the school lunch program under this chapter or the

school breakfast program under the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.]; (C) "areas in which poor economic conditions exist" means areas in which at least 33⅓ percent of the children are eligible for free or reduced price school meals under this chapter and the Child Nutrition Act of 1966, as determined by information provided from departments of welfare, zoning commissions, census tracts, by the number of free and reduced price lunches or breakfasts served to children attending public and nonprofit private schools located in the area of program food service sites, or from other appropriate sources, including statements of eligibility based upon income for children enrolled in the program; (D) "children" means individuals who are eighteen years of age and under, and individuals who are older than eighteen who are (i) determined by a State educational agency or a local public educational agency of a State, in accordance with regulations prescribed by the Secretary, to be mentally or physically handicapped, and (ii) participating in a public or nonprofit private school program established for the mentally or physically handicapped; and (E) "State" means any of the fifty States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands of the United States, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(2) To the maximum extent feasible, consistent with the purposes of this section, any food service under the program shall use meals prepared at the facilities of the service institution or at the food service facilities of public and nonprofit private schools. The Secretary shall assist States in the development of information and technical assistance to encourage increased service of meals prepared at the facilities of service institutions and at public and nonprofit private schools.

(3) Eligible service institutions entitled to participate in the program shall be limited to those that—

(A) demonstrate adequate administrative and financial responsibility to manage an effective food service;

(B) have not been seriously deficient in operating under the program;

(C) either conduct a regularly scheduled food service for children from areas in which poor economic conditions exist or qualify as camps; and

(D) provide an ongoing year-round service to the community to be served under the program (except that an otherwise eligible service institution shall not be disqualified for failure to meet this requirement for ongoing year-round service if the State determines that its disqualification would result in an area in which poor economic conditions exist not being served or in a significant number of needy children not having reasonable access to a summer food service program).

(4) The following order of priority shall be used by the State in determining participation where more than one eligible service institution proposes to serve the same area:

(A) local schools or service institutions that have demonstrated successful program performance in a prior year;

(B) service institutions that prepare meals at their own facilities or operate only one site;

(C) service institutions that use local school food facilities for the preparation of meals;

(D) other service institutions that have demonstrated ability for successful program operation; and

(E) service institutions that plan to integrate the program with Federal, State, or local employment programs.

The Secretary and the States, in carrying out their respective functions under this section, shall actively seek eligible service institutions located in rural areas, for the purpose of assisting such service institutions in applying to participate in the program.

(5) Camps that satisfy all other eligibility requirements of this section shall receive reimbursement only for meals served to children who meet the eligiblity requirements for free or reduced price meals, as determined under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

(b) Payments to service institutions; food service operations costs: adjustments in maximum reimbursement levels; meals per day limitation; budget for administrative costs: submittal and approval by State; administrative cost payments: maximum allowable levels; study of food service operations and administrative costs: report to Congress

(1) Payments to service institutions shall equal the full cost of food service operations (which cost shall include the cost of obtaining, preparing, and serving food, but shall not include administrative costs), except that such payments to any institution shall not exceed (1) 85.75 cents for each lunch and supper served; (2) 47.75 cents for each breakfast served; or (3) 22.50 cents for each meal supplement served: *Provided*, That such amounts shall be adjusted each January 1 to the nearest one-fourth cent in accordance with the changes for the twelve-month period ending the preceding November 30 in the series for food away from home of the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor: *Provided further*, That the Secretary may make such adjustments in the maximum reimbursement levels as the Secretary determines appropriate after making the study prescribed in paragraph (4) of this subsection.

(2) Any service institution shall be permitted to serve up to three meals per day of operation if at least one of the three meals is a meal supplement, and any service institution that is a camp shall be permitted to serve up to four meals per day of operation, if the service institution has the administrative capability, and the food preparation and food holding capabilities (where applicable), to manage more than one meal service per day, and if the service period of different meals does not coincide or overlap. Such meals may include a breakfast, a lunch, a supper, and meal supplements.

(3) Every service institution, when applying for participation in the program, shall submit a

complete budget for administrative costs related to the program, which shall be subject to approval by the State. Payment to service institutions for administrative costs shall equal the full amount of State approved administrative costs incurred, except that such payment to service institutions may not exceed the maximum allowable levels determined by the Secretary pursuant to the study prescribed in paragraph (4) of this subsection.

(4)(A) The Secretary shall conduct a study of the food service operations carried out under the program. Such study shall include, but shall not be limited to—

(i) an evaluation of meal quality as related to costs; and

(ii) a determination whether adjustments in the maximum reimbursement levels for food service operation costs prescribed in paragraph (1) of this subsection should be made, including whether different reimbursement levels should be established for self-prepared meals and vendored meals and which site-related costs, if any, should be considered as part of administrative costs.

(B) The Secretary shall also study the administrative costs of service institutions participating in the program and shall thereafter prescribe maximum allowable levels for administrative payments that reflect the costs of such service institutions, taking into account the number of sites and children served, and such other factors as the Secretary determines appropriate to further the goals of efficient and effective administration of the program.

(C) The Secretary shall report the results of such studies to Congress not later than December 1, 1977.

(c) Payments for meals served during May through September; exceptions for continuous school calendars

Payments shall be made to service institutions only for meals served during the months of May through September, except in the case of service institutions that operate food service programs for children on school vacation at any time under a continuous school calendar.

(d) Advance program payments to States for monthly meal service; letters of credit, forwarding to States; determination of amount; valid claims, receipt

Not later than April 15, May 15, and July 1, of each year, the Secretary shall forward to each State a letter of credit (advance program payment) that shall be available to each State for the payment of meals to be served in the month for which the letter of credit is issued. The amount of the advance program payment shall be an amount which the State demonstrates, to the satisfaction of the Secretary, to be necessary for advance program payments to service institutions in accordance with subsection (e) of this section. The Secretary shall also forward such advance program payments, by the first day of the month prior to the month in which the program will be conducted, to States that operate the program in months other than May through September. The Secretary shall forward any remaining payments due pursuant to subsection (b) of this section not later than sixty days following receipt of valid claims therefor.

(e) Advance program payments to service institutions for monthly meal service; certification of personnel training sessions; minimum days per month operations requirement; payments: computation, limitation; valid claims, receipt; withholding; demand for repayment; subtraction of disputed payments

(1) Not later than June 1, July 15, and August 15 of each year, or, in the case of service institutions that operate under a continuous school calendar, the first day of each month of operation, the State shall forward advance program payments to each service institution: *Provided*, That (A) the State shall not release the second month's advance program payment to any service institution that has not certified that it has held training sessions for its own personnel and the site personnel with regard to program duties and responsibilities, and (B) no advance program payment may be made for any month in which the service institution will operate under the program for less than ten days.

(2) The amount of the advance program payment for any month in the case of any service institution shall be an amount equal to (A) the total program payment for meals served by such service institution in the same calendar month of the preceding calendar year, (B) 50 percent of the amount established by the State to be needed by such service institution for meals if such service institution contracts with a food service management company, or (C) 65 percent of the amount established by the State to be needed by such service institution for meals if such service institution prepares its own meals, whichever amount is greatest: *Provided*, That the advance program payment may not exceed the total amount estimated by the State to be needed by such service institution for meals to be served in the month for which such advance program payment is made or $40,000, whichever is less, except that a State may make a larger advance program payment to such service institution where the State determines that such larger payment is necessary for the operation of the program by such service institution and sufficient administrative and management capability to justify a larger payment is demonstrated. The State shall forward any remaining payment due a service institution not later than seventy-five days following receipt of valid claims. If the State has reason to believe that a service institution will not be able to submit a valid claim for reimbursement covering the period for which an advance program payment has been made, the subsequent month's advance program payment shall be withheld until such time as the State has received a valid claim. Program payments advanced to service institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance program payment.

(f) Nutritional standards; free cost meals to children in approved institutions; camp services, charges for meals to ineligible children; quality assurance, model specifications and standards; meal preparation contracts, requirements; inspection and testing

Service institutions receiving funds under this section shall serve meals consisting of a combination of foods and meeting minimum nutritional standards prescribed by the Secretary on the basis of tested nutritional research. Such meals shall be served without cost to children attending service institutions approved for operation under this section, except that, in the case of camps, charges may be made for meals served to children other than those who meet the eligibility requirements for free or reduced price meals in accordance with subsection (a)(5) of this section. To assure meal quality, States shall, with the assistance of the Secretary, prescribed model meal specifications and model food quality standards, and ensure that all service institutions contracting for the preparation of meals with food service management companies include in their contracts menu cycles, local food safety standards, and food quality standards approved by the State. Such contracts shall require (A) periodic inspections, by an independent agency or the local health department for the locality in which the meals are served, of meals prepared in accordance with the contract in order to determine bacteria levels present in such meals, and (B) that bacteria levels conform to the standards which are applied by the local health authority for that locality with respect to the levels of bacteria that may be present in meals served by other establishments in that locality. Such inspections and any testing resulting therefrom shall be in accordance with the practices employed by such local health authority.

(g) Regulations, guidelines, applications, and handbooks; publication; startup costs

The Secretary shall publish proposed regulations relating to the implementation of the program by November 1 of each fiscal year, final regulations by January 1 of each fiscal year, and guidelines, applications, and handbooks by February 1 of each fiscal year: *Provided*, That for fiscal year 1978, those portions of the regulations relating to payment rates for both food service operations and administrative costs need not be published until December 1 and February 1, respectively. In order to improve program planning, the Secretary may provide that service institutions be paid as startup costs not to exceed 20 percent of the administrative funds provided for in the administrative budget approved by the State under subsection (b)(3) of this section. Any payments made for startup costs shall be subtracted from amounts otherwise payable for administrative costs subsequently made to service institutions under subsection (b)(3) of this section.

(h) Direct disbursement to service institutions by Secretary

Each service institution shall, insofar as practicable, use in its food service under the program foods designated from time to time by the Secretary as being in abundance. The Secretary is authorized to donate to States, for distribution to service institutions, food available under section 1431 of title 7, or purchased under section 612c of title 7 or section 1446a-1 of title 7. Donated foods may be distributed only to service institutions that can use commodities efficiently and effectively, as determined by the Secretary.

(i) Administration of program by Secretary, in event of nonadministration by the State, and direct disbursement to service institutions; notification

If any State (1) is unable for any reason to disburse the funds otherwise payable to it under this section, or (2) does not operate the program in accordance with the requirements of this section, the Secretary shall assume authority for administration of the program in such State, and shall disburse the funds directly to service institutions in the State for the same purposes and subject to the same conditions as are required of a State disbursing funds made available under this section. In cases described in clause (1) of the preceding sentence, the State shall notify the Secretary, not later than January 1 of each fiscal year in which the program is operated, of its intention not to administer the program.

(j) Administrative expenses of Secretary; authorization of appropriations

Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

(k) Administrative costs of State; payment; adjustment; standards and effective dates, establishment; funds: withholding, inspection

(1) The Secretary shall pay to each State for its administrative costs incurred under this section in any fiscal year an amount equal to (A) 20 percent of the first $50,000 in funds distributed to that State for the program in the preceding fiscal year; (B) 10 percent of the next $100,000 distributed to that State for the program in the preceding fiscal year; (C) 5 percent of the next $250,000 in funds distributed to that State for the program in the preceding fiscal year; and (D) 2½ percent of any remaining funds distributed to that State for the program in the preceding fiscal year: *Provided*, That such amounts may be adjusted by the Secretary to reflect changes in the size of that State's program since the preceding fiscal year.

(2) The Secretary shall establish standards and effective dates for the proper, efficient, and effective administration of the program by the State. If the Secretary finds that the State has failed without good cause to meet any of the Secretary's standards or has failed without good cause to carry out the approved State management and administration plan under subsection (n) of this section, the Secretary may withhold from the State such funds authorized under this subsection as the Secretary determines to be appropriate.

(3) To provide for adequate nutritional and food quality monitoring, and to further the implementation of the program, an additional amount, not to exceed the lesser of actual costs

or 1 percent of program funds, shall be made available by the Secretary to States to pay for State or local health department inspections, and to reinspect facilities and deliveries to test meal quality.

(*l*) Food service management companies; subcontracts; assignments, conditions and limitations; meal capacity information in bids subject to review; registration; record, availability to States; small and minority-owned businesses for supplies and services; contracts: standard form, bid and contract procedures, bonding requirements and exemption, review by States, collusive bidding safeguards

(1) Service institutions may contract on a competitive basis only with food service management companies registered with the State in which they operate for the furnishing of meals or management of the entire food service under the program, except that a food service management company entering into a contract with a service institution under this section may not subcontract with a single company for the total meal, with or without milk, or for the assembly of the meal. The Secretary shall prescribe additional conditions and limitations governing assignment of all or any part of a contract entered into by a food service management company under this section. Any food service management company shall, in its bid, provide the service institution information as to its meal capacity. The State shall, upon award of any bid, review the company's registration to calculate how many remaining meals the food service management company is equipped to prepare.

(2) Each State shall provide for the registration of food service management companies. For the purposes of this section, registration shall include, at a minimum—

(A) certification that the company meets applicable State and local health, safety, and sanitation standards;

(B) disclosure of past and present company owners, officers, and directors, and their relationship, if any, to any service institution or food service management company that received program funds in any prior fiscal year;

(C) records of contract terminations or disallowances, and health, safety, and sanitary code violations, in regard to program operations in prior fiscal years; and

(D) the addresses of the company's food preparation and distribution sites.

No food service management company may be registered if the State determines that such company (i) lacks the administrative and financial capability to perform under the program, or (ii) has been seriously deficient in its participation in the program in prior fiscal years.

(3) In order to ensure that only qualified food service management companies contract for services in all States, the Secretary shall maintain a record of all registered food service management companies and their program record for the purpose of making such information available to the States.

(4) In accordance with regulations issued by the Secretary, positive efforts shall be made by service institutions to use small businesses and minority-owned businesses as sources of supplies and services. Such efforts shall afford those sources the maximum feasible opportunity to compete for contracts using program funds.

(5) Each State, with the assistance of the Secretary, shall establish a standard form of contract for use by service institutions and food service management companies. The Secretary shall prescribe requirements governing bid and contract procedures for acquisition of the services of food service management companies, including, but not limited to, bonding requirements (which may provide exemptions applicable to contracts of $100,000 or less), procedures for review of contracts by States, and safeguards to prevent collusive bidding activities between service institutions and food service management companies.

(m) Accounts and records

States and service institutions participating in programs under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations issued hereunder. Such accounts and records shall at all times be available for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(n) Management and administration plan; notification and submittal to Secretary; specific provisions

Each State desiring to participate in the program shall notify the Secretary by January 1 of each year of its intent to administer the program and shall submit for approval by February 15 a management and administration plan for the program for the fiscal year, which shall include, but not be limited to, (1) the State's administrative budget for the fiscal year, and the State's plans to comply with any standards prescribed by the Secretary under subsection (k) of this section; (2) the State's plans for use of program funds and funds from within the State to the maximum extent practicable to reach needy children, including the State's methods for assessing need, and its plans and schedule for informing service institutions of the availability of the program; (3) the State's best estimate of the number and character of service institutions and sites to be approved, and of meals to be served and children to participate for the fiscal year, and a description of the estimating methods used; (4) the State's plans and schedule for providing technical assistance and training eligible service institutions; (5) the State's schedule for application by service institutions; (6) the actions to be taken to maximize the use of meals prepared by service institutions and the use of school food service facilities; (7) the State's plans for monitoring and inspecting service institutions, feeding sites, and food service management companies and for ensuring that such companies do not enter into contracts for more meals than they can provide effectively and efficiently; (8) the State's plan and schedule for registering food service management companies; (9) the State's plan for timely and effective action against program violators; (10) the State's plan for determining the amounts of program payments to service institutions and for disbursing such payments; (11) the State's plan for ensuring fiscal integrity by auditing service institutions not subject to auditing requirements prescribed by the Secretary; and (12) the State's procedure for granting a hearing and prompt determination to any service institution wishing to appeal a State ruling denying the service institution's application for program participation or for program reimbursement.

(o) Violations and penalties

(1) Whoever, in connection with any application, procurement, recordkeeping entry, claim for reimbursement, or other document or statement made in connection with the program, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, or whoever, in connection with the program, knowingly makes an opportunity for any person to defraud the United States, or does or omits to do any act with intent to enable any person to defraud the United States, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(2) Whoever being a partner, officer, director, or managing agent connected in any capacity with any partnership, association, corporation, business, or organization, either public or private, that receives benefits under the program, knowingly or willfully embezzles, misapplies, steals, or obtains by fraud, false statement, or forgery, any benefits provided by this section or any money, funds, assets, or property derived from benefits provided by this section, shall be fined not more than $10,000 or imprisoned for not more than five years, or both (but, if the benefits, money, funds, assets, or property involved is not over $200, then the penalty shall be a fine of not more than $1,000 or imprisonment for not more than one year, or both).

(3) If two or more persons conspire or collude to accomplish any act made unlawful under this subsection, and one or more of such persons do any act to effect the object of the conspiracy or collusion, each shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(p) Authorization of appropriations

For the fiscal years beginning October 1, 1977, and ending September 30, 1980, there are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this section.

(As amended Nov. 10, 1977, Pub. L. 95-166, § 2, 91 Stat. 1325; Nov. 10, 1978, Pub. L. 95-627, §§ 5(d), 7(b), 10(d)(2), 92 Stat. 3620, 3622, 3624.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a)(1) and (5) is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

AMENDMENTS

1978—Subsec. (a)(1)(D)(ii). Pub. L. 95-627, § 10(d)(2), inserted "or nonprofit private" following "in a public".

Subsec. (b)(1). Pub. L. 95-627, § 5(d), inserted "for All Urban Consumers" following "Consumer Price Index".

Subsec. (k)(1). Pub. L. 95-627, § 7(b), substituted "$100,000" for "$50,000" in cl. (B), "$250,000" for "$100,000" in cl. (C), and "2½ percent" for "2 percent" in cl. (D).

1977—Subsec. (a). Pub. L. 95-166, in revising subsec. (a), among other changes: reenacted par. (1); inserted therein cl. (A) definition of "program"; reenacted as cl. (B) definition of "service institutions", inserting therein development of "school vacation" programs; reenacted as cl. (C) definition of "areas in which poor economic conditions exist" definition of "poor economic conditions" of former par. (3), substituting "as determined by information" for "as shown by information" and "served to children attending public and nonprofit private schools located in the area of program food service sites, or from other appropriate sources, including statements of eligibility based upon income for children enrolled in the program" for "served to children attending schools located in the area of summer food sites, or from other applicable sources" and striking out reference to information provided from model city target areas; inserted cl. (D) definition of "children"; reenacted as cl. (E) definition of "State" last sentence of former par. (3), extending the term to include the Northern Mariana Islands; enacted par. (2), which incorporated part of former par. (1) which had read "To the maximum extent feasible, consistent with the purposes of this section, special summer programs shall utilize the existing food service facilities of public and nonprofit private schools."; enacted par. (3), which incorporated part of former par. (2) which had read "Service institutions eligible to participate under the program authorized under this section shall be limited to those which conduct a regularly scheduled program for children from areas in which poor economic conditions exist, for any period during the months of May through September, at site locations where organized recreation activities or food services are provided for children in attendance."; and added pars. (4) and (5).

Subsec. (b)(1). Pub. L. 95-166 incorporated existing provisions in part in text designated par. (1); substituted "Payments" for "Disbursements" increased the payments for cost of lunch and supper, breakfast, and each meal supplement to 85.75 from 75.5, to 47.75 from 42, and to 22.50 from 19.75 cents respectively; substituted provision for adjustment of rates each January 1 based on the Consumer Price Index for twelve-month period ending November 30 for prior such provision for adjustment each March 1 based on the Index for year ending January 31; exclude from cost of food service operations administrative costs; and authorized adjustments, as appropriate, in the maximum reimbursement levels.

Subsec. (b)(2). Pub. L. 95-166 added par. (2) which incorporated in part existing provision which formerly stated that no institution shall be prohibited from serving breakfasts, suppers, and meal supplements as well as lunches unless the service period of different meals coincides or overlaps.

Subsec. (b)(3). Pub. L. 95-166 added par. (3) which supersedes part of existing provisions prescribing administrative costs of lunch and supper, breakfast, and meal supplement not to exceed 6, 3, and 1.5 cents respectively.

Subsec. (b)(4). Pub. L. 95-166 added par. (4).

Subsec. (c). Pub. L. 95-166 substituted "Payments" for "Disbursements" and "except in the case of service institutions that operate food service programs for children on school vacation at any time under a continuous school calendar" for "except that the foregoing provision shall not apply to institutions which develop food service programs for children on school vacation at any time under a continuous school calendar or prevent such institutions, if otherwise eligible, from participating in the program authorized by this section".

Subsec. (d). Pub. L. 95-166, in revising the text, substituted provision for advance program payment to States through letters of credit forwarded no later than April 15, May 15, and July 1, of each year for prior provision for forwarding advance payments no later than June 1, July 1, and August 1 of each year; inserted computation of payment amount provision; struck out prior provision for an amount no less than (1) the total payment made to the State for meals served for the calendar month of the preceding calendar year or (2) 65 per centum of the amount estimated by the State, on the basis of approved applications, to be needed to reimburse service institutions for meals to be served in the month, whichever is the greater, now covered in subsec. (e)(2) of this section; substituted provision for forwarding payments to States operating a program in months other than May through September by the first day of the month prior to the month in which the program is conducted for prior provision for receipt of advance payments not later than the first day of each month involved where institutions operate programs during nonsummer vacations during a continuous school year calendar; reenacted provision for payments within sixty days of receipt of valid claims; and struck out provision declaring that any funds advanced to a State for which valid claims have not been established within 180 days shall be deducted from the next appropriate monthly advance payment unless the claimant requests a hearing with the Secretary prior to the 180th day, now covered in subsec. (e)(2) of this section.

Subsec. (e). Pub. L. 95-166 added subsec. (e), which in incorporating in part provisions of former subsec. (d), substituted in par. (1) July 15 and August 15 for July 1 and August 1 and reenacted provision for payment not later than the first day of each month of operation where service institutions operate under a continuous school calendar, and in par. (2) substituted provision for computation of amount which is the greatest of the amount described in cls. (A), (B), and (C) for prior provision for such computation which is the greater of (1) the total payment made to the State for meals served for the calendar month of the preceding calendar year (now covered in cl. (A)) or (2) 65 per centum of the amount estimated by the State, on the basis of approved applications, to be needed to reimburse service institutions for meals to be served in the month (now covered in cl. (C)). Former subsec. (e) redesignated (f).

Subsec. (f). Pub. L. 95-166 redesignated former subsec. (e) as (f); substituted in first sentence "receiving funds" for "to which funds are disbursed"; and added provisions respecting: charging ineligible children for meals served in camps, model specifications and standards for quality assurance, meal preparation contract requirements, and inspection and testing. Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 95-166 redesignated former subsec. (f) as (g); required publication of proposed regulations by November 1, instead of January 1, final regulations by January 1, instead of March 1, and guidelines, applications, and handbooks by February 1, instead of March 1, of each fiscal year; inserted the proviso; substituted provision for payment of startup costs limited to 20 percent of administrative funds provided for in the administrative budget for prior limitation to 10 per centum of Federal funds provided the service institutions for meals served under this section during the preceding summer; and substituted provision for subtraction of startup costs from amounts otherwise payable for administrative costs made to the service institutions for prior provision for such reduction from payments made for meals served under subsec. (b) of this section. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 95-166 redesignated former subsec. (g) as (h), struck out "participating" preceding "service institution" and ", either nationally or in the institution area, or foods donated by the Secretary" following "abundance", and substituted provision for donation of available or purchased food to States, for distribution to service institutions that can use commodities efficiently and effectively, as determined by the Secretary for prior provision for donation by the Secretary of available or purchased foods, irrespective of amount of appropriated funds, to service institutions in accordance with the needs as determined by authorities of these institutions for utilization in their feeding program. Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95-166 redesignated former subsec. (h) as (i), authorized Secretary's administration of the program when the State is unable for any reason to disburse the funds otherwise payable or does not operate the program as required by this section, prior provision only requiring direct disbursements when the State educational agency was not permitted by law or was otherwise unable to disburse the funds, and required State notification of the Secretary of its intention not to administer the program. Former subsec. (i) redesignated (j).

Subsec. (j). Pub. L. 95-166 redesignated former subsec. (i) as (j). Former subsec. (j) redesignated (p).

Subsec. (k). Pub. L. 95-166 added subsec. (k) and struck out prior subsec. (k) requiring the Secretary to pay administrative costs of each State in an amount equal to 2 per centum of funds distributed to the State and prescribing minimum sum of $10,000 each fiscal year, except where distribution of funds to the State totals less than $50,000 for the fiscal year.

Subsec. (*l*). Pub. L. 95-166 added subsec. (*l*) and struck out prior subsec. (*l*) which provided that nothing in this section should be construed to preclude a service institution from contracting on a competitive basis for the furnishing of meals or administration of the program, or both.

Subsec. (m). Pub. L. 95-166 struck out ", State educational agencies," following "States".

Subsecs. (n), (o). Pub. L. 95-166 added subsecs. (n) and (o).

Subsec. (p). Pub. L. 95-166 redesignated former subsec. (j) as (p) and made authorization applicable to fiscal years beginning Oct. 1, 1977, and ending Sept. 30, 1980.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment of subsecs. (a), (k), by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

Amendment of subsec. (b) by Pub. L. 95-627 effective July 1, 1979, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1752, 1755, 1759a, 1776, 1776b of this title.

§ 1762a. Commodity distribution program

(a) Applicable period; use of funds for purchase of agricultural commodities and products for donation

Notwithstanding any other provision of law, the Secretary, during the period beginning July 1, 1974, and ending September 30, 1982, shall—

(1) use funds available to carry out the provisions of section 612c of title 7 which are not expended or needed to carry out such provisions, to purchase (without regard to the provisions of existing law governing the expenditure of public funds) agricultural commodities and their products of the types custom-

arily purchased under such section (which may include domestic seafood commodities and their products), for donation to maintain the annually programmed level of assistance for programs carried on under this chapter, the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], and title VII of the Older Americans Act of 1965 [42 U.S.C. 3045 et seq.]; and

[*See main edition for text of (2)*]

(b) Products included in food donations

Among the products to be included in the food donations to the school lunch program shall be cereal and shortening and oil products.

(c) Authorization of appropriations for purchase of products or for cash payments in lieu of donations

The Secretary may use funds appropriated from the general fund of the Treasury to purchase agricultural commodities and their products of the types customarily purchased for donation under section 3045f(a)(4) of this title or for cash payments in lieu of such donations under section 3045f(d)(1) of this title. There are hereby authorized to be appropriated such sums as are necessary to carry out the purposes of this subsection.

(d) Assistance procedures; cost and benefits, review; technical assistance; report to Congress; food quality standards contracting procedures

In providing assistance under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.] for school lunch and breakfast programs, the Secretary shall establish procedures which will—

(1) ensure that the views of local school districts and private nonprofit schools with respect to the type of commodity assistance needed in schools are fully and accurately reflected in reports to the Secretary by the State with respect to State commodity preferences and that such views are considered by the Secretary in the purchase and distribution of commodities and by the States in the allocation of such commodities among schools within the States;

(2) solicit the views of States with respect to the acceptability of commodities;

(3) ensure that the timing of commodity deliveries to States is consistent with State school year calendars and that such deliveries occur with sufficient advance notice;

(4) provide for systematic review of the costs and benefits of providing commodities of the kind and quantity that are suitable to the needs of local school districts and private nonprofit schools; and

(5) make available technical assistance on the use of commodities available under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.].

Within eighteen months after November 10, 1977, the Secretary shall report to Congress on the impact of procedures established under this subsection, including the nutritional, economic, and administrative benefits of such procedures. In purchasing commodities for programs carried out under this chapter and the Child Nutrition Act of 1966, the Secretary shall establish procedures to ensure that contracts for the purchase of such commodities shall not be entered into unless the previous history and current patterns of the contracting party with respect to compliance with applicable meat inspection laws and with other appropriate standards relating to the wholesomeness of food for human consumption are taken into account.

(e) State advisory councils; establishment; membership; function

Each State educational agency that receives food assistance payments under this section for any school year shall establish for such year an advisory council, which shall be composed of representatives of schools in the State that participate in the school lunch program. The council shall advise such State agency with respect to the needs of such schools relating to the manner of selection and distribution of commodity assistance for such program.

(As amended Nov. 10, 1977, Pub. L. 95-166, § 6, 91 Stat. 1334; Nov. 10, 1978, Pub. L. 95-627, § 12(b), 92 Stat. 3625.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsecs. (a)(1) and (d), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The Older Americans Act of 1965, referred to in subsec. (a)(1), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218 as amended. Title VII of the Older Americans Act of 1965 was added by Pub. L. 92-258, Mar. 22, 1972, 86 Stat. 88, and was classified generally to subchapter VII (§ 3045 et seq.) of chapter 35 of this title, prior to its repeal by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Section 3045f of this title, referred to in subsec. (c), was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-627 inserted "(which may include domestic seafood commodities and their products)" following "under such section".

1977—Subsec. (a). Pub. L. 95-166, § 6(1), extended termination date for termination of commodity distribution program to Sept. 30, 1982, from Sept. 30, 1977.

Subsecs. (c) to (e). Pub. L. 95-166, § 6(2), added subsecs. (c) to (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

§ 1763. National Advisory Council on Child Nutrition

(a) Establishment; membership

There is hereby established a council to be known as the National Advisory Council on Child Nutrition (hereinafter in this section referred to as the "Council") which shall be composed of nineteen members appointed by the Secretary. One member shall be a school administrator, one member shall be a person engaged in child welfare work, one member shall be a person engaged in vocational education work, one member shall be a nutrition expert, one member shall be a school food service management expert, one member shall be a State superintendent of schools (or the equivalent thereof) one member shall be a supervisor of a school lunch program in a school system in an urban area (or the equivalent thereof), one member shall be a supervisor of a school lunch program in a school system in a rural area, one member shall be a State school lunch director (or the equivalent thereof), one member shall be a person serving on a school board, one member, shall be a classroom teacher, two members shall be parents of children in schools that participate in the school lunch program under this chapter, two members shall be senior high school students who participate in the school lunch program under this chapter, and four members shall be officers or employees of the Department of Agriculture specially qualified to serve on the Council because of their education, training, experience, and knowledge in matters relating to child food programs.

(b) Terms of members

The fifteen members of the Council appointed from outside the Department of Agriculture shall be appointed for terms of two years, except that the appointments for 1978 shall be made as follows: Two replacements, one parent, and one senior high school student shall be appointed for terms of two years; and two replacements, one parent, and one senior high school student shall be appointed for terms of one year. Thereafter, all appointments shall be for a term of two years, except that a person appointed to fill an unexpired term shall serve only for the remainder of such term. Parents and senior high school students appointed to the Council shall be members of State or school district child nutrition councils or committees actively engaged in providing program advice and guidance to school officials administering the school lunch program. Such appointments shall be made in a manner to balance rural and urban representation between parents and students. Members appointed from the Department of Agriculture shall serve at the pleasure of the Secretary.

[*See main edition for text of* (*c*) *to* (*g*)]

(h) Compensation and travel expenses

Members of the Council shall serve without compensation but shall receive reimbursement for necessary travel and subsistence expenses incurred by them in the performance of the duties of the Council: *Provided,* That members serving as parents, in addition to reimbursement for necessary travel and subsistence, shall, at the discretion of the Secretary, be compensated for other personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings.

(As amended Nov. 10, 1977, Pub. L. 95-166, § 16, 91 Stat. 1344.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-166, § 16(1), (2), increased to nineteen from fifteen the membership of the Council and included as members two parents of children in schools participating in the school lunch program and two senior high school students participating in the school lunch program.

Subsec. (b). Pub. L. 95-166, § 16(3), substituted provision for appointment of fifteen members from outside Department of Agriculture for two year terms for prior such appointment of eleven members for three year terms; inserted provision for 1978 appointment of a parent and high school senior for two years and also for one year; reduced regular term to two from three years; required parent and high school senior appointees to be members of nutrition councils or committees advising and guiding school officials in the school lunch program and a balanced rural and urban representation between parents and students in appointment of such persons; and struck out original provision for appointment of three members for three years, for two years, and for one year.

Subsec. (h). Pub. L. 95-166, § 16(4), added proviso respecting compensation of parent members of the Council.

§ 1766. Child care food program

(a) Grants-in-aid; institution defined; guidelines for institutions providing care to children outside of school hours; eligibility

The Secretary may carry out a program to assist States through grants-in-aid and other means to initiate, maintain, and expand nonprofit food service programs for children in institutions providing child care. For purposes of this section, the term "institution" means any public or private nonprofit organization providing nonresidential child care, including, but not limited to, child care centers, settlement houses, recreational centers, Head Start centers, and institutions providing child care facilities for handicapped children. In addition, the term "institution" shall include programs developed to provide day care outside school hours for schoolchildren, and public or nonprofit private organizations that sponsor family or group day care homes. The Secretary may establish separate guidelines for institutions that provide care to school children outside of school hours. For purposes of determining eligibility—

(1) no institution, other than a family or group day care home sponsoring organization, or family or group day care home shall be eligible to participate in the program unless it has Federal, State, or local licensing or approval, or is complying with appropriate renewal procedures as prescribed by the Secretary and the State has no information indicating that the institution's license will not be renewed; or where Federal, State, or local licensing or approval is not available, it receives funds under title XX of the Social Security Act [42 U.S.C. 1397 et seq.] or otherwise demonstrates that it meets either any applicable State or local government licensing or approval standards or approval standards established by the Secretary after consultation with the Secretary of Health, Education, and Welfare; and

(2) no institution shall be eligible to participate in the program unless it satisfies the following criteria:

(A) accepts final administrative and financial responsibility for management of an effective food service;

(B) has not been seriously deficient in its operation of the child care food program, or any other program under this chapter or the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], for a period of time specified by the Secretary; and

(C) will provide adequate supervisory and operational personnel for overall monitoring and management of the child care food program.

(b) Limitations on cash assistance

For the fiscal year ending September 30, 1979, and for each subsequent fiscal year, the Secretary shall provide cash assistance to States for meals served in the manner specified in subsection (c) of this section, except that, in any fiscal year, the aggregate amount of assistance provided to a State by the Secretary under this section shall not exceed the sum of (1) the Federal funds provided by the State to participating institutions within the State for that fiscal year and (2) any funds used by the State under section 10 of the Child Nutrition Act of 1966 [42 U.S.C. 1779].

(c) Formula for computation of payments; national average payment rate

The Secretary shall provide assistance to each State in the following manner:

(1) For meals served to children in institutions, other than family or group day care home sponsoring organizations, where no less than two-thirds of the children enrolled are members of families that satisfy the income standards for free and reduced-price school meals under section 1758 of this title, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(A)(i) the total number of breakfasts served in the State in these institutions by (ii) the sum of the national average payment rate for breakfasts and the national average payment rate for free breakfasts under section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773];

(B)(i) the total number of lunches and suppers served in the State in these institutions by (ii) the sum of the national average payment rate for lunches under section 1753 of this title, and the national average payment rate for free lunches under section 1759a of this title; and

(C)(i) the total number of supplements served in the State in these institutions by (ii) the national average payment rate for supplements served in such institutions.

For the six-month period ending June 30, 1978, the national average payment rate for supplements served in these institutions shall be 23.75 cents. For supplements served in these institutions thereafter, the Secretary shall prescribe adjustments to this national average payment rate on July 1 and January 1 of each year. Such adjustments shall be computed to the nearest one-fourth cent based on changes, measured over the most recent six-month period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers.

(2) For meals served to children in institutions, other than family or group day care home sponsoring organizations, where less than two-thirds but not less than one-third of the children enrolled are members of families that satisfy the income standards for free and reduced-price school meals under section 1758 of this title, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(A)(i) the total number of breakfasts served in the State in these institutions by (ii) the sum of the national average payment rate for reduced-price breakfasts under section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773];

(B)(i) the total number of lunches and suppers served in the State in these institutions by (ii) the sum of the national average payment rate for lunches under section 1753 of this title and the national average payment rate for reduced-price lunches under section 1759a of this title; and

(C)(i) the total number of supplements served in the State in these institutions by (ii) the national average payment rate for supplements served in such institutions.

For the six-month period ending June 30, 1978, the national average payment rate for supplements served in these institutions shall be 18 cents. The Secretary shall prescribe adjustments to this national average payment rate on July 1 and January 1 of each year. Such adjustments shall be computed to the nearest one-fourth cent based on changes, measured over the most recent six-month period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers.

(3) For meals served to children in institutions, other than family or group day care home sponsoring organizations and institutions electing to use the optional reimbursement procedures under subsection (f)(3) of this section, where less than one-third of the enrolled children are members of families that satisfy the income standards for free and reduced-price school meals under section 1758 of this title, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(A)(i) the total number of breakfasts served in the State in these institutions by (ii) the national average payment rate for breakfasts under section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773];

(B)(i) the total number of lunches and suppers served in the State in these institutions by (ii) the national average payment rate for lunches under section 1753 of this title; and

(C)(i) the total number of supplements served in the State in these institutions by (ii) the national average payment rate for supplements in such institutions.

For the six-month period ending June 30, 1978, the national average payment rate for supplements served in these institutions shall be 6 cents. The Secretary shall prescribe adjustments to this national average payment rate on July 1 and January 1 of each year. Such adjustments shall be computed to the nearest one-fourth cent based on changes, measured over the most recent six-month period for which data are available, in the series for food away from home of the Consumer Price Index for All Urban Consumers.

(4) For meals served to children in institutions electing to use the reimbursement procedures under subsection (f)(3) of this section, each State shall receive assistance in the following manner:

(A) for meals served to children who are members of families that satisfy the income standards for free school meals under section 1758 of this title, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(i)(I) the number of breakfasts served by (II) the sum of the national average payment rate for breakfasts and the national average payment rate for free breakfasts under section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773];

(ii)(I) the number of lunches and suppers served by (II) the sum of the national average payment rate for lunches under section 1753 of this title and the national average payment rate for free lunches under section 1759a of this title; and

(iii)(I) the number of supplements served by (II) the national average payment rate for supplements determined under clause (C) of paragraph (1) of this subsection;

(B) for meals served to children who are members of families that satisfy the income standards for reduced-price meals under section 1758 of this title, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(i)(I) the number of breakfasts served by (II) the sum of the national average payment rate for breakfasts and the national average payment rate for reduced-price breakfasts under section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773];

(ii)(I) the number of lunches and suppers served by (II) the sum of the national average payment rate for lunches under section 1753 of this title and the national average payment rate for reduced-price lunches under section 1759a of this title;

(iii)(I) the number of supplements served by (II) the national average payment rate for supplements determined under clause (C) of paragraph (2) of this subsection; and

(C) for meals served to all other children in these institutions, each State shall receive an amount equal to the sum of the products obtained by multiplying—

(i)(I) the number of breakfasts served to such children by (II) the national average payment rate for breakfasts under section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773];

(ii)(I) the number of lunches and suppers served to such children by (II) the national average payment rate for lunches under section 1753 of this title; and

(iii)(I) the number of supplements served to such children by (II) the national average payment rate for supplements determined under clause (C) of paragraph (3) of this subsection.

(5) For meals served in family or group day care homes, each State shall receive amounts sufficient to make payments for such meals under subsection (f)(4) of this section.

(d) Requirements for approval; notification

Any eligible public institution shall be approved for participation in the child care food program upon its request. Any eligible private institution shall be approved for participation if it (1) has tax exempt status under title 26 or, under conditions established by the Secretary, is moving toward compliance with the requirements for tax exempt status, or (2) is currently operating a Federal program requiring nonprofit status. Family or group day care homes need not have individual tax exempt certification if they are sponsored by an institution that has tax exempt status, or, under conditions established by the Secretary, such institution is moving toward compliance with the requirements for tax exempt status or is currently operating a Federal program requiring nonprofit status. An institution applying for participation under this section shall be notified of approval or disapproval in writing within thirty days after the date its completed application is filed. If an institution submits an incomplete application to the State, the State shall so notify the institution within fifteen days of receipt of the application, and shall provide technical assistance, if necessary, to the institution for the purpose of completing its application.

(e) Hearing

The State shall provide, in accordance with regulations issued by the Secretary, a fair hearing and a prompt determination to any institution aggrieved by the action of the State as it affects the participation of such institution in the program authorized by this section, or its claim for reimbursement under this section.

(f) State disbursement to institutions; time of payment; notification; maximum per meal reimbursement rate; election of manner of reimbursement by certain institutions; reimbursement of administrative expenses; start-up funds; advance payments

(1) Funds paid to any State under this section shall be disbursed to eligible institutions by the State under agreements approved by the Secretary. Disbursements to any institution shall be made only for the purpose of assisting in financing the cost of providing meals to children attending institutions, or in family or group day-care homes. Disbursement to any institution shall not be dependent upon the collection of moneys from participating children. All valid

claims from such institutions shall be paid within forty-five days of receipt by the State. The State shall notify the institution within fifteen days of receipt of a claim if the claim as submitted is not valid because it is incomplete or incorrect.

(2) The Secretary shall establish maximum per meal reimbursement rates for each of the three categories of institutions specified in subsections (c)(1), (2), and (3) of this section. Such maximum reimbursement rates for lunches and suppers shall be equal to the maximum reimbursement rates established by the Secretary for lunches served under the national school lunch program. The disbursement to any institution for meals provided under this section shall not be less, for any fiscal year, than the sum of the products obtained by multiplying the total number of each type of meal (breakfast, lunch or supper, or supplement) served in such institution in that fiscal year by the applicable national average payment rates for States for each such type of meal at that category of institution, unless the resulting sum exceeds the cost to the institution of providing such meals.

(3) Institutions, other than family or group day care home sponsoring organizations, may elect to receive reimbursement in accordance with the eligibility of each enrolled child for free, reduced-price, or paid meals under section 1758 of this title. Such reimbursement shall be based on (A) the national average payment rates for lunches under section 1753 of this title; (B) the national average payment rates for free lunches and reduced-price lunches under section 1759a of this title; (C) the national average payment rates for breakfasts, free breakfasts, and reduced-price breakfasts under section 4 of the Child Nutrition Act of 1966 [42 U.S.C. 1773]; and (D) the national average payment rates for supplements under subsection (c) of this section. Reimbursements to such institutions shall be made under the same procedures for determining such reimbursement levels as were prescribed by regulations in effect on September 30, 1978.

(4) Institutions that participate in the program under this section as family or group day care home sponsoring organizations shall be provided, for payment to such homes, a reimbursement factor in an amount determined by the Secretary to be adequate to cover the cost of obtaining and preparing food and prescribed labor costs, involved in providing meals under this section, without a requirement for documentation of such costs. Such institutions shall also receive reimbursement for their administrative expenses. Reimbursement for administrative expenses shall not exceed maximum allowable levels prescribed by the Secretary. Reimbursement for administrative expenses shall also include start-up funds to finance the administrative expenses for such institutions to initiate successful operation under the program. Such start-up funds shall be in addition to other reimbursement to such institutions for administrative expenses. Start-up funds shall be payable to enable institutions satisfying the criteria of subsection (d) of this section, and any other standards prescribed by the Secretary, to develop an application for participation in the program as a family or group day care home sponsoring organization or to implement the program upon approval of the application. Such start-up funds shall be payable in accordance with the procedures prescribed by the Secretary. The amount of start-up funds payable to an institution shall be not less than the institution's anticipated reimbursement for administrative expenses under the program for one month and not more than the institution's anticipated reimbursement for administrative expeses under the program for two months.

(5) By the first day of each month of operation, the State shall provide advance payments for the month to each approved institution in an amount that reflects the full level of valid claims customarily received from such institution for one month's operation. In the case of a newly participating institution, the amount of the advance shall reflect the State's best estimate of the level of valid claims such institutions will submit. If the State has reason to believe that an institution will not be able to submit a valid claim covering the period for which such an advance has been made, the subsequent month's advance payment shall be withheld until the State receives a valid claim. Payments advanced to institutions that are not subsequently deducted from a valid claim for reimbursement shall be repaid upon demand by the State. Any prior payment that is under dispute may be subtracted from an advance payment.

(g) Meals served by participating institutions

(1) Meals served by institutions participating in the program under this section shall consist of a combination of foods that meet minimum nutritional requirements prescribed by the Secretary on the basis of tested nutritional research. Such meals shall be served free to needy children.

(2) No institution may be prohibited from serving breakfast, lunch, supper, and supplements to any eligible child each day, except in the case of institutions that provide care to schoolchildren outside of school hours.

(3) No physical segregation or other discrimination against any child shall be made because of his or her inability to pay, nor shall there be any overt identification of any such child by special tokens or tickets, different meals or meal service, announced or published lists of names, or other means.

(4) Each institution shall, insofar as practicable, use in its food service foods designated from time to time by the Secretary as being in abundance, either nationally or in the food service area, or foods donated by the Secretary.

(h) Donation of agricultural commodities by Secretary; measurement of value; cash in lieu of commodities

The Secretary shall donate agricultural commodities produced in the United States for use in institutions participating in the child care food program under this section. The value of such commodities (or cash in lieu of commodities) donated to each State for each school year shall be, at a minimum, the amount obtained by multiplying the number of lunches and suppers served in participating institutions in that State during that school year by the rate for commodities or cash in lieu thereof established for that school year under section 1755(e) of this title. Any State receiving assistance under this section for institutions participating in the child care food program may, upon application to the Secretary, receive cash in lieu of some or all of the commodities to which it would otherwise be entitled under this subsection. In determining whether to request cash in lieu of commodities, the State shall base its decision on the preferences of individual participating institutions within the State, unless this proves impracticable due to the small number of institutions preferring donated commodities.

(i) Information required from state plans

For the child care food program, the State plan required under section 1759a(e) of this title shall provide, in addition to other information required by regulation or available from regular reporting:

(1) the number of institutions and the number of family or group day care homes participating in the program, together with the average daily attendance in such institutions;

(2) the number of institutions and the number of family or group day care homes in the State that are licensed, approved, or registered or that receive funds under title XX of the Social Security Act [42 U.S.C. 1397 et seq.], and the number of such institutions and homes that participate in the program authorized under this section;

(3) the action program, the State proposes to undertake to use the Federal funds provided under this section, including the State's plans to (A) extend the program to all eligible institutions (placing priority on reaching institutions in needy areas first), (B) assist family or group day care homes in obtaining sponsoring organizations, and (C) encourage eligible institutions to participate in the program;

(4) a plan for the conduct of audits; and

(5) a plan to monitor program performance and measure progress in achieving program goals.

(j) Availability of money for audits

The Secretary shall make available for each fiscal year to States administering the child care food program, for the purpose of conducting audits of participating institutions, an amount up to 2 percent of the funds used by each State in the program under this section, during the second preceding fiscal year.

(k) Standard form agreement regulations

The Secretary may issue regulations directing States to develop and provide for the use of a standard form of agreement between each family or group day care sponsoring organization and the family or group day care homes participating in the program under such organization, for the purpose of specifying the rights and responsibilities of each party.

(*l*) Studies; maximum administrative payments reflecting costs of institutions; report and recommendations to Congress

(1) The Secretary shall study the administrative costs of institutions participating in the program under this section, including the cost effect of such factors as the types of institutions, the number of children served, and the location of institutions in urban or rural areas. The Secretary may prescribe maximum allowable levels of administrative payments that reflect the costs of institutions participating in the program.

(2) The Secretary shall conduct a study of the food service operations carried out in the program under this section. Such study shall include, but not be limited to (1) an evaluation of meal quality as related to costs; and (2) a determination of whether maximum reimbursement levels should be set for food service costs, including whether different reimbursement levels should be established for self-prepared meals and vendored meals, economies of scale, and differences between food service operations in institutions and family and group day care homes.

(3) The Secretary shall conduct a study on licensing problems faced by institutions and family or group day care homes. Such study shall include, but not be limited to, an evaluation of the licensing requirements under this section.

(4) Of the funds appropriated for the fiscal year ending September 30, 1979, to carry out the purposes of this section, not to exceed $2,000,000 shall be available to the Secretary for the purpose of conducting the studies required under paragraphs (1), (2), and (3) of this subsection. The Secretary shall report the results of such studies to Congress, along with any recommendations the Secretary wishes to make, not later than eighteen months after November 10, 1978.

(m) Withholding of funds

In any State where the State is not permitted by law or is otherwise unable to disburse the funds payable to it under this section to any institution in the State, the Secretary shall withhold all funds to which such State would be entitled and shall use such funds for the same purposes and subject to the same conditions as are required of a State.

(n) Equipment assistance; allocation of unused funds; eligibility criteria; notification; prompt action standard; priority systems; disbursement of funds regulations; legal title

(1) Of the sums appropriated for each fiscal year to carry out the purposes of this section, $6,000,000 shall be available to the Secretary for the purposes of providing equipment assistance to enable institutions to establish, maintain, and expand the child care food program. The Secretary shall allocate among the States during each fiscal year the funds available under this subsection. Such allocation shall be based on the ratio of the number of children below the age of six in each State who are members of families that satisfy the income standards for free and reduced-price school

meals under section 1758 of this title to the number of such children in all States. In making such allocation, the Secretary shall use the most recent data available.

(2) If any State cannot use all of the funds allocated to it under this subsection, the Secretary shall make reallocations to the remaining States in the manner set forth in paragraph (1) of this subsection for allocating funds. Payments to any State of funds allocated under this subsection for any fiscal year shall be made upon condition that at least one-fourth of the cost of equipment financed under this subsection shall be financed from sources within the State, except that this condition shall not apply to equipment obtained for institutions that are especially needy, as determined by the State.

(3) Each State shall establish criteria for determining institutions that are especially needy for purposes of this subsection and shall inform all institutions within the State of those criteria. Such criteria shall be submitted to the Secretary for approval and be included in the State plan of operation for the child care food program required by subsection (i) of this section.

(4) Within thirty days of notification by the Secretary to the State of the amount of funds available under this subsection, the State shall notify institutions of the availability of funds for food service equipment. The Secretary shall establish standards to assure prompt action by States on requests by institutions for such funds and shall also prescribe a priority system to be followed by States in allocating funds under this subsection.

(5) The Secretary shall issue regulations authorizing the State to disburse funds under this subsection directly to a supplier of food service equipment if the funds are used to purchase equipment for an institution that (A) meets all the requirements for participation under this section, except for the licensing requirements, and (B) satisfies all the requirements for licensing, except for a requirement for food service equipment. The State shall retain legal title to such equipment until the State and the institution sign an agreement authorizing the institution to participate in the program under this section.

(*o*) Training and technical assistance; notification of nonparticipating institutions; availability of list of notified nonparticipating institutions

States participating in the program under this section shall provide sufficient training, technical assistance, and monitoring to facilitate expansion and effective operation of the program, and shall take affirmative action to expand the availability of benefits under this section. Such action, at a minimum, shall include annual notification to each nonparticipating institution or family or group day care home within the State that is licensed, approved, or registered, or that receives funds under title XX of the Social Security Act [42 U.S.C. 1397 et seq.], of the availability of the program, the requirements for program participation, the availability of food service equipment funds under the program, and the application procedures to be followed in the program. The list of institutions so notified each year shall be available to the public upon request. The Secretary shall assist the States in developing plans to fulfill the requirements of this subsection.

(p) Non-diminishment of state and local funds

Expenditures of funds from State and local sources for the maintenance of food programs for children shall not be diminished as a result of funds received under this section.

(q) Accounts and records

States and institutions participating in the program under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with the requirements of this section. Such accounts and records shall be available at all times for inspection and audit by representatives of the Secretary, the Comptroller General of the United States, and appropriate State representatives and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(r) Authorization of appropriations

There are hereby authorized to be appropriated for each fiscal year such funds as are necessary to carry out the purposes of this section.

(As amended Nov. 10, 1977, Pub. L. 95-166, §§ 3, 19(d), 91 Stat. 1332, 1345; Nov. 10, 1978, Pub. L. 95-627, § 2, 92 Stat. 3603.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(1), (i)(2), (*o*), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Title XX of the Social Security Act is classified generally to subchapter XX (§ 1397 et seq.) of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Child Nutrition Act of 1966, referred to in subsec. (a)(2)(B), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-627 excepted family or group day care homes from licensing requirements, set out guidelines for institutions providing care for children outside of school hours, and set out criteria for determining eligibility under this section.

Subsec. (b). Pub. L. 95-627 substituted provisions limiting the aggregate amount of cash assistance to a State under this section for provisions setting out a formula for computation of payments under this section and adjustments to such payments. See subsec. (c) of this section.

Subsec. (c). Pub. L. 95-627 substituted provisions relating to the formula for the computation of payments under this section and the prescription of a national average payment rate for provisions relating to the maintenance of national nutritional standards and the prohibition of discrimination and identification of children unable to pay under the program.

Subsec. (d). Pub. L. 95-627 substituted provisions stating requirements for approval for participation in the program and requiring written notification of such approval or disapproval for provisions relating to State disbursements to participating institutions.

Subsec. (e). Pub. L. 95-627 substituted provisions relating to fair hearings for provisions relating to donations of agricultural commodities and cash in lieu of commodities. See subsec. (h) of this section.

Subsec. (f). Pub. L. 95-627 substituted provisions relating to disbursements to participating institutions by the State for provisions calling for direct disbursements to participating institutions by the Secretary and prescribing conditions therefor.

Subsec. (g). Pub. L. 95-627 substituted provisions relating to meals served at participating institutions and the necessary nutritional content thereof for provisions prohibiting the diminution of expenditures by State and local sources by reason of the availability of Federal funds.

Subsec. (h). Pub. L. 95-627 substituted provisions relating to donations of agricultural land commodities and cash in lieu of commodities for provisions authorizing appropriations to meet the administrative expenditures of the Secretary.

Subsec. (i). Pub. L. 95-627 substituted provisions relating to information required from State plans for provisions requiring adequate accounts and general record-keeping by States, State educational agencies, and participating institutions.

Subsec. (j). Pub. L. 95-627 substituted provisions relating to the availability of Federal funds to the States for audits of participating institutions for provisions relating to food service equipment assistance and the apportionment of unused funds.

Subsec. (k). Pub. L. 95-627 substituted provisions relating to the use of a standard form of agreement and the issuance of regulations pertaining to such use for provisions relating to the issuance of rules and regulations to carry out this section by the Secretary.

Subsecs. (*l*) to (r). Pub. L. 95-627 added subsecs. (*l*) to (r).

1977—Subsec. (e). Pub. L. 95-166, § 19(d), substituted in last sentence "school year" for "fiscal year" in three instances.

Subsec. (j)(1). Pub. L. 95-166, § 3, substituted "food service equipment assistance" for "nonfood assistance".

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (e) by section 19(d) of Pub. L. 95-166 effective July 1, 1977, see section 19 of Pub. L. 95-166.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1752, 1757, 1776, 1784 of this title.

§ 1769. Pilot projects

(a) Statement of purpose; project contents

The Secretary shall conduct pilot projects with respect to local school districts or other appropriate units, or groups of program participants, for the purpose of determining whether there may be more efficient, healthful, economical, and reliable methods of operating school lunch, school breakfast, and summer feeding programs under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], and methods for operating such programs that will result in improved delivery of benefits thereunder in accordance with the purposes of this chapter and such Act. Such projects shall, notwithstanding any other provision of law, include (1) not more than ten projects providing participating schools or other institutions the option of receiving all or part cash assistance in lieu of commodities under this chapter and such Act for such nutrition programs operated in such schools or institutions, (2) projects designed to streamline or reduce reporting requirements by local school districts, and (3) projects using the United States Department of Agriculture Extension Service to aid in nutrition training and education in schools and other institutions.

(b) Study

The Secretary shall conduct a study to analyze the impact and effect of cash payments in lieu of commodities. The study shall be limited to a comparison between a State that phased out its commodity distribution facilities prior to June 30, 1974, and elected to receive cash payments in lieu of donated foods, and a State not eligible for cash payments in lieu of donated foods. Such study shall include an assessment of the administrative feasibility and nutritional impact of cash payments in lieu of donated foods, the cost savings, if any, that may be effected thereby at the Federal, State, and local levels, any additional costs that may be placed on programs and participating students, the impact on Federal programs designed to provide adequate income to farmers, the impact on the quality of food served, and the impact on plate waste in school lunch and breakfast programs.

(c) Report to Congress; contents

The Secretary shall report to Congress, not later than eighteen months after November 10, 1977, on the results of the pilot projects and study conducted under this section, except for the pilot projects conducted under subsection (d) of the section. In connection with such pilot projects, such report shall include an assessment of the methods employed in such projects for operating school lunch, school breakfast, and summer feeding programs, in terms of the following factors—

(1) the administrative feasibility and nutritional impact;

(2) the cost savings that may be effected at Federal, State, and local levels;

(3) the impact on Federal programs designed to provide adequate income to farmers;

(4) the impact on the quality of food served; and

(5) the impact on plate waste.

(d) Free lunches without regard for income of family; reimbursement of school food authorities

(1) The Secretary may conduct pilot projects in not more than fourteen school districts (or other appropriate units), of which not more than two may be located in any administrative region of the Food and Nutrition Service of the Department of Agriculture, for the purpose of determining the feasibility, cost, and other consequences of providing lunches free to all children, without regard to the income of the children's families, during the school year beginning July 1, 1979.

(2) The Secretary shall reimburse school food authorities participating in a pilot project under this subsection for all lunches served to children on the same basis that the Secretary normally provides for lunches served to children meeting the eligibility requirements for free lunches under section 1758 of this title.

(3) The Secretary shall submit to the appropriate committees of the Senate and the House of Representatives a report on the pilot projects conducted under this subsection not later than six months after the conclusion of such projects.

(4) There are hereby authorized to be appropriated such sums as are necessary for the fiscal year beginning October 1, 1978, for the purpose of conducting an evaluation of pilot projects conducted under this subsection and for the purpose of making additional payments for lunches served to children (beyond what the school food authorities would otherwise receive under sections 1753 and 1759a of this title) to school food authorities participating in pilot projects.

(June 4, 1946, ch. 281, § 20, as added Nov. 10, 1977, Pub. L. 95-166, § 10(2), 91 Stat. 1336, and amended Nov. 10, 1978, Pub. L. 95-627, § 11, 92 Stat. 3624.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in subsec. (a), is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-627, § 11(1), added provision excluding pilot projects conducted under subsec. (d) of this section.

Subsec. (d). Pub. L. 95-627, § 11(2), added subsec. (d).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1755 of this title.

§ 1769a. Reduction of paperwork; report to Congress

In carrying out functions under this chapter and the Child Nutrition Act of 1966 [42 U.S.C. 1771 et seq.], the Secretary shall reduce, to the maximum extent possible, the paperwork required of State and local educational agencies, schools, and other agencies participating in child nutrition programs under this chapter and such Acts. The Secretary shall report to Congress not later than one year after November 10, 1977, on the extent to which a reduction in such paperwork has occurred.

(June 4, 1946, ch. 281, § 21, as added Nov. 10, 1977, Pub. L. 95-166, § 13, 91 Stat. 1338.)

REFERENCES IN TEXT

The Child Nutrition Act of 1966, referred to in text, is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

§ 1769b. Department of Defense overseas dependents' schools

(a) Purpose of program; availability of payments and commodities

For the purpose of obtaining Federal payments and commodities in conjunction with the provision of lunches to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the National School Lunch Program in the United States.

(b) Administration of program; eligibility determinations and regulations

The Secretary of Defense shall administer lunch programs authorized by this section and shall determine eligibility for free and reduced-price lunches under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the National School Lunch Program under this section.

(c) Nutritional standards for meals; noncompliance with standards

The Secretary of Defense shall be required to offer meals meeting nutritional standards prescribed by the Secretary of Agriculture; however, the Secretary of Defense may authorize deviations from Department of Agriculture prescribed meal patterns and fluid milk requirements when local conditions preclude strict compliance or when such compliance is impracticable.

(d) Authorization of appropriations

Funds are hereby authorized to be appropriated for any fiscal year in such amounts as may be necessary for the administrative expenses of the Department of Defense under this section and for payment of the difference between the value of commodities and payments received from the Secretary of Agriculture and (1) the full cost of each lunch for each student eligible for a free lunch, and (2) the full cost of each lunch, less any amounts required by law or regulation to be paid by each student eligible for a reduced-price lunch.

(e) Technical assistance for administration of program

The Secretary of Agriculture shall provide the Secretary of Defense with the technical assistance in the administration of the school lunch programs authorized by this section.

(June 4, 1946, ch. 281, § 22, as added Nov. 1, 1978, Pub. L. 95-561, title XIV, § 1408(a), 92 Stat. 2368.)

CODIFICATION

Another section 22 of act June 4, 1946, ch. 281, as added Nov. 10, 1978, Pub. L. 95-627, § 9, 92 Stat. 3623 is classified to section 1769c of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1978 and no provision herein to be construed as impairing or preventing the taking effect of any other Act providing for the transfer of functions described herein to an executive department having responsibility for education, see section 1415 of Pub. L. 95-561, set out as an Effective Date note under section 921 of Title 20, Education.

TRANSFER OF FUNCTIONS

All functions of the Secretary of Defense and the Department of Defense relating to the operation of overseas schools for the dependents of the Department of Defense and under the Defense Dependents' Education Act of 1978, 20 U.S.C. 921 et seq., were transferred to the Secretary of Education pursuant to section 3442(a) of Title 20, Education.

§ 1769c. Study of menu choice

As a means of diminishing waste of foods without endangering nutritional integrity of meals served, the Secretary shall conduct a study to determine the cost and feasibility of requiring schools to offer a choice of menu items within the required meal patterns. This study shall, as a minimum, include different needs and capabilities of elementary and secondary schools for such a requirement. The Secretary shall develop regulations designed to diminish such waste based on the results of this study.

(June 4, 1946, ch. 281, § 22, as added Nov. 10, 1978, Pub. L. 95-627, § 9, 92 Stat. 3623.)

CODIFICATION

Another section 22 of act June 4, 1946, ch. 281, as added Nov. 1, 1978, Pub. L. 95-561, title XIV, § 1408(a), 92 Stat. 2368 is classified to section 1769b of this title.

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

CHAPTER 13A—CHILD NUTRITION

Sec.
1776a. Allocation of funds; State participation in studies and surveys [New].
1776b. Withholding of allocated funds; deficient administration of programs by States; correction of deficiency [New].
1788. Nutrition education and training [New].
    (a) Congressional findings.
    (b) Statement of purpose.
    (c) Definitions.
    (d) Nutrition information and training; grants; coordination with other nutrition activities; coordination with Department of Health, Education, and Welfare: transfer of funds; State contracts: nutrition training grants and pilot projects; private schools, program administration.
    (e) Agreements with State agencies; regulations.
    (f) Use of funds; planning and assessment grants; administrative expenses.
    (g) Accounts, records, and reports; inspection, audit, and preservation.
Sec.
    (h) State coordinators for nutrition; duties; budget and need assessment; State plan, contents; review, public hearings.
    (i) Authorization of appropriations; enrollment data.
1789. Department of Defense overseas dependents' schools [New].
    (a) Purpose of program; availability of payments and commodities.
    (b) Administration of program; eligibility determinations and regulations.
    (c) Nutritional standards for meals; noncompliance with standards.
    (d) Authorization of appropriations.
    (e) Technical assistance for administration of program.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 1752, 1755, 1759a, 1760, 1761, 1762, 1762a, 1763, 1765, 1766, 1767, 1768, 1769, 1769a, 1776a, 1776b of this title.

§ 1771. Congressional declaration of purpose

SHORT TITLE OF 1978 AMENDMENT.

Pub. L. 95-627, § 1, Nov. 10, 1978, 92 Stat. 3603 provided: "That this Act [which enacted section 1769c of this title, amended sections 1755, 1757, 1758, 1759a to 1761, 1762a, 1766, 1769, 1772 to 1774, 1776, 1784 and 1786 of this title, and enacted provisions set out as notes under sections 1755, 1773 and 1786 of this title] may be cited as the 'Child Nutrition Amendments of 1978'."

§ 1772. Special program to encourage the consumption of fluid milk by children; authorization of appropriations; eligibility for special milk program; minimum rate of reimbursement

There is hereby authorized to be appropriated for the fiscal year ending June 30, 1970, and for each succeeding fiscal year, such sums as may be necessary to enable the Secretary of Agriculture, under such rules and regulations as he may deem in the public interest, to encourage consumption of fluid milk by children in the United States in (1) nonprofit schools of high school grade and under, and (2) nonprofit nursery schools, child-care centers, settlement houses, summer camps, and similar nonprofit institutions devoted to the care and training of children. For the purposes of this section "United States" means the fifty States, Guam, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, the Trust Territory of the Pacific Islands, and the District of Columbia. The Secretary shall administer the special milk program provided for by this section to the maximum extent practicable in the same manner as he administered the special milk program provided for by this chapter during the fiscal year ending June 30, 1969. Any school or nonprofit child care institution shall receive the special milk program upon their request. Children who qualify for free lunches under guidelines set forth by the Secretary shall, at the option of the school involved (or of the local educational agency involved in the case of a public school) also be eligible for free milk. For the fiscal year ending June 30, 1975, and for subsequent school years, the minimum rate of reimbursement for a half-pint of milk served in schools and other eligible institutions shall not be less than 5 cents per half-pint served to eligible children, and such minimum rate of reimbursement shall be adjusted on an annual basis each school year to reflect changes in the Producer Price Index for Fresh Processed Milk published by the Bureau of Labor Statistics of the Department of Labor. Such adjustment shall be computed to the nearest one-fourth cent. Notwithstanding any other provision of this section, in no event shall the minimum rate of reimbursement exceed the cost to the school or institution of milk served to children.

(As amended Pub. L. 95-166, §§ 11, 20(1), (2), Nov. 10, 1977, 91 Stat. 1337, 1346; Pub. L. 95-627, § 5(a), Nov. 10, 1978, 92 Stat. 3619.)

AMENDMENTS

1978—Pub. L. 95-627 substituted "Producer Price Index for Fresh Processed Milk" for "series of food away from home of the Consumer Price Index", and added provision relating to eligibility for free milk.

1977—Pub. L. 95-166, provided free milk for children when milk is made available at times other than the periods of meal service in outlets that operate a food service program under sections 1753, 1766, and 1773 of this title, and substituted "school years" and "annual basis each school year" for "fiscal years" and "annual basis each fiscal year" and deleted "thereafter, beginning with the fiscal year ending June 30, 1976," preceding "to reflect changes".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-627 effective July 1, 1979, except as specifically provided, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by section 20(1) of Pub. L. 95-166 effective July 1, 1977, see section 20 of Pub. L. 95-166.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1755, 1775, 1776, 1780 of this title.

§ 1773. School breakfast program

(a) Establishment; authorization of appropriations

There is hereby authorized to be appropriated such sums as are necessary to enable the Secretary to carry out a program to assist the States and the Department of Defense through grants-in-aid and other means to initiate, maintain, or expand nonprofit breakfast programs in all schools which make application for assistance and agree to carry out a nonprofit breakfast program in accordance with this chapter. Appropriations and expenditures for this chapter shall be considered Health, Education, and Welfare functions for budget purposes rather than functions of Agriculture.

(b) Apportionment of funds to States; national average payment for breakfasts, reduced-price breakfasts, and free breakfasts; additional payments, severe need: maximum payment for free and reduced price breakfasts

(1) Of the funds appropriated for the purposes of this section, the Secretary shall for the fiscal year ending June 30, 1973, (1) apportion $2,600,000 equally among the States other than Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, and $45,000 equally among Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, and (2) apportion the remainder among the States in accordance with the apportionment formula contained in section 1753 of this title. For each fiscal year beginning with the fiscal year ending June 30, 1974, the Secretary shall make breakfast assistance payments, at such times as he may determine, from the sums appropriated therefor, to each State educational agency, in a total amount equal to the result obtained by (1) multiplying the number of breakfasts (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary pursuant to subsection (e) of this section) served during such fiscal year to children in schools in such States which participate in the breakfast program under this section under agreements with such State educational agency by a national average breakfast payment prescribed by the Secretary for such fiscal year to carry out the purposes of this section; (2) multiplying the number of such breakfasts served free to children eligible for free breakfasts in such schools during such fiscal year by a national average free breakfast payment prescribed by the Secretary for such fiscal year to carry out the purposes of this section; and (3) multiplying the number of reduced price breakfasts served to children eligible for reduced price breakfasts in such schools during such fiscal year by a national average reduced price breakfasts payment prescribed by the Secretary for such fiscal year to carry out the provisions of this section: *Provided*, That in any fiscal year the aggregate amount of the breakfast assistance payments made by the Secretary to each State educational agency for any fiscal year shall not be less than the amount of the payments made by the State educational agency to participating schools within the State for the fiscal year ending June 30, 1972, to carry out the purposes of this section. The national average payment established by the Secretary for all breakfasts served to eligible children shall not be less than 8 cents; an amount of not less than 15 cents shall be added for each reduced-price breakfast; and an amount of not less than 20 cents shall be added for each free breakfast.

(2)(A) The Secretary shall make additional payments for breakfasts served to children qualifying for a free or reduced-price meal at schools that are in severe need.

(B) The maximum payment for each such free breakfast shall be the higher of—

(i) the national average payment established by the Secretary for free breakfasts plus 10 cents, or

(ii) 45 cents, which shall be adjusted on a semiannual basis each July 1 and January 1 to the nearest one-fourth cent in accordance with changes in the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor for the most recent six-month period for which such data are available, except that the initial such adjustment shall be made on January 1, 1978, and shall reflect the change in the series of food away from home during the period November 1, 1976, to October 31, 1977.

(C) The maximum payment for each such reduced-price breakfast shall be five cents less than the maximum payment for each free breakfast as determined under clause (B) of this paragraph.

[*See main edition for text of* (*c*)]

(d) Severe need assistance; eligibility standards; receipt of lesser of operating costs of breakfast program or meal reimbursement rate

Each State educational agency shall establish eligibility standards for providing additional assistance to schools in severe need, which shall include those schools in which the service of breakfasts is required pursuant to State law and those schools (having a breakfast program or desiring to initiate a breakfast program) in which, during the most recent second preceding school year for which lunches were served, 40 percent or more of the lunches served to students at the school were served free or at a reduced price and in which the rate per meal established by the Secretary is insufficient to cover the costs of the breakfast program. Such eligibility standards shall be submitted to the Secretary for approval and included in the State plan of child nutrition operations required by section 1759a(e)(1) of this title. Pursuant to those State eligibility standards, a school, upon the submission of appropriate documentation about the need circumstances in that school and the school's eligibility for additional assistance, shall be entitled to receive 100 percent of the operating costs of the breakfast program, including the costs of obtaining, preparing, and serving food, or the meal reimbursement rate specified in paragraph (2) of subsection (b) of this section, whichever is less.

[*See main edition for text of* (*e*) *to* (*g*)]

(As amended Pub. L. 95-166, § 12, Nov. 10, 1977, 91 Stat. 1337; Pub. L. 95-561, title XIV, § 1408(b)(1), Nov. 1, 1978, 92 Stat. 2368; Pub. L. 95-627, § 6(c), Nov. 10, 1978, 92 Stat. 3620.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-561 added provision relating to applicability to programs of the Department of Defense.

Subsec. (d). Pub. L. 95-627 specified which schools could be considered to be in severe need.

1977—Subsec. (b)(1). Pub. L. 95-166, § 12(1), (2), designated existing provisions as par. (1) and as so designated struck out provision for payment of up to 45 cents for breakfasts served to children qualifying for a free breakfast in cases of severe need, which is now covered in par. (2).

Subsec. (b)(2). Pub. L. 95-166, § 12(3), added par. (2).

Subsec. (d). Pub. L. 95-166, § 12(4), substituted requirement that the Secretary establish eligibility standards for providing additional assistance to schools in severe need for prior requirement that the State educational agency require applicant schools to provide justification of the need for such assistance; required the eligibility standards to be submitted to the Secretary for approval and to be included in the State plan of child nutrition operations and submission of appropriate documentation about the need circumstances in the school and the school's eligibility for additional assistance; and authorized payment of the lesser of 100 percent of the operating costs or the meal reimbursement rate, previously limited to the 100 percent payment.

EFFECTIVE DATE OF 1978 AMENDMENTS

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

Amendment by Pub. L. 95-561 effective Oct. 1, 1978, and no provision therein to be construed as impairing or preventing the taking effect of any other Act providing for the transfer of functions described therein to an executive department having responsibility for education, see section 1415 of Pub. L. 95-561, set out as an Effective Date note under section 921 of Title 20, Education.

TRANSFER OF FUNCTIONS

All functions of the Secretary of Defense and the Department of Defense relating to the operation of overseas schools for the dependents of the Department of Defense and under the Defense Dependents' Education Act of 1978, 20 U.S.C. 921 et seq., were transferred to the Secretary of Education pursuant to section 3442(a) of Title 20, Education.

ALTERNATE FOODS

Section 6(d) of Pub. L. 95-627 provided that: "The Secretary shall not limit or prohibit, during the school year 1978-79, the use of formulated grain-fruit products currently approved for use in the school breakfast program. The Secretary shall consult experts in child nutrition, industry representatives, and school food service personnel and school administrators (including personnel and administrators in school systems using such products) with respect to the continued use of formulated grain-fruit products in the school breakfast program, and shall also take into account the findings and recommendations in the report on this subject of the General Accounting Office. The Secretary shall not promulgate a final rule disapproving the use of such products in the school breakfast program beyond the 1978-79 school year until the Secretary has notified the appropriate committees of Congress, and such rule shall not take effect until sixty days after such notification."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1755, 1756, 1759a, 1760, 1766, 1775, 1776, 1777, 1780 of this title.

§ 1774. Food service equipment assistance program

(a) Establishment; equipment required for food service programs; authorization of appropriations

There is hereby authorized to be appropriated for the fiscal year ending June 30, 1971, not to exceed $38,000,000, for the fiscal year ending June 30, 1972, not to exceed $33,000,000, for each of the three fiscal years ending June 30, 1973, June 30, 1974, and June 30, 1975, not to exceed $40,000,000 and for each succeeding fiscal year, not to exceed $75,000,000, to enable the Secretary to formulate and carry out a program to assist the States through grants-in-aid and other means to supply schools drawing attendance from areas in which poor economic conditions exist with equipment, other than land or buildings, for the storage, preparation, transportation, and serving of food to enable such schools to establish, maintain, and expand schools food service programs. In the case of a nonprofit private school, such equipment shall be for use of such school principally in connection with child feeding programs authorized in this chapter and in the National School Lunch Act, as amended [42 U.S.C. 1751 et seq.].

(b) Apportionment of funds to States; reapportionment of funds; matching funds requirement inapplicable to especially needy schools; order of priority; availability of remaining funds

Except for the funds reserved under subsection (e) of this section, the Secretary shall apportion the funds appropriated for the purposes of this section among the States on the basis of the ratio that the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary pursuant to section 9 of the National School Lunch Act [42 U.S.C. 1758]) served in each State in the latest preceding school year for which the Secretary determines data are available at the time such funds are apportioned bears to the total number of such lunches served in all States in such preceding school year. If any State cannot utilize all of the funds apportioned to it under the provisions of this subsection, the Secretary shall make further apportionments to the remaining States in the manner set forth in this subsection for apportioning funds among all the States. Payments to any State of funds apportioned under the provisions of this subsection for any fiscal year shall be made upon condition that at least one-fourth of the cost of equipment financed under this subsection shall be borne by funds from sources within the State, except that such condition shall not apply with respect to funds used under this section to assist schools that are especially needy, as determined by criteria to be established by each State and approved by the Secretary. States shall apportion their share of funds under this subsection by giving priority to schools without a food service program, schools that do not serve both breakfasts and lunches but that will use food service equipment to initiate the service of breakfasts or lunches, and schools without the facilities to prepare and cook hot meals at the schools (including schools having equipment that is so antiquated or impaired as to endanger the continuation of an adequate food service program or the ability to prepare and cook hot meals) or at a kitchen that serves the schools and that is operated by the local school district or by a nonprofit private school or the authority that is responsible for the administration of one or more nonprofit private schools. After making funds available to such schools, the Secretary shall make the remaining funds available to eligible schools that do not meet the priority criteria, for the purpose of purchasing needed replacement equipment.

[*See main edition for text of* (c)]

(d) Nonprofit private schools

If, in any State, the State educational agency is prohibited by law from administering the program authorized by this section in nonprofit private schools within the State, the Secretary shall administer such program in such private schools. In such event, the Secretary shall withhold from the funds apportioned to any such State under the provisions of subsection (b) of this section an amount which bears the same ratio to such funds as the number of lunches (consisting of a combination of foods which meet the minimum nutritional requirements prescribed by the Secretary pursuant to section 9(a) of the National School Lunch Act [42 U.S.C. 1758(a)]) served in nonprofit private schools in such State in the latest preceding school year for which the Secretary determines data are available at the time such funds are withheld bears to the total number of such lunches served in all schools within such State in such preceding school year.

(e) Reservation of funds; State apportionment; funds for States administered by Secretary: withholding; reapportionment of funds; matching funds requirement inapplicable to especially needy schools

For the fiscal years ending September 30, 1978, September 30, 1979, and September 30, 1980, 40 percent of the funds appropriated for the purposes of this section shall be reserved to the Secretary to assist schools without a food service program and schools that do not serve breakfasts or lunches but that plan to use food service equipment to initiate a breakfast or lunch program. The Secretary shall apportion the funds so reserved among the States on the basis of the ratio of the number of children in each State enrolled in schools without a food service program and in schools moving toward the initiation of the service of breakfasts to the number of children in all States enrolled in schools without a food service program and in schools moving toward the initiation of the service of breakfasts. In those States in which the Secretary administers the food service equipment assistance program in nonprofit private schools, the Secretary shall withhold from the funds apportioned to any such State under this subsection an amount which bears the same ratio to such funds as the number of children enrolled in nonprofit private schools without a food service program or moving toward the initiation of the service of breakfasts in such State bears to the total number of children enrolled in all schools without a food service program or moving toward the initiation of the service of breakfasts in such State. The funds so reserved, apportioned, and withheld shall be used by the State, or the Secretary in the case of nonprofit private schools, only to assist schools without a food service program and schools moving toward the initiation of the service of breakfasts. If any State cannot use all the funds apportioned to it under the provisions of this subsection, the Secretary shall make further apportionment to the remaining States for use only in assisting schools without a food service program and schools moving toward the initiation of the service of breakfasts. If after such further apportionment, any funds received under this subsection remain unused, the Secretary shall immediately apportion such funds among the States in accordance with the provisions of subsection (b) of this section. Payment to any State of funds under the provisions of this subsection shall be made upon the condition that at least one-fourth of the cost of the equipment financed shall be borne by funds from sources within the State, except that such condition shall not apply with respect to funds used under this subsection to assist schools that are especially needy, as determined by criteria established by each State and approved by the Secretary.

(f) Funds for food service program of hot meals prepared and cooked by the school, or received by the school; necessity of alternative method of meal preparation; conditions for use of funds for food service facilities located at institution providing the school lunch or breakfast program

(1) Funds authorized for the purposes of this section shall be used only for facilities that enable schools, or local public or private nonprofit institutions under the conditions prescribed in paragraph (2) of this subsection, to prepare and cook hot meals or receive hot meals at the school or institution unless the school can demonstrate to the satisfaction of the State (or, in the case of nonprofit private schools in States where the Secretary administers the food service equipment program in such schools, to the satisfaction of the Secretary) that an alternative method of meal preparation is necessary for the introduction or continued existence of the school lunch or breakfast program in such school or to improve the consumption of food or the participation of eligible children in the program.

(2) If a school authorized to receive funds under this section cannot establish a food service program of hot meals prepared and cooked by the school, or received by the school, and the school enters into an agreement with a public or private nonprofit institution to provide the school lunch or breakfast program for children attending the school, the funds provided under this section may be used for food service facilities to be located at such institution, if (A) the school retains legal title to such facilities and, (B) in the case of funds made available under subsection (e) of this section, the institution would otherwise be without such facilities.

(As amended Pub. L. 95-166, §§ 4, 20(3), (4), Nov. 10, 1977, 91 Stat. 1332, 1346; Pub. L. 95-627, § 6(b), Nov. 10, 1978, 92 Stat. 3620.)

Amendments

1978—Subsec. (a). Pub. L. 95-627, § 6(b)(1), substituted "$75,000,000, to enable" for "$40,000,000, to enable".

Subsec. (b). Pub. L. 95-627, § 6(b)(2), (3), added provisions relating to schools initiating the service of breakfasts or lunches and authorized making funds available to eligible schools that fail to meet priority criteria.

Subsec. (e). Pub. L. 95-627, § 6(b)(4) to (6), substituted "40 percent" for "33⅓ percent" and provisions relating to the initiation of a breakfast or lunch program for provisions relating to schools without facilities to prepare or receive hot meals.

1977—Subsec. (a). Pub. L. 95-166, § 4(4), struck out authorization of transfer of equipment no longer used at a nonprofit private school principally in connection with authorized child feeding programs to another nonprofit private school participating in any of such programs or to a public school participating in any of such programs, or, absent such disposition, of reversion to the United States of that part of the equipment financed with Federal funds, or the residual value thereof.

Subsec. (b). Pub. L. 95-166, §§ 4(1), 20(3), substituted "such condition shall not apply with respect to funds used under this section to assist schools that are especially needy, as determined by criteria to be established by each State and approved by the Secretary" for "such conditions shall not apply with respect to funds used under this section to assist schools if such schools are especially needy, as determined by the State" and added provisions respecting apportionment of funds on basis of priority to certain schools and availability of remaining funds to other schools with a food service program and with facilities to prepare and cook hot meals at the schools; and substituted in first sentence "school year" for "fiscal year" in two instances.

Subsec. (d). Pub. L. 95-166, § 20(4), substituted "school year" for "fiscal year" in two instances.

Subsec. (e). Pub. L. 95-166, § 4(2), redesignated the program to be known as the "food service equipment assistance program", previously known as the "nonfood assistance program"; extended reservation of funds for fiscal years ending Sept. 30, 1978, through Sept. 30, 1980; deleted prior fund reservation provision applicable to fiscal year ending June 30, 1976, period July 1, 1976, through Sept. 30, 1976, and fiscal year ending Sept. 30, 1977; included within category of eligible schools the schools without facilities to cook hot meals; and required each State to establish criteria, approved by the Secretary, for determination of especially needy schools.

Subsec. (f). Pub. L. 95-166, § 4(3), added subsec. (f).

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

Effective Date of 1977 Amendment

Amendment of subsecs. (b) and (d) by section 20(3), (4) of Pub. L. 95-166 effective July 1, 1977, see section 20 of Pub. L. 95-166.

§ 1776. State administrative expenses

(a) Amount available; formula for computation of payment; improved program integrity and meal quality; use for costs of administration of programs for which allocation made; retention of funds by Secretary

(1) Each fiscal year, the Secretary shall make available to the States for their administrative costs an amount equal to not less than 1½ percent of the Federal funds expended under sections 4, 11, and 17 of the National School Lunch Act [42 U.S.C. 1753, 1759a, 1766] and 1772, 1773, and 1774 of this title during the second preceding fiscal year. The Secretary shall allocate the funds so provided in accordance with paragraphs (2), (3), and (4) of this subsection. There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this section.

(2) The Secretary shall allocate to each State for administrative costs incurred in any fiscal year in connection with the programs authorized under the National School Lunch Act [42 U.S.C. 1751 et seq.] or under this chapter, except for the programs authorized under section 13 or 17 of the National School Lunch Act [42 U.S.C. 1761, 1766] or under section 1786 of this title, an amount equal to not less than 1 percent and not more than 1½ percent of the funds expended by each State under sections 4 and 11 of the National School Lunch Act [42 U.S.C. 1753, 1759a] and sections 1772, 1773, and 1774 of this title during the second preceding

fiscal year. In no case shall the grant available to any State under this subsection be less than the amount such State was allocated in the fiscal year ending September 30, 1978, or $100,000, whichever is larger.

(3) The Secretary shall allocate to each State for its administrative costs incurred under the program authorized by section 17 of the National School Lunch Act [42 U.S.C. 1766] in any fiscal year an amount, based upon funds expended under that program in the second preceding fiscal year, equal to (A) 20 percent of the first $50,000, (B) 10 percent of the next $100,000, (C) 5 percent of the next $250,000, and (D) 2½ percent of any remaining funds. The Secretary may adjust any State's allocation to reflect changes in the size of its program.

(4) The remaining funds appropriated under this section shall be allocated among the States by the Secretary in amounts the Secretary determines necessary for the improvement in the States of the administration of the programs authorized under the National School Lunch Act [42 U.S.C. 1751 et seq.] and this chapter, except for section 1786 of this title, including, but not limited to, improved program integrity and the quality of meals served to children.

(5) Funds available to States under this subsection and under section 13(k)(1) of the National School Lunch Act [42 U.S.C. 1761(k)(1)] shall be used for the costs of administration of the programs for which the allocations are made, except that States may transfer up to 10 percent of any of the amounts allocated among such programs.

(6) Where the Secretary is responsible for the administration of programs under this chapter or the National School Lunch Act [42 U.S.C. 1751 et seq.], the amount of funds that would be allocated to the State agency under this section and under section 13(k)(1) of the National School Lunch Act [42 U.S.C. 1761(k)(1)] shall be retained by the Secretary for the Secretary's use in the administration of such programs.

(b) State staffing standards for planning and administration of covered programs

The Secretary, in cooperation with the several States, shall develop State staffing standards for the administration by each State of sections 4, 11, and 17 of the National School Lunch Act [42 U.S.C. 1753, 1759a, 1766], and sections 1772, 1773, and 1774 of this title, that will ensure sufficient staff for the planning and administration of programs covered by State administrative expenses.

(c) Funds, usage: compensation, benefits, and travel expenses of personnel; support services; office equipment; staff development

Funds paid to a State under subsection (a) of this section may be used to pay salaries, including employee benefits and travel expenses, for administrative and supervisory personnel; for support services; for office equipment; and for staff development.

(d) Fund adjustment; State administered programs

If any State agency agrees to assume responsibility for the administration of food service programs in nonprofit private schools or child care institutions that were previously administered by the Secretary, an appropriate adjustment shall be made in the administrative funds paid under this section to the State not later than the succeeding fiscal year.

(e) Unused funds; availability for obligation and expenditure, and reallocation to other States

Notwithstanding any other provision of law, funds available to each State under this section for fiscal year 1978 that are not obligated or expended in that fiscal year shall remain available for obligation and expenditure by that State in fiscal year 1979. For fiscal year 1979, and the succeeding fiscal year, the Secretary shall establish a date by which each State shall submit to the Secretary a plan for the disbursement of funds provided under this section for each such year, and the Secretary shall reallocate any unused funds, as evidenced by such plans, to other States as the Secretary deems appropriate.

(f) Commodity distribution program

The State may use a portion of the funds available under this section to assist in the administration of the commodity distribution program.

(g) State plan; use of funds

Each State shall submit to the Secretary for approval by October 1 of each year an annual plan for the use of State administrative expense funds, including a staff formula for State personnel, system level supervisory and operating personnel, and school level personnel.

(h) State funding requirement

Payments of funds under this section shall be made only to States that agree to maintain a level of funding out of State revenues, for administrative costs in connection with programs under this chapter (except section 1786 of this title) and the National School Lunch Act [42 U.S.C. 1751 et seq.] (except section 13 of that Act [42 U.S.C. 1761]), not less than the amount expended or obligated in fiscal year 1977.

(i) Authorization of appropriations

For the fiscal years beginning October 1, 1977, and ending September 30, 1980, there are hereby authorized to be appropriated such sums as may be necessary for the purposes of this section.

(As amended Pub. L. 95-166, § 14, Nov. 10, 1977, 91 Stat. 1338; Pub. L. 95-627, § 7(a), Nov. 10, 1978, 92 Stat. 3621.)

REFERENCES IN TEXT

The National School Lunch Act, referred to in subsecs. (a)(2), (4), (6), and (h), is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-627 generally revised and restructured subsection and, among other changes, added formula for determining State allocations for administrative costs incurred under the program authorized by section 17 of the National School Lunch Act, authorized the State to transfer up to ten percent of any amounts allocated for administrative costs of the programs for which such funds were allocated, and authorized retention by the Secretary for the Secretary's use in administering certain programs, allocations for such programs, under this section and section 13(k)(1) of the National School Lunch Act.

1977—Subsecs. (a) to (i). Pub. L. 95-166 added subsecs. (a) to (i) and struck out prior provisions authorizing the Secretary to utilize appropriated funds for advances to State educational agencies for use for administrative expenses, advancing the fund only in necessary amounts and for administration of certain activities, and authorizing appropriation of necessary sums, now incorporated in subsec. (i) of this section.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1755, 1775, 1776a, 1776b of this title.

§ 1776a. Allocation of funds; State participation in studies and surveys

Funds appropriated for the purpose of section 7 of the Child Nutrition Act of 1966, as amended [42 U.S.C. 1776], shall be allocated among the States but the distribution of such funds to an individual State is contingent upon that State's agreement to participate in studies and surveys of programs authorized under the National School Lunch Act, as amended [42 U.S.C. 1751 et seq.], and the Child Nutrition Act of 1966, as amended [42 U.S.C. 1771 et seq.], when such studies and surveys have been directed by the Congress and requested by the Secretary of Agriculture.

(Pub. L. 96-108, title III, § 301, Nov. 9, 1979, 93 Stat. 837.)

References in Text

The Child Nutrition Act of 1966, as amended, referred to in text, is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

The National School Lunch Act, as amended, referred to in text, is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

Codification

Section was enacted as part of the Agriculture, Rural Development, and Related Agencies Appropriation Act, 1980, and not as part of the Child Nutrition Act of 1966 which comprises this chapter.

Similar Provisions

Similar provisions were contained in the following prior appropriation act:

Pub. L. 96-38, title I, § 100, July 25, 1979, 93 Stat. 98.

§ 1776b. Withholding of allocated funds; deficient administration of programs by States; correction of deficiency

If the Secretary of Agriculture determines that a State's administration of any program under the National School Lunch Act, as amended [42 U.S.C. 1751 et seq.], or the Child Nutrition Act of 1966, as amended [42 U.S.C. 1771 et seq.] (other than section 17 [42 U.S.C. 1786]), or the regulations issued pursuant to these Acts, is seriously deficient, and the State fails to correct the deficiency within a specified period of time, the Secretary may withhold from the State some or all of the funds allocated to the State under section 7 of the Child Nutrition Act of 1966, as amended [42 U.S.C. 1776], and under section 13(k)(1) of the National School Lunch Act, as amended [42 U.S.C. 1761(k)(1)]; upon a subsequent determination by the Secretary that the programs are operated in an acceptable manner some or all of the funds withheld may be allocated.

(Pub. L. 96-108, title III, § 301, Nov. 9, 1979, 93 Stat. 837.)

References in Text

The National School Lunch Act, as amended, referred to in text, is act June 4, 1946, ch. 281, 60 Stat. 230, as amended, which is classified generally to chapter 13 (§ 1751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1751 of this title and Tables.

The Child Nutrition Act of 1966, as amended, referred to in text, is Pub. L. 89-642, Oct. 11, 1966, 80 Stat. 885, as amended, which is classified generally to chapter 13A (§ 1771 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1771 of this title and Tables.

Codification

Section was enacted as part of the Agriculture, Rural Development, and Related Agencies Appropriation Act, 1980, and not as part of the Child Nutrition Act of 1966 which comprises this chapter.

§ 1779. Rules and regulations; transfer of funds from one program to another; special projects

The Secretary shall prescribe such regulations as he may deem necessary to carry out this chapter and the National School Lunch Act [42 U.S.C. 1751 et seq.], including regulations relating to the service of food in participating schools and service institutions in competition with the programs authorized under this chapter and the National School Lunch Act. Such regulations shall not prohibit the sale of competitive foods approved by the Secretary in food service facilities or areas during the time of service of food under this chapter or the National School Lunch Act if the proceeds from the sales of such foods will inure to the benefit of the schools or of organizations of students approved by the schools. In such regulations the Secretary may provide for the transfer of funds by any State between the programs authorized under this chapter and the National School Lunch Act on the basis of an approved State plan of operation for the use of the funds and may provide for the reserve of up to 1 per centum of the funds available for apportionment to any State to carry out special developmental projects.

(As amended Pub. L. 95-166, § 17, Nov. 10, 1977, 91 Stat. 1345.)

Amendments

1977—Pub. L. 95-166 inserted "approved by the Secretary" following "competitive foods".

Section Referred to in Other Sections

This section is referred to in sections 1759a, 1766 of this title.

§ 1784. Definitions

For the purposes of this chapter—

[*See main edition for text of* (*a*) *to* (*d*)]

(e) "School year" means the annual period from July 1 through June 30.

(f) Except as used in section 1786 of this title, the terms "child" and "children" as used in this chapter, shall be deemed to include persons regardless of age who are determined by the State educational agency, in accordance with regulations prescribed by the Secretary, to be mentally or physically handicapped and who are attending any nonresidential public or nonprofit private school of high school grade or under for the purpose of participating in a school program established for mentally or physically handicapped.

(As amended Pub. L. 95-166, § 20(5), Nov. 10, 1977, 91 Stat. 1346; Pub. L. 95-627, § 10(c), (d)(3), Nov. 10, 1978, 92 Stat. 3624.)

Amendments

1978—Subsec. (e). Pub. L. 95-627, § 10(c), substituted "from July 1 through June 30" for "determined in accordance with regulations issued by the Secretary".

Subsec. (f). Pub. L. 95-627, § 10(d)(3), added subsec. (f).

1977—Subsec. (e). Pub. L. 95-166 added subsec. (e).

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-166 effective July 1, 1977, see section 20 of Pub. L. 95-166.

§ 1786. Special supplemental food program

(a) Congressional findings and declaration of purpose

Congress finds that substantial numbers of pregnant, postpartum, and breastfeeding women, infants, and young children from families with inadequate income are at special risk with respect to their physical and mental health by reason of inadequate nutrition of health care, or both. It is, therefore, the purpose of the program authorized by this section to provide, up to the authorization levels set forth in subsection (g) of this section, supplemental foods and nutrition education through any eligible local agency that applies for participation in the program. The program shall serve as an adjunct to good health care, during critical times of growth and development, to prevent the occurrence of health problems and improve the health status of these persons.

(b) Definitions

As used in this section—

(1) "Administrative costs" means costs that shall include, but not be limited to, costs for certification of eligibility of persons for participation in the program; centrifuges, measuring boards, spectrophotometers, and scales used for such certification; food delivery; monitoring; nutrition education; outreach; start-up costs; and general administration applicable to implementation of the program under this section, such as the cost of staff, warehouse facilities, transportation, insurance, developing and printing food instruments, and administration of State and local agency offices.

(2) "Breastfeeding women" means women up to one year postpartum who are breastfeeding their infants.

(3) "Children" means persons who have had their first birthday but have not yet attained their fifth birthday.

(4) "Competent professional authority" means physicians, nutritionists, registered nurses, dietitians, or State or local medically trained health officials, or persons designated by physicians or State or local medically trained health officials, in accordance with standards prescribed by the Secretary, as being competent professionally to evaluate nutritional risk.

(5) "Infants" means persons under one year of age.

(6) "Local agency" means a public health or welfare agency or a private nonprofit health or welfare agency, which, directly or through an agency or physician with which it has contracted, provides health services. The term shall include an Indian tribe, band, or group recognized by the Department of the Interior, the Indian Health Service of the Department of Health, Education, and Welfare, or an intertribal council or group that is an authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior.

(7) "Nutrition education" means individual or group sessions and the provision of materials designed to improve health status that achieve positive change in dietary habits, and emphasize relationships between nutrition and health, all in keeping with the individual's personal, cultural, and socioeconomic preferences.

(8) "Nutritional risk" means (A) detrimental or abnormal nutritional conditions detectable by biochemical or anthropometric measurements, (B) other documented nutritionally related medical conditions, (C) dietary deficiencies that impair or endanger health, or (D) conditions that predispose persons to inadequate nutritional patterns or nutritionally related medical conditions, including, but not limited to, alcoholism and drug addiction.

(9) "Plan of operation and administration" means a document that describes the manner in which the State agency intends to implement and operate the program.

(10) "Postpartum women" means women up to six months after termination of pregnancy.

(11) "Pregnant women" means women determined to have one or more fetuses in utero.

(12) "Secretary" means the Secretary of Agriculture.

(13) "State agency" means the health department or comparable agency of each State; an Indian tribe, band, or group recognized by the Department of the Interior; an intertribal council or group that is the authorized representative of Indian tribes, bands, or groups recognized by the Department of the Interior; or the Indian Health Service of the Department of Health, Education, and Welfare.

(14) "Supplemental foods" means those foods containing nutrients determined by nutritional research to be lacking in the diets of pregnant, breastfeeding, and postpartum women, infants, and children, as prescribed by the Secretary. State agencies may, with the approval of the Secretary, substitute different foods providing the nutritional equivalent of foods prescribed by the Secretary, to allow for different cultural eating patterns.

(c) Grants-in-aid; cash grants; ratable reduction of amount an agency may distribute; affirmative action; regulations relating to dual receipt of benefits under commodity supplemental food program

(1) The Secretary may carry out a special supplemental food program to assist State agencies through grants-in-aid and other means to provide, through local agencies, at no cost, supplemental foods and nutrition education to low-income pregnant, postpartum, and breastfeeding women, infants, and children who satisfy the eligibility requirements specified in subsection (d) of this section. The program shall be supplementary to the food stamp program (91 Stat. 958) [7 U.S.C. 2011 et seq.] and to any program under which foods are distributed to needy families in lieu of food stamps.

(2) Subject to the authorization levels specified in subsection (g) of this section for the fiscal years ending September 30, 1979, and September 30, 1980, and subject to amounts appropriated for this program for the fiscal years ending September 30, 1981, and September 30, 1982—

(A) the Secretary shall make cash grants to State agencies for the purpose of administering the program, and

(B) any State agency approved eligible local agency that applies to participate in or expand the program under this section shall immediately be provided with the necessary funds to carry out the program.

(3) Nothing in this subsection shall be construed to permit the Secretary to reduce ratably the amount of foods that an eligible local agency shall distribute under the program to participants. The Secretary shall take affirmative action to ensure that the program is instituted in areas most in need of supplemental foods. The existence of a commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977 shall not preclude the approval of an application from an eligible local agency to participate in the program under this section nor the operation of such program within the same geographic area as that of the commodity supplemental food program, but the Secretary shall issue such regulations as are necessary to prevent dual receipt of benefits under the commodity supplemental food program and the program under this section.

(d) Eligible participants

(1) Participation in the program under this section shall be limited to pregnant, postpartum, and breastfeeding women, infants, and children from low-income families who are determined by a competent professional authority to be at nutritional risk.

(2) The Secretary shall establish income eligibility standards to be used in conjunction with the nutritional risk criteria in determining eligibility of persons for participation in the program. Persons at nutritional risk shall be eligible for the program only if they are members of families that satisfy the income standards prescribed for free and reduced-price school meals under section 1758 of this title.

(3) Persons shall be certified for participation in accordance with general procedures prescribed by the Secretary.

(e) Nutrition education

(1) The State agency shall ensure that nutrition education is provided to all pregnant, postpartum, and breastfeeding participants in the program and to parents or caretakers of infant and child participants in the program. The State agency may also provide nutrition education to pregnant, postpartum, and breastfeeding women and to parents or caretakers of infants and children enrolled at local agencies operating the program under this section who do not participate in the program. The Secretary shall prescribe standards to ensure that adequate nutrition education services are provided. The State agency shall provide training to persons providing nutrition education under this section. Nutrition education shall be evaluated annually by each State agency, and such evaluation shall include the views of participants concerning the effectiveness of the nutrition education they have received.

(2) The Secretary shall, after submitting proposed nutrition education materials to the Secretary of Health, Education, and Welfare for comment, issue such materials for use in the program under this section.

(f) State operation and administration plan; public hearings; eligible migrants; monthly reports; recordkeeping; notification of applicant agency by state; notification of individual by agency; publication of program benefits; state fair hearing; validity of certification of eligibility following change of area; effective administration standards; withholding of administrative funds; prescribed supplemental food regulations; responsibility of professional authority; use of foreign language

(1) Each State agency shall submit annually to the Secretary, by a date specified by the Secretary, a plan of operation and administration for approval by the Secretary, as a prerequisite to receiving funds under this section. The plan shall include, among such other information as the Secretary may require—

(A) a description of how the State agency will distribute administrative funds, including start-up funds, to local agencies operating under the program;

(B) a description of the State agency's financial management system;

(C) a description of methods used to determine nutritional risk;

(D) a budget for administrative funds;

(E) the staffing pattern;

(F) nutrition education goals and action plans, including a description of the methods that will be used to meet the special nutrition education needs of migrants and Indians;

(G) plans to provide program benefits under this section to eligible migrants and Indians;

(H) a list of all areas and special populations, in priority order based on relative need, within the jurisdiction the State agency, and the State agency's plans to initiate or expand operations under the program in areas most in need of supplemental foods, including plans to inform nonparticipating local agencies of the availability and benefits of the program and the availability of technical assistance in implementing the program, and a description of how the State agency will take all reasonable actions to identify potential local agencies and encourage such agencies to implement or expand operations under the program within the following year in the neediest one-third of all areas unserved or partially served;

(I) a description of how the State agency's delivery system will enable low-income persons to receive supplemental foods under this program, in accordance with standards developed by the Secretary;

(J) the State agency's plans for informing eligible persons of the program under this section in accordance with paragraph (8) of this subsection;

(K) a description of how the State agency plans to coordinate operations under the program with special counseling services such as, but not limited to, the expanded food and nutrition education program, family planning, immunization, prenatal care, well-child care, alcohol and drug abuse counseling, child abuse counseling, and with the food stamp program; and

(L) a copy of the procedure manual developed by the State agency for the program under this section.

The Secretary shall not approve any plan that permits any person to participate simultaneously in both the program authorized under this section and the commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977.

(2) Not less than one month prior to the submission to the Governor of the plan of operation and administration required by this subsection, the State agency shall conduct hearings to enable the general public to participate in the development of the State agency plan.

(3) The Secretary shall establish procedures under which eligible migrants may, to the maximum extent feasible, continue to participate in the program under this section when they are present in States other than the State in which they were originally certified for participation in the program. Each State agency shall be responsible for administering the program for migrant populations within its jurisdiction.

(4) State agencies shall submit monthly financial reports and participation data to the Secretary.

(5) State and local agencies operating under the program shall keep such accounts and records, including medical records, as may be necessary to enable the Secretary to determine whether there has been compliance with this section and to determine and evaluate the benefits of the nutritional assistance provided under this section. Such accounts and records shall at all times be available for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines necessary.

(6) The State agency, upon receipt of a completed application from a local agency for participation in the program (and the Secretary, upon receipt of a completed application from a State agency), shall notify the applicant agency in writing within thirty days of the approval or disapproval of the application, and any disapproval shall be accompanied with a statement of the reasons for such disapproval. Within fifteen days after receipt of an incomplete application, the State agency (or the Secretary) shall notify the applicant agency of the additional information needed to complete the application.

(7) Local agencies participating in the program under this section shall notify persons of their eligibility or ineligibility for the program within twenty days of the date that the household, during office hours of a local agency, personally makes an oral or written request to participate in the program. The Secretary shall establish a shorter notification period for categories of persons who, due to special nutritional risk conditions; must receive benefits more expeditiously.

(8) The State agency shall, in cooperation with participating local agencies, publicize the availability of program benefits, including the eligibility criteria for participation and the location of local agencies operating the program. Such information shall be publicly announced by the State agency and by local agencies at least annually. Such information shall also be distributed to offices and organizations that deal with significant numbers of potentially eligible persons, including health and medical organizations, hospitals and clinics, welfare and unemployment offices, social service agencies, farmworker organizations, Indian tribal organizations, and religious and community organizations in low income areas.

(9) The State agency shall grant a fair hearing, and a prompt determination thereafter, in accordance with regulations issued by the Secretary, to any applicant, participant, or local agency aggrieved by the action of a State or local agency as it affects participation.

(10) If a person certified as eligible for participation in the program under this section in one area moves to another area in which the program is operating, that person's certification of eligibility shall remain valid for the period for which the person was originally certified.

(11) The Secretary shall establish standards for the proper, efficient, and effective administration of the program, including standards that will ensure sufficient State agency staff. If the Secretary determines that a State agency has failed without good cause to administer the program in a manner consistent with this section or to implement the approved plan of operation and administration under this subsection, the Secretary may withhold such amounts of the State agency's administrative funds as the Secretary deems appropriate. Upon correction of such failure during a fiscal year by a State agency, any funds so withheld for such fiscal year shall be provided the State agency.

(12) The Secretary shall prescribe by regulation the supplemental foods to be made available in the program under this section. To the degree possible, the Secretary shall assure that the fat, sugar, and salt content of the prescribed foods is appropriate. Products specifically designed for pregnant, postpartum, and breastfeeding women, or infants shall be available at the discretion of the Secretary if the products are commercially available or are justified to and approved by the Secretary based on clinical tests performed in accordance with standards prescribed by the Secretary.

(13) A competent professional authority shall be responsible for prescribing the appropriate supplemental foods, taking into account medical and nutritional conditions and cultural eating patterns.

(14) The State agency shall (A) provide nutrition education materials and instruction in languages other than English and (B) use appropriate foreign language materials in the administration of the program, in areas in which a substantial number of low-income households speak a language other than English.

(g) Authorization of appropriations

There are hereby authorized to be appropriated $550,000,000 for the fiscal year ending September 30, 1979, $750,000,000 for the fiscal year ending September 30, 1980, $900,000,000 for the fiscal year ending September 30, 1981, and $950,000,000 for the fiscal year ending September 30, 1982, for the purpose of carrying out the program authorized by this section. Of the sums appropriated for any fiscal year for the program under this section, one-half of 1 percent, not to exceed $3,000,000, shall be available to the Secretary for the purpose of evaluating program performance, evaluating health benefits, and administration of pilot projects, including projects designed to meet the special needs of migrants, Indians, and rural populations.

(h) Administrative funds

(1) The Secretary shall make 20 percent of the funds provided under this section each fiscal year (other than funds expended for evaluation and pilot projects under subsection (g) of this section) available for State agency and local agency administrative costs. When reallocating funds, the Secretary may exceed the 20 percent limitation for administrative costs if the Secretary determines such action necessary for the proper, efficient, and effective administration of the program. Not less than one-sixth of the funds expended by each State agency for administrative costs under this subsection shall be used for nutrition education activities, unless the State agency requests that it be authorized to expend a lesser amount and such request is accompanied by documentation that other funds will be used to conduct such activities.

(2) The Secretary, for each of the fiscal years 1979 through 1982, shall allocate administrative funds to each State agency on the basis of a formula determined by the Secretary, which shall include a minimum amount, and which shall be designed to take into account the varying needs of State agencies based on factors such as the number of local agencies and the number of persons participating in the program at those agencies.

(3) Each State agency shall provide, from its allocation for administrative funds, funds to local agencies for their administrative costs. Each State agency shall distribute administrative funds to local agencies under allocation standards developed by the State agency in cooperation with the several local agencies, which satisfy allocation guidelines established by the Secretary. Such allocation standards shall take into account factors deemed appropriate to further proper, efficient, and effective administration of the program, such as local agency staffing needs, density of population, number of persons served, and availability of administrative support from other sources. These allocation standards shall be included in the plan of operation and administration required by subsection (f) of this section.

(4) The State agency shall forward in advance to local agencies those administrative funds necessary for successful commencement of program operations under this section during the three months following approval or until a program reaches its projected caseload level, whichever comes first.

(i) Division of funds formula; reallocation of unspent funds; use of state allocation to buy supplemental foods

By the beginning of each fiscal year, the Secretary shall divide, among the State agencies, the funds provided in accordance with this section on the basis of a formula determined by the Secretary. Each State agency's allocation, as so determined, shall constitute the State agency's authorized operational level for that year, except that the Secretary shall reallocate funds periodically if the Secretary determines that a State agency is unable to spend its allocation. For purposes of the formula, if Indians are served by the health department of a State, the formula shall be based on the State population inclusive of the Indians within the State boundaries. If Indians residing in the State are served by a State agency other than the health department of the State, the population of the tribes within the jurisdiction of the State being so served shall not be included in the formula for such State, and shall instead be included in the formula for the State agency serving the Indians. Notwithstanding any other provision of this section, the Secretary may use a portion of a State agency's allocation to purchase supplemental foods for donation to the State agency under this section.

(j) Report on migrant population participation

By October 1 of each year, the Secretary shall prepare a report describing plans to ensure that, to the maximum extent feasible, eligible members of migrant populations continue to participate in the program as such persons move among States. The report shall be made available to the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

(k) National Advisory Council on Maternal, Infant, and Fetal Nutrition; establishment; membership; term; officers; meetings; quorum; study on program improvement; report to President and Congress; technical assistance by Secretary

(1) There is hereby established a National Advisory Council on Maternal, Infant, and Fetal Nutrition (referred to in this subsection as the "Council") composed of twenty-one members appointed by the Secretary. One member shall be a State director of a program under this section; one member shall be a State official responsible for a commodity supplemental food program under section 1304 of the Food and Agriculture Act of 1977; one member shall be a State fiscal officer of a program under this section (or the equivalent thereof); one member shall be a State health officer (or the equivalent thereof); one member shall be a local agency director of a program under this section in an urban area; one member shall be a local agency director of a program under this section in a rural area; one member shall be a project director of a commodity supplemental food program; one member shall be a State public health nutrition director (or the equivalent thereof); one member shall be a representative of an organization serving migrants; one member shall be an official from a State agency predominantly serving Indians; three members shall be parent participants of a program under this section or of a commodity supplemental food program; one member shall be a pediatrician; one member shall be an obstetrician; one member shall be a representative of a nonprofit public interest organization that has experience with and knowledge of the special supplemental food program; one member shall be a person involved at the retail sales level of food in the special supplemental food program; two members shall be officials of the Department of Health, Education, and Welfare appointed by the Secretary of Health, Education, and Welfare; and two members shall be officials of the Department of Agriculture appointed by the Secretary.

(2) Members of the Council appointed from outside the Department of Agriculture and the Department of Health, Education, and Welfare shall be appointed for terms not exceeding three years. State and local officials shall serve only during their official tenure, and the tenure of parent participants shall not exceed two years. Persons appointed to complete an unexpired term shall serve only for the remainder of such term.

(3) The Secretary shall designate a Chairman and a Vice Chairman. The Council shall meet at the call of the Chairman, but shall meet at least once a year. Eleven members shall constitute a quorum.

(4) The Council shall make a continuing study of the operation of the program under this section and related programs to determine how the program may be improved. The Council shall submit once every two years to the President and Congress, beginning with the fiscal year ending September 30, 1980, a written report, together with its recommendations on such program operations.

(5) The Secretary shall provide the Council with such technical and other assistance, including secretarial and clerical assistance, as may be required to carry out its functions.

(6) Members of the Council shall serve without compensation but shall be reimbursed for necessary travel and subsistence expenses incurred by them in the performance of the duties of the Council. Parent participant members of the Council, in addition to reimbursement for necessary travel and subsistence, shall, at the discretion of the Secretary, be compensated in advance for other personal expenses related to participation on the Council, such as child care expenses and lost wages during scheduled Council meetings.

(*l*) Donation of foods by Secretary

Foods available under section 1431 of title 7, including, but not limited to, dry milk, or purchased under section 612c of title 7, may be donated by the Secretary, at the request of a State agency, for distribution to programs conducted under this section. The Secretary may purchase and distribute, at the request of a State agency, supplemental foods for donation to programs conducted under this section, with appropriated funds, including funds appropriated under this section.

(As amended Pub. L. 95-166, §§ 18, 20(6), Nov. 10, 1977, 91 Stat. 1345, 1346; Pub. L. 95-627, § 3, Nov. 10, 1978, 92 Stat. 3611; Pub. L. 96-108, title III, § 301, Nov. 9, 1979, 93 Stat. 838.)

REFERENCES IN TEXT

The food stamp program (91 Stat. 958), referred to in subsec. (c)(1), probably means Pub. L. 88-525, Aug. 31, 1964, 78 Stat. 703, as amended by Pub. L. 95-113, title XIII, Sept. 29, 1977, 91 Stat. 958, known as the Food Stamp Act of 1977, which is classified generally to chapter 51 (§ 2011 et seq.) of Title 7, Agriculture. For complete classification of the Food Stamp Act of 1977 to the Code, see Short Title note set out under section 2011 of Title 7 and Tables.

Section 1304 of the Food and Agriculture Act of 1977, referred to in subsec. (c)(3), (f)(1) and (k)(1), is section 1304 of Pub. L. 95-113, title XIII, Sept. 29, 1977, 91 Stat. 980, which amended provisions set out as notes under sections 612c and 1281 of Title 7, Agriculture.

AMENDMENTS

1979—Subsec. (g). Pub. L. 96-108 substituted "$750,000,000" for "$800,000,000".

1978—Subsec. (a). Pub. L. 95-627 expanded provisions of this section to include postpartum and breastfeeding women.

Subsec. (b). Pub. L. 95-627 substituted provisions defining terms for purposes of this section for provisions relating to cash grants to State health departments, Indians, and other agencies for supplemental food to pregnant and lactating women and infants.

Subsec. (c). Pub. L. 95-627 substituted provisions authorizing grants-in-aid by the Secretary, prohibiting ratable reductions of amounts of food an agency may distribute, authorizing affirmative actions to institute the program where needed, and authorizing the issuance of regulations relating to dual receipt of benefits under a commodity supplemental food program for provisions authorizing appropriations to carry out the food program for each fiscal year during the period ending Sept. 30, 1978.

Subsec. (d). Pub. L. 95-627 substituted provisions specifying persons eligible to participate in the food program for provisions prescribing administrative cost limitations and calling for approval by the Secretary of the manner of expenditure by the recipient agencies.

Subsec. (e). Pub. L. 95-627 substituted provisions relating to nutrition education for program participants for provisions relating to persons eligible to participate in the program. See subsec. (d) of this section.

Subsec. (f). Pub. L. 95-627 substituted provisions relating to submittal of State operational and administrative plans, participation in the program by eligible migrants, recordkeeping, certain types of notification, hearings, certification of eligibility, withholding of funds, issuance of regulations, and use of foreign languages for provisions relating to the maintenance of adequate medical records, the establishment of an advisory committee to study methods of evaluating the health benefits of the program, and the submittal of a report to Congress based upon such study no later than June 1, 1976.

Subsec. (g). Pub. L. 95-627 substituted provisions authorizing appropriations for fiscal years ending Sept. 30, 1979, 1980, 1981, and 1982 for provisions defining terms for purposes of this section. See subsec. (b) of this section.

Subsec. (h). Pub. L. 95-627 substituted provisions relating to the allocation of funds for administrative costs for provisions relating to the establishment of the National Advisory Council on Maternal, Infant, and Fetal Nutrition.

Subsecs. (i) to (*l*). Pub. L. 95-627 added subsecs. (i) to (*l*).

1977—Subsec. (d). Pub. L. 95-166, § 20(6), substituted "each year by not later than a date specified by the Secretary" for "by January 1 of each year (by December 1 in the case of fiscal year 1976)".

Subsec. (h)(8). Pub. L. 95-166, § 18, added proviso respecting compensation of parent recipient members of the Council.

Change of Name

The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-627 effective Oct. 1, 1978, see section 14 of Pub. L. 95-627, set out as an Effective Date of 1978 Amendment note under section 1755 of this title.

Effective Date of 1977 Amendment

Amendment of subsec. (d) by Pub. L. 95-166 effective July 1, 1977, see section 20 of Pub. L. 95-166.

Regulations; Continuing Effective; Pending Proceedings; Availability of Appropriations

Section 13 of Pub. L. 95-627 provided that:

"(a) The Secretary shall promulgate regulations to implement the provisions of section 3 of this Act [amending this section] within one hundred and twenty days of the date of enactment of this Act [Nov. 10, 1978].

"(b) The provisions of section 17 of the National School Lunch Act [section 1766 of this title] and section 17 of the Child Nutrition Act of 1966 [this section], in effect prior to the effective date of sections 2 and 3 of this Act [Oct. 1, 1978], which are relevant to current regulations of the Secretary governing the child care food program and the special supplemental food program, respectively, shall remain in effect until such regulations are revoked, superseded, amended, or modified by regulations issued under those sections as amended by sections 2 and 3 of this Act.

"(c) Pending proceedings under section 17 of the National School Lunch Act [section 1766 of this title] and section 17 of the Child Nutrition Act of 1966 [this section] shall not be abated by reason of any provision of sections 2 and 3 of this Act [which amended this section and section 1766 of this title], but shall be disposed of under the applicable provisions of section 17 of the National School Lunch Act and section 17 of the Child Nutrition Act of 1966 in effect prior to the effective date of sections 2 and 3 of this Act [Oct. 1, 1978].

"(d) Appropriations made available to carry out section 17 of the National School Lunch Act [section 1766 of this title] and section 17 of the Child Nutrition Act of 1966 [this section] shall be available to carry out the provisions of sections 2 and 3 of this Act [which amended this section and section 1766 of this title]."

Section Referred to in Other Sections

This section is referred to in section 1776 of this title.

§ 1788. Nutrition education and training

(a) Congressional findings

Congress finds that—

(1) the proper nutrition of the Nation's children is a matter of highest priority;

(2) the lack of understanding of the principles of good nutrition and their relationship to health can contribute to a child's rejection of highly nutritious foods and consequent plate waste in school food service operations;

(3) many school food service personnel have not had adequate training in food service management skills and principles, and many teachers and school food service operators have not had adequate training in the fundamentals of nutrition or how to convey this information so as to motivate children to practice sound eating habits;

(4) parents exert a significant influence on children in the development of nutritional habits and lack of nutritional knowledge on the part of parents can have detrimental effects on children's nutritional development; and

(5) there is a need to create opportunities for children to learn about the importance of the principles of good nutrition in their daily lives and how these principles are applied in the school cafeteria.

(b) Statement of purpose

It is the purpose of this section to encourage effective dissemination of scientifically valid information to children participating or eligible to participate in the school lunch and related child nutrition programs by establishing a system of grants to State educational agencies for the development of comprehensive nutrition information and education programs. Such nutrition education programs shall fully use as a learning laboratory the school lunch and child nutrition programs.

(c) Definitions

For purposes of this section, the term "nutrition information and education program" means a multidisciplinary program by which scientifically valid information about foods and nutrients is imparted in a manner that individuals receiving such information will understand the principles of nutrition and seek to maximize their well-being through food consumption practices. Nutrition education programs shall include, but not be limited to, (A) instructing students with regard to the nutritional value of foods and the relationship between food and human health; (B) training school food service personnel in the principles and practices of food service management; (C) instructing teachers in sound principles of nutrition education; and (D) developing and using classroom materials and curricula.

(d) Nutrition information and training; grants; coordination with other nutrition activities; coordination with Department of Health, Education, and Welfare: transfer of funds; State contracts: nutrition training grants and pilot projects; private schools, program administration

(1) The Secretary is authorized to formulate and carry out a nutrition information and education program, through a system of grants to State educational agencies, to provide for (A) the nutritional training of educational and food service personnel, (B) the food service management training of school food service personnel, and (C) the conduct of nutrition education activities in schools and child care institutions.

(2) The program is to be coordinated at the State level with other nutrition activities conducted by education, health, and State Cooperative Extension Service agencies. In formulating the program, the Secretary and the State may solicit the advice and recommendations of the National Advisory Council on Child Nutrition; State educational agencies; the Department of Health, Education, and Welfare; and other interested groups and individuals concerned with improvement of child nutrition.

(3) If a State educational agency is conducting or applying to conduct a health education program which includes a school-related nutrition education component as defined by the Secretary, and that health education program is eligible for funds under programs administered by the Department of Health, Education, and Welfare, the Secretary may make funds authorized in this section available to the Department of Health, Education, and Welfare to fund the nutrition education component of the State program without requiring an additional grant application.

(4) The Secretary, in carrying out the provisions of this subsection, shall make grants to State educational agencies who, in turn, may contract with land-grant colleges eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503, as amended; 7 U.S.C. 301-305, 307, and 308), or the Act of August 30, 1890 (26 Stat. 417, as amended; 7 U.S.C. 321-326 and 328), including the Tuskegee Institute, other institutions of higher education, and nonprofit organizations and agencies, for the training of educational and school food service personnel with respect to providing nutrition education programs in schools and the training of school food service personnel in school food service management. Such grants may be used to develop and conduct training programs for early childhood, elementary, and secondary educational personnel and food service personnel with respect to the relationship between food, nutrition, and health; educational methods and techniques, and issues relating to nutrition education; and principles and skills of food service management for cafeteria personnel.

(5) The State, in carrying out the provisions of this subsection, may contract with State and local educational agencies, land-grant colleges eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503, as amended; 7 U.S.C. 301-305, 307, and 308), or the act of August 30, 1890 (26 Stat. 417, as amended; 7 U.S.C. 321-326 and 328), including the Tuskegee Institute, other institutions of higher education, and other public or private nonprofit educational or research agencies, institutions, or organizations to pay the cost of pilot demonstration projects in elementary and secondary schools with respect to nutrition education. Such projects may include, but are not limited to, projects for the development, demonstration, testing, and evaluation of curricula for use in early childhood, elementary, and secondary education programs.

(6) Notwithstanding any other provision of this section, if, in any State, the State educational agency is prohibited by law from administering the program authorized by this section in nonprofit private schools and institutions, the Secretary may administer the program with respect to such schools and institutions.

(e) Agreements with State agencies; regulations

The Secretary is authorized to enter into agreements with State educational agencies incorporating the provisions of this section, and issue such regulations as are necessary to implement this section.

(f) Use of funds; planning and assessment grants; administrative expenses

(1) The funds made available under this section may, under guidelines established by the Secretary, be used by State educational agencies for (A) employing a nutrition education specialist to coordinate the program, including travel and related personnel costs; (B) undertaking an assessment of the nutrition education needs of the State; (C) developing a State plan of operation and management for nutrition education; (D) applying for and carrying out planning and assessment grants; (E) pilot projects and related purposes; (F) the planning, development, and conduct of nutrition education programs and workshops for food service and educational personnel; (G) coordinating and promoting nutrition information and education activities in local school districts (incorporating, to the maximum extent practicable, as a learning laboratory, the child nutrition programs); (H) contracting with public and private nonprofit educational institutions for the conduct of nutrition education instruction and programs relating to the purposes of this section; and (I) related nutrition education purposes, including the preparation, testing, distribution, and evaluation of visual aids and other informational and educational materials.

(2) Any State desiring to receive grants authorized by this section may, from the funds

appropriated to carry out this section, receive a planning and assessment grant for the purposes of carrying out the responsibilities described in clauses (A), (B), (C), and (D) of paragraph (1) of this subsection. Any State receiving a planning and assessment grant, may, during the first year of participation, be advanced a portion of the funds necessary to carry out such responsibilities: *Provided*, That in order to receive additional funding, the State must carry out such responsibilities.

(3) An amount not to exceed 15 percent of each State's grant may be used for up to 50 percent of the expenditures for overall administrative and supervisory purposes in connection with the program authorized under this section.

(4) Nothing in this section shall prohibit State or local educational agencies from making available or distributing to adults nutrition education materials, resources, activities, or programs authorized under this section.

(g) Accounts, records, and reports; inspection, audit, and preservation

(1) State educational agencies participating in programs under this section shall keep such accounts and records as may be necessary to enable the Secretary to determine whether there has been compliance with this section and the regulations issued hereunder. Such accounts and records shall at all times be available for inspection and audit by representatives of the Secretary and shall be preserved for such period of time, not in excess of five years, as the Secretary determines to be necessary.

(2) State educational agencies shall provide reports on expenditures of Federal funds, program participation, program costs, and related matters, in such form and at such times as the Secretary may prescribe.

(h) State coordinators for nutrition; duties; budget and need assessment; State plan, contents, review, public hearings

(1) In order to be eligible for assistance under this section, a State shall appoint a nutrition education specialist to serve as a State coordinator for school nutrition education. It shall be the responsibility of the State coordinator to make an assessment of the nutrition education needs in the State as provided in paragraph (2) of this subsection, prepare a State plan as provided in paragraph (3) of this subsection, and coordinate programs under this chapter with all other nutrition education programs provided by the State with Federal or State funds.

(2) Upon receipt of funds authorized by this section, the State coordinator shall prepare an itemized budget and assess the nutrition education needs of the State. Such assessment shall include, but not be limited to, the identification and location of all students in need of nutrition education. The assessment shall also identify State and local individual, group, and institutional resources within the State for materials, facilities, staffs, and methods related to nutrition education.

(3) Within nine months after the award of the planning and assessment grant, the State coordinator shall develop, prepare, and furnish the Secretary, for approval, a comprehensive plan for nutrition education within such State. The Secretary shall act on such plan not later than sixty days after it is received. Each such plan shall describe (A) the findings of the nutrition education needs assessment within the State; (B) provisions for coordinating the nutrition education program carried out with funds made available under this section with any related publicly supported programs being carried out within the State; (C) plans for soliciting the advice and recommendations of the National Advisory Council on Child Nutrition, the State educational agency, interested teachers, food nutrition professionals and paraprofessionals, school food service personnel, administrators, representatives from consumer groups, parents, and other individuals concerned with the improvement of child nutrition; (D) plans for reaching all students in the State with instruction in the nutritional value of foods and the relationships among food, nutrition, and health, for training food service personnel in the principles and skills of food service management, and for instructing teachers in sound principles of nutrition education; and (E) plans for using, on a priority basis, the resources of the land-grant colleges eligible to receive funds under the Act of July 2, 1862 (12 Stat. 503; 7 U.S.C. 301-305, 307, and 308), or the Act of August 30, 1890 (26 Stat. 417, as amended; 7 U.S.C. 321-326 and 328), including the Tuskegee Institute. To the maximum extent practicable, the State's performance under such plan shall be reviewed and evaluated by the Secretary on a regular basis, including the use of public hearings.

(j)[1] Authorization of appropriations; enrollment data

(1) For the fiscal years beginning October 1, 1977, and October 1, 1978, grants to the States for the conduct of nutrition education and information programs shall be based on a rate of 50 cents for each child enrolled in schools or in institutions within the State, except that no State shall receive an amount less than $75,000 per year.

(2) For the fiscal year beginning October 1, 1979, there is hereby authorized to be appropriated for grants to each State for the conduct of nutrition education and information programs, an amount equal to the higher of (A) 50 cents for each child enrolled in schools or in institutions within each State, or (B) $75,000 for each State. Grants to each State from such appropriations shall be based on a rate of 50 cents for each child enrolled in schools or in institutions within such State, except that no State shall receive an amount less than $75,000 for that year. If funds appropriated for such year are insufficient to pay the amount to which each State is entitled under the preceding sentence, the amount of such grant shall be ratably reduced to the extent necessary so that the total of such amounts paid does not exceed the amount of appropriated funds. If additional funds become available for making such payments, such amounts shall be increased on the same basis as they were reduced.

(3) Enrollment data used for purposes of this subsection shall be the latest available as certi-

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[1] So in original. No subsec. (i) has been enacted.

fied by the Office of Education of the Department of Health, Education, and Welfare.

(Pub. L. 89-642, § 19, as added Pub. L. 95-166, § 15, Nov. 10, 1977, 91 Stat. 1340.)

References in Text

Act of July 2, 1862 (12 Stat. 503, as amended; 7 U.S.C. 301 to 305, 307, and 308), referred to in subsecs. (d)(4), (5) and (h)(3), is act July 2, 1862, ch. 130, 12 Stat. 503, as amended, known as the First Morrill Act, which is classified generally to subchapter I (§ 301 et seq.) of chapter 13 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 301 of Title 7 and Tables.

Act of August 30, 1890 (26 Stat. 417, as amended; 7 U.S.C. 321 to 326 and 328), referred to in subsecs. (d)(4), (5) and (h)(3), is act Aug. 30, 1890, ch. 841, 26 Stat. 417, as amended, known as the Second Morrill Act, which is classified generally to subchapter II (§ 321 et seq.) of chapter 13 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 321 of Title 7 and Tables.

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

Termination of Advisory Councils

Advisory Councils established after Jan. 5, 1973 to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a council established by the President or an officer of the Federal Government, such council is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a council established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 1789. Department of Defense overseas dependents' schools

(a) Purpose of program; availability of payments and commodities

For the purpose of obtaining Federal payments and commodities in conjunction with the provision of breakfasts to students attending Department of Defense dependents' schools which are located outside the United States, its territories or possessions, the Secretary of Agriculture shall make available to the Department of Defense, from funds appropriated for such purpose, the same payments and commodities as are provided to States for schools participating in the school breakfast program in the United States.

(b) Administration of program; eligibility determinations and regulations

The Secretary of Defense shall administer breakfast programs authorized by this section and shall determine eligibility for free and reduced-price breakfasts under the criteria published by the Secretary of Agriculture, except that the Secretary of Defense shall prescribe regulations governing computation of income eligibility standards for families of students participating in the school breakfast program under this section.

(c) Nutritional standards for meals; noncompliance with standards

The Secretary of Defense shall be required to offer meals meeting nutritional standards prescribed by the Secretary of Agriculture; however, the Secretary of Defense may authorize deviations from Department of Agriculture prescribed meal patterns and fluid milk requirements when local conditions preclude strict compliance or when such compliance is highly impracticable.

(d) Authorization of appropriations

Funds are hereby authorized to be appropriated for any fiscal year in such amounts as may be necessary for the administrative expenses of the Department of Defense under this section and for payment of the difference between the value of commodities and payments received from the Secretary of Agriculture and (1) the full cost of each breakfast for each student eligible for a free breakfast, and (2) the full cost of each breakfast, less any amounts required by law or regulation to be paid by each student eligible for a reduced-price breakfast.

(e) Technical assistance for administration of program

The Secretary of Agriculture shall provide the Secretary of Defense with technical assistance in the administration of the school breakfast programs authorized by this section.

(Pub. L. 89-642, § 20, as added Pub. L. 95-561, title XIV, § 1408(b)(2), Nov. 1, 1978, 92 Stat. 2368.)

Effective Date

Section effective Oct. 1, 1978, and no provisions to be construed to impair or to prevent the taking of effect of any other Act providing for the transfer of the described functions to an executive department having responsibility for education, see section 1415 of Pub. L. 95-561, set out as an Effective Date note under section 921 of Title 20, Education.

Transfer of Functions

All functions of the Secretary of Defense and the Department of Defense relating to the operation of overseas schools for the dependents of the Department of Defense and under the Defense Dependents' Education Act of 1978, 42 U.S.C. 921 et seq., were transferred to the Secretary of Education pursuant to section 3442(a) of Title 20, Education.

CHAPTER 15B—AIR POLLUTION CONTROL

§§ 1857 to 1857c-9. Transferred

Codification

Section 1857, act July 14, 1955, ch. 360, title I, § 101, formerly § 1, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 392, renumbered and amended Oct. 20, 1965, Pub. L. 89-272, title I, § 101(2), (3), 79 Stat. 992; Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 485, which related to Congressional findings and declaration of purpose, was transferred to section 7401 of this title.

Section 1857a, act July 14, 1955, ch. 360, title I, § 102, formerly § 2, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 393, renumbered Oct. 20, 1965, Pub. L. 89-272, title I, § 101(3), 79 Stat. 992, amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 485; Dec. 31, 1970, Pub. L. 91-604, § 15(c)(2), 84 Stat. 1713, which related to cooperative activities, was transferred to section 7402 of this title.

Section 1857b, act July 14, 1955, ch. 360, title I, § 103, formerly § 3, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 394, renumbered and amended Oct. 20, 1965, Pub. L. 89-272, title I, §§ 101(3), 103, 79 Stat. 992, 996; Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 486; Dec. 31, 1970, Pub. L. 91-604, §§ 2(a), 4(2), 15(a)(2), (c)(2), 84 Stat. 1676, 1689, 1710, 1713, which related to research, investigations, training, and other activities, was transferred to section 7403 of this title.

Section 1857b-1, act July 14, 1955, ch. 360, title I, § 104, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 487, and amended Dec. 5, 1969, Pub. L. 91-137, 83 Stat. 283; Dec. 31, 1970, Pub. L. 91-604, §§ 2(b), (c), 13(a), 15(c)(2), 84 Stat. 1676, 1677, 1709, 1713; Apr. 9, 1973, Pub. L. 93-15, § 1(a), 87 Stat. 11; June 22, 1974, Pub. L. 93-319, § 13(a), 88 Stat. 265, which provided for research relating to fuels and vehicles, was transferred to section 7404 of this title.

Section 1857c, act July 14, 1955, ch. 360, title I, § 105, formerly § 4, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 395, renumbered and amended § 104, Oct. 20, 1965, Pub. L. 89-272, title I, § 101(2)-(4), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89-675, § 3, 80 Stat. 954, renumbered and amended § 105, Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 489; Dec. 31, 1970, Pub. L. 91-604, §§ 3(a), (b)(1), 15(c)(2), 84 Stat. 1677, 1713, which related to grants for support of air pollution planning and control programs, was transferred to section 7405 of this title.

Section 1857c-1, act July 14, 1955, ch. 360, title I, § 106, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 490, and amended Dec. 31, 1970, Pub. L. 91-604, § 3(c), 84 Stat. 1677, which related to interstate air quality agencies and program cost limitations, was transferred to section 7406 of this title.

Section 1857c-2, act July 14, 1955, ch. 360, title I, § 107, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1678, which related to air quality control regions, was transferred to section 7407 of this title.

Section 1857c-3, act July 14, 1955, ch. 360, title I, § 108, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1678, which related to air quality criteria and control techniques, was transferred to section 7408 of this title.

Section 1857c-4, act July 14, 1955, ch. 360, title I, § 109, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1679, which related to procedure for and promulgation of national primary and secondary ambient air quality standards, was transferred to section 7409 of this title.

Section 1857c-5, act July 14, 1955, ch. 360, title I, § 110, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1680, and amended June 22, 1974, Pub. L. 93-319, § 4, 88 Stat. 256; S. Res. 4, Feb. 4, 1977, which related to state implementation plans for national primary and secondary ambient air quality standards, was transferred to section 7410 of this title.

Section 1857c-6, act July 14, 1955, ch. 360, title I, § 111, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1683, and amended Nov. 18, 1971, Pub. L. 92-157, title III, § 302(f), 85 Stat. 464, which related to standards of performance for new stationary sources, was transferred to section 7411 of this title.

Section 1857c-7, act July 14, 1955, ch. 360, title I, § 112, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1685, which related to national emission standards for hazardous air pollutants, was transferred to section 7412 of this title.

Section 1857c-8, act July 14, 1955, ch. 360, title I, § 113, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1686, and amended Nov. 18, 1971, Pub. L. 92-157, title III, § 302(b), (c), 85 Stat. 464; June 22, 1974, Pub. L. 93-319, § 6(a)(1)-(3), 88 Stat. 259, which related to Federal enforcement procedures, was transferred to section 7413 of this title.

Section 1857c-9, act July 14, 1955, ch. 360, title I, § 114, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1687, and amended June 22, 1974, Pub. L. 93-319, § 6(a)(4), 88 Stat. 259, which related to recordkeeping, inspections, monitoring, and entry, was transferred to section 7414 of this title.

§ 1857c-10. Repealed. Pub. L. 95-95, title I, § 112(b)(1), Aug. 7, 1977, 91 Stat. 709

Section, act July 14, 1955, ch. 360, title I, § 119, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, related to the authority of the Administrator of the Environmental Protection Agency to deal with energy shortages. See section 7413 of this title.

References to section 1857c-10 appearing in section 792 of Title 15, Commerce and Trade, shall be construed to refer to section 7413(d) of Title 42, see Compliance Orders note set out under section 792 of Title 15.

Effective Date of Repeal

Section repealed effective Aug. 7, 1977, see section 406 of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§§ 1857d to 1857f-6c. Transferred

Codification

Section 1857d, act July 14, 1955, ch. 360, title I, § 115, formerly § 5, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 396, renumbered § 105 and amended Oct. 20, 1965, Pub. L. 89-272, title I, §§ 101(2), (3), 102, 79 Stat. 992, 995, renumbered § 108 and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 491, renumbered § 115 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 4(a), (b)(2)-(10), 15(c)(2), 84 Stat. 1678, 1688, 1689, 1713, which related to abatement of air pollution by means of conference procedure, was transferred to section 7415 of this title.

Section 1857d-1, act July 14, 1955, ch. 360, title I, § 116, formerly § 109 as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 497, renumbered and amended Dec. 31, 1970, Pub. L. 91-604, § 4(a), (c), 84 Stat. 1678, 1689; June 22, 1974, Pub. L. 93-319, § 6(b), 88 Stat. 259, which related to retention of state authority concerning air pollution, was transferred to section 7416 of this title.

Section 1857e, act July 14, 1955, ch. 360, title I, § 117, formerly § 6, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 399, renumbered § 106, Oct. 20, 1965, Pub. L. 89-272, title I, § 101(3), 79 Stat. 992, renumbered § 110 and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 498, renumbered § 117 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 4(a), (d), 15(c)(2), 84 Stat. 1678, 1689, 1713, which related to an Air Quality Advisory Board and to advisory committees, was transferred to section 7417 of this title.

Section 1857f, act July 14, 1955, ch. 360, title I, § 118, formerly § 7, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 399, renumbered § 107, Oct. 20, 1965, Pub. L. 89-272, title I, § 101(3), 79 Stat. 992, renumbered § 111 and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 499, renumbered § 118 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 4(a), 5, 84 Stat. 1678, 1689, which related to control and abatement of air pollution from federal facilities, Presidential exemption, and report to Congress on Presidential exemptions, was transferred to section 7418 of this title.

Section 1857f-1, act July 14, 1955, ch. 360, title II, § 202, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 499; Dec. 31, 1970, Pub. L. 91-604, § 6(a), 84 Stat. 1690; June 22, 1974, Pub. L. 93-319, § 5, 88 Stat. 258, related to establishment of motor vehicle emission and fuel standards, was transferred to section 7521 of this title.

Section 1857f-2, act July 14, 1955, ch. 360, title II, § 203, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 993, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 499; Dec. 31, 1970, Pub. L. 91-604, §§ 7(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1693, 1705, 1713, which related to prohibited acts with regard to motor vehicle emissions, was transferred to section 7522 of this title.

Section 1857f-3, act July 14, 1955, ch. 360, title II, § 204, as added Oct. 20, 1965, Pub. L. 89-272, title I,

§ 101(8), 79 Stat. 994, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 500; Dec. 31, 1970, Pub. L. 91-604, § 7(b), 84 Stat. 1694, which related to subpenas and to jurisdiction of district courts to restrain violations, was transferred to section 7523 of this title.

Section 1857f-4, act July 14, 1955, ch. 360, title II, § 205, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 994, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 500; Dec. 31, 1970, Pub. L. 91-604, § 7(c), 84 Stat. 1694, which related to penalties for violations, was transferred to section 7524 of this title.

Section 1857f-5, act July 14, 1955, ch. 360, title II, § 206, as added Dec. 31, 1970, Pub. L. 91-604, § 8(a), 84 Stat. 1694, which related to motor vehicle and motor vehicle engine compliance testing and certification, was transferred to section 7525 of this title.

Section 1857f-5a, act July 14, 1955, ch. 360, title II, § 207, as added Dec. 31, 1970, Pub. L. 91-604, § 8(a), 84 Stat. 1696, which related to compliance by vehicles and engines in actual use, was transferred to section 7541 of this title.

Section 1857f-6, act July 14, 1955, ch. 360, title II, § 208, formerly § 207, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 994, amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 501, renumbered and amended Dec. 31, 1970, Pub. L. 91-604, §§ 8(a), 10(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1694, 1700, 1705, 1713, which related to reports, records, and information required, access to and copying records, availability of records to the public, and disclosure of trade secrets, was transferred to section 7542 of this title.

Section 1857f-6a, act July 14, 1955, ch. 360, title II, § 209, formerly § 208, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 501, renumbered and amended Dec. 31, 1970, Pub. L. 91-604, §§ 8(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1694, 1705, 1713, which related to State standards regarding control of emissions from new motor vehicles or new motor vehicle engines, was transferred to section 7543 of this title.

Section 1857f-6b, act July 14, 1955, ch. 360, title II, § 210, formerly § 209, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 502, renumbered and amended Dec. 31, 1970, Pub. L. 91-604, §§ 8(a), 10(b), 84 Stat. 1694, 1700, which related to federal assistance in developing and maintaining vehicle emission devices and systems inspection and emission testing and control programs, was transferred to section 7544 of this title.

Section 1857f-6c, act July 14, 1955, ch. 360, title II, § 211, formerly § 210, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 502, renumbered and amended Dec. 31, 1970, Pub. L. 91-604, §§ 8(a), 9(a), 84 Stat. 1694, 1698; Nov. 18, 1971, Pub. L. 92-157, title III, § 302(d), (e), 85 Stat. 464, which related to regulation of fuels, was transferred to section 7545 of this title.

§§ 1857f-6e to 1857f-7. Transferred

CODIFICATION

Section 1857f-6e, act July 14, 1955, ch. 360, title II, § 212, as added Dec. 31, 1970, Pub. L. 91-604, § 10(c), 84 Stat. 1700, and amended Apr. 9, 1973, Pub. L. 93-15, § 1(b), 87 Stat. 11; June 22, 1974, Pub. L. 93-319, § 13(b), 88 Stat. 265, which related to low emission vehicles, was transferred to section 7546 of this title.

Section 1857f-6f, act July 14, 1955, ch. 360, title II, § 213, as added June 22, 1974, Pub. L. 93-319, § 10, 88 Stat. 261; and amended S. Res. 4, Feb. 4, 1977, which related to fuel economy for new vehicles, was transferred to section 7547 of this title.

Section 1857f-7, act July 14, 1955, ch. 360, title II, § 214, formerly § 208, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 994, renumbered § 212 and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 503, renumbered § 213 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 8(a), 10(d), 11(a)(2)(A), 84 Stat. 1694, 1703, 1705, renumbered § 214, June 22, 1974, Pub. L. 93-319, § 10, 88 Stat. 261, which related to definitions concerning motor vehicle emission and fuel standards, was transferred to section 7550 of this title.

§§ 1857f-9 to 1857k. Transferred

CODIFICATION

Section 1857f-9, act July 14, 1955, ch. 360, title II, § 231, as added Dec. 31, 1970, Pub. L. 91-604, § 11(a)(1), 84 Stat. 1703, which related to the establishment of aircraft emission standards, was transferred to section 7571 of this title.

Section 1857f-10, act July 14, 1955, ch. 360, title II, § 232, as added Dec. 31, 1970, Pub. L. 91-604, § 11(a)(1), 84 Stat. 1704, which related to enforcement of aircraft emission standards, was transferred to section 7572 of this title.

Section 1858f-11, act July 14, 1955, ch. 360, title II, § 233, as added Dec. 31, 1970, Pub. L. 91-604, § 11(a)(1), 84 Stat. 1704, which related to state standards and controls regarding aircraft emissions, was transferred to section 7573 of this title.

Section 1857f-12, act July 14, 1955, ch. 360, title II, § 234, as added Dec. 31, 1970, Pub. L. 91-604, § 11(a)(1), 84 Stat. 1705, related to definitions concerning aircraft emissions standards, was transferred to section 7574 of this title.

Section 1857g, act July 14, 1955, ch. 360, title III, § 301, formerly § 8, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 400, renumbered Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 504; Dec. 31, 1970, Pub. L. 91-604, §§ 3(b)(2), 15(c)(2), 84 Stat. 1677, 1713, which related to administration of air pollution control, was transferred to section 7601 of this title.

Section 1857h, act July 14, 1955, ch. 360, title III, § 302, formerly § 9, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 400, renumbered Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 504; Dec. 31, 1970, Pub. L. 91-604, § 15(a)(1), (c)(1), 84 Stat. 1710, 1713, which related to definitions concerning air pollution control, was transferred to section 7602 of this title.

Section 1857h-1, act July 14, 1955, ch. 360, title III, § 303, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1705, which related to emergency powers of the Administrator, was transferred to section 7603 of this title.

Section 1857h-2, act July 14, 1955, ch. 360, title III, § 304, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1706, which related to citizen suits, was transferred to section 7604 of this title.

Section 1857h-3, act July 14, 1955, ch. 360, title III, § 305, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1707, which related to legal representation of the Administrator and appearance by the Attorney General, was transferred to section 7605 of this title.

Section 1857h-4, act July 14, 1955, ch. 360, title III, § 306, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1707, which related to federal procurement, was transferred to section 7606 of this title.

Section 1857h-5, act July 14, 1955, ch. 360, title III, § 307, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1707, and amended Nov. 18, 1971, Pub. L. 92-157, title III, § 302(a), 85 Stat. 464; June 22, 1974, Pub. L. 93-319, § 6(c), 88 Stat. 259, which related to administrative proceedings and judicial review, was transferred to section 7607 of this title.

Section 1857h-6, act July 4, 1955, ch. 360, title III, § 308, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1708, which related to mandatory licensing, was transferred to section 7608 of this title.

Section 1857h-7, act July 14, 1955, ch. 360, title III, § 309, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1709, which related to policy review, was transferred to section 7609 of this title.

Section 1857i, act July 14, 1955, ch. 360, title III, § 310, formerly § 10, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 401, renumbered § 303, Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), 79 Stat. 992, amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 505, renumbered § 310 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to application to other laws and nonduplication of appropriations, was transferred to section 7610 of this title.

Section 1857j, act July 14, 1955, ch. 360, title III, § 311, formerly § 11, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 401, renumbered § 304, Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 505, renumbered § 311 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to records and audits, was transferred to section 7611 of this title.

Section 1857j-1, act July 14, 1955, ch. 360, title III, § 312, formerly § 305, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 505, renumbered and amended Dec. 31, 1970, Pub. L. 91-604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to cost studies, was transferred to section 7612 of this title.

Section 1857j-2, act July 14, 1955, ch. 360, title III, § 313, formerly § 306, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506, renumbered and amended Dec. 31, 1970, Pub. L. 91-604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to additional reports to Congress, was transferred to section 7613 of this title.

Section 1857j-3, act July 14, 1955, ch. 360, title III, § 314, formerly § 307, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506, renumbered and amended Dec. 31, 1970, Pub. L. 91-604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713, which related to labor standards, was transferred to section 7614 of this title.

Section 1857k, act July 14, 1955, ch. 360, title III, § 315, formerly § 12, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 401, renumbered § 305, Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), 79 Stat. 992, amended and renumbered § 308, Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506; renumbered § 315, Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1705, which related to separability of provisions, was transferred to section 7615 of this title.

§ 1857*l*. Repealed. Pub. L. 95-95, title III, § 306, Aug. 7, 1977, 91 Stat. 777

Section, act July 14, 1955, ch. 360, title III, § 316, formerly § 13, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 401, renumbered § 306 and amended Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89-675, § 2(a), 80 Stat. 954, renumbered § 309, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506, and renumbered § 316 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 12(a), 13(b), 84 Stat. 1705, 1709; Apr. 9, 1973, Pub. L. 93-15, § 1(c), 87 Stat. 11; June 22, 1974, Pub. L. 93-319, § 13(c), 88 Stat. 265, authorized appropriations for air pollution control. Similar subject matter is now covered by section 7626 of this title.

§§ 1858, 1858a. Transferred

CODIFICATION

Section 1858, act July 14, 1955, ch. 360, title IV, § 402, as added Dec. 31, 1970, Pub. L. 91-604, § 14, 84 Stat. 1709, which established the Office of Noise Abatement and Control and authorized investigation of noise and its effects on public health and welfare and a report to Congress on the results of this investigation, was transferred to section 7641 of this title.

Section 1858a, act July 14, 1955, ch. 360, title IV, § 403, as added Dec. 31, 1970, Pub. L. 91-604, § 14, 84 Stat. 1710, which authorized appropriations concerning noise pollution, was transferred to section 7642 of this title.

CHAPTER 16—NATIONAL SCIENCE FOUNDATION

Sec.
1869b. Issuance of instructions to grantees of pre-college curriculum projects [New].
1873a. Financial or other interest of employees processing applications or proposals for Foundation grant or contract [New].
  (a) Written statement; availability to public; penalty.
  (b) Promulgation of standards.
  (c) Annual report to Congress.
  (d) Effect of Executive Order requiring disclosure.
1884. Resource Center for Science and Engineering [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 20 sections 3286, 3444.

§ 1861. Establishment; composition

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-99, § 1, Aug. 15, 1977, 91 Stat. 831, provided: "That this Act [which enacted sections 1869b, 1873a, and 1884 of this title, amended sections 1862, 1863, 1873, and 1882 of this title, and enacted provisions set out as a note under section 1862 of this title] may be cited as the 'National Science Foundation Authorization Act, Fiscal Year 1978'."

§ 1862. Functions

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Balancing of research and educational activities in the sciences

In exercising the authority and discharging the functions referred to in the foregoing subsections, it shall be an objective of the Foundation to strengthen research and education in the sciences, including independent research by individuals, throughout the United States, and to avoid undue concentration of such research and education.

[*See main edition for text of* (*f*)]

(As amended Aug. 15, 1977, Pub. L. 95-99, § 14(a), 91 Stat. 835.)

AMENDMENTS

1977—Subsec. (e). Pub. L. 95-99 substituted "an objective" for "one of the objectives".

TRANSFER OF NATIONAL SCIENCE FOUNDATION PROGRAMS

For transfer of all programs relating to science education of the National Science Foundation or the Director thereof under this chapter, with certain exceptions, to the Secretary of Education, see section 3444 of Title 20, Education.

STATUS OF SCIENTIFIC INSTRUMENTATION; CURRENT AND PROJECTED NEEDS FOR SCIENTIFIC AND TECHNOLOGICAL INSTRUMENTATION; DEVELOPMENT OF INDICES, CORRELATES, OR OTHER SUITABLE MEASURES OR INDICATORS

Pub. L. 96-44, § 7, Aug. 2, 1979, 93 Stat. 334, provided that: "In partial fulfillment of the established statutory requirement that the National Science Foundation evaluate the status of and current and projected need for scientific resources (section 3(a)(5) and (6) of Public Law 81-507, as amended [subsec. (a)(5) and (6) of this section]), the National Science Foundation shall develop indices, correlates, or other suitable measures or indicators of the status of scientific instrumentation in the United States and of the current and projected need for scientific and technological instrumentation."

FLOOD HAZARD MITIGATION STUDY

Pub. L. 96-44, § 8, Aug. 2, 1979, 93 Stat. 334, provided that: "The National Science Foundation shall conduct a Flood Hazard Mitigation Study and shall report to the Congress with specific program recommendations by the end of the fiscal year 1980."

AUTHORIZED USE OF FUNDS UNDER SCIENCE AND SOCIETY PROGRAM

Section 5 of Pub. L. 95-99 provided that:

"(a) From the funds authorized under the program 'Science and Society', the National Science Foundation is authorized to provide support which is designed to—

"(1) improve public understanding of public policy issues involving science and technology;

"(2) facilitate the participation of qualified scientists and engineers and of undergraduate and graduate students in public activities aimed at the resolution of public policy issues having significant scientific and technical aspects; and

"(3) assist nonprofit, citizens, and bona fide public interest groups to acquire necessary scientific and technical expertise in order to improve their comprehension of scientific and technical aspects of public policy issues.

"(b) Awards made pursuant to this section shall, to the extent feasible, include support for—

"(1) qualified scientists and engineers to work on public policy issues with significant scientific and technical components in conjunction with units of State and local government, nonprofit organizations, or bona fide public interest groups;

"(2) internship programs for science and engineering undergraduate or graduate students to work on public policy issues with significant scientific and technical components in conjunction with units of State and local government, nonprofit organizations, or bona fide public interest groups as part of their academic training;

"(3) forums, conferences, and workshops on public policy issues with significant scientific and technical components;

"(4) training in the presentation of scientific and technical studies in a manner which (A) improves public understanding of the ways in which science and technology influence contemporary life, (B) improves public access to the results of scientific and technical research, (C) encourages and facilitates interaction between laypersons and scientists on public issues with important scientific and technological components, and (D) increases public knowledge and understanding of the ethical and value implications of scientific and technological developments;

"(5) new and existing programs using radio or television to increase public understanding of public policy issues with significant scientific and technical components; and

"(6) bona fide public interest groups to acquire necessary scientific and technical expertise relating to the scientific and technical aspects of public policy issues and to enable such groups to bring together in appropriate forums experts whose research has been directed to the resolution of such issues."

ESTABLISHMENT OF "SCIENCE FOR CITIZENS PROGRAM" CONDUCTED IN CONJUNCTION WITH "PUBLIC UNDERSTANDING OF SCIENCE PROGRAM"

Section 5 of Pub. L. 94-471 provided that:

[*See main edition for text of* (*a*) *to* (*c*)]

"(d) To assist the Congress in evaluating activities initiated pursuant to this Section, the Director of the National Science Foundation, in consultation with a review panel having a balanced representation from the scientific and nonscientific community and the public and private sectors, is directed to prepare a comprehensive analysis and assessment of such activities to be submitted to the House Committee on Science and Technology and the Senate Committee on Labor and Public Welfare [now the Committee on Labor and Human Resources], not later than October 31, 1977. An interim report is required no later than March 1, 1977."

DEVELOPMENT OF PROGRAM PLAN FOR CONTINUING EDUCATION IN SCIENCE AND ENGINEERING

Section 6 of Pub. L. 94-471 which required the National Science Foundation to develop a program plan for continuing education in science and engineering and, not later than Oct. 31, 1977, provide specific committees of the House of Representatives and Senate a report on the plan developed with recommendations for implementation in fiscal year 1978, was omitted from the Code as executed.

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Director of the National Science Foundation, see Parts 1, 23, and 30 of Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2251 of Title 50, Appendix, War and National Defense.

§ 1863. National Science Board

[*See main edition for text of* (*a*) *to* (*i*)]

(j) Annual report to President; submittal to Congress

The Board shall render an annual report to the President, for submission to the Congress on or before March 31 in each year. Such report shall deal essentially, though not necessarily exclusively, with policy issues or matters which affect the Foundation or with which the Board in its official role as the policymaking body of the Foundation is concerned.

(As amended Aug. 15, 1977, Pub. L. 95-99, § 14(b), 91 Stat. 835.)

AMENDMENTS

1977—Subsec. (j). Pub. L. 95-99 added subsec. (j).

§ 1864. Director of Foundation

FEASIBILITY STUDY OF SOLAR ENERGY TRANSMISSION TO EARTH

Pub. L. 95-434, § 8, Oct. 10, 1978, 92 Stat. 1050, provided that:

"(a) The Director of the National Science Foundation, in consultation with the Director of the Office of Science and Technology Policy, the Secretary of Energy, the Administrator of the National Aeronautics and Space Administration, and technical experts in public agencies, private organizations, and academic institutions, is authorized to determine the need to provide support under this Act for a study of the feasibility of transmitting solar energy to Earth by using orbital structures manufactured from lunar or asteroidal materials, and the impact of such a feasibility study, if any, on existing National Science Foundation programs.

"(b)(1) If the Foundation determines that such a feasibility study is necessary, the Foundation is authorized to conduct such a study directly or by grants or contracts with public agencies, private organizations, or academic institutions.

"(2) At the conclusion of any such study the Foundation shall prepare and submit to the President and to the Congress a report of the study, together with such recommendations as the Foundation deems appropriate.

"(3) Of the funds authorized in section 2, $500,000 shall be available to carry out the provisions of this subsection."

Science for Citizens Program; Preparation and Submission of Plan to Committees of Congress

Pub. L. 94–86, § 3, Aug. 9, 1975, 89 Stat. 429, which directed the Director of the National Science Foundation to prepare a comprehensive plan for the establishment and conduct of a "Science for Citizens Program" and, within six months from Aug. 9, 1975, submit the plan to specific committees of the House of Representatives and Senate, was omitted from the Code as executed.

Participation of Public in Conduct of Foundation Programs; Preparation and Submission of Plan to Committees of Congress

Pub. L. 94–86, § 4, Aug. 9, 1975, 89 Stat. 430, which authorized the Director of the National Science Foundation to prepare a comprehensive plan to facilitate the participation of members of the public in the formulation, development, and conduct of National Science Foundation programs, policies, and priorities and to submit the resulting recommendations, plans, or other findings to specific committees of the House of Representatives and the Senate within 120 days from Aug. 9, 1975, was omitted from the Code as executed.

§ 1869b. Issuance of instructions to grantees of pre-college curriculum projects

The National Science Foundation is directed to issue instructions to grantees for pre-college curriculum projects covering the protection of pre-college students and procedures for involving such students in pre-college education research and development, pilot-testing, evaluation, and revision of experimental and innovative pre-college curriculum projects funded by the Foundation. These instructions shall require such grantees to obtain written approval of the school board or comparable authority responsible for the schools prior to the involvement of such students.

(Pub. L. 95–99, § 9, Aug. 15, 1977, 91 Stat. 833.)

Codification

Section was not enacted as part of act May 10, 1950, ch. 171, 64 Stat. 149, known as the National Science Foundation Act of 1950, which comprises this chapter.

§ 1873. Employment of personnel

[*See main edition for text of* (a) *to* (c)]

(d) Compensation of members of Board and special commission

The members of the Board and the members of each special commission shall receive compensation for each day engaged in the business of the Foundation at a rate fixed by the Chairman but not exceeding the rate specified for the daily rate for GS–18 of the General Schedule under section 5332 of title 5 and shall be allowed travel expenses as authorized by section 5703 of title 5.

[*See main edition for text of* (e) *to* (i)]

(As amended Aug. 15, 1977, Pub. L. 95–99, § 14(c), 91 Stat. 835.)

Amendments

1977—Subsec. (d). Pub. L. 95–99 substituted provisions authorizing compensation at a daily rate fixed by the chairman but not exceeding the rate specified for the daily rate for GS–18 of the General Schedule under section 5332 of title 5 for provisions authorizing a daily rate of $100.

Employment of Minorities, Women, and Handicapped Individuals in Executive Level Positions

Pub. L. 94–471, § 7, Oct. 11, 1976, 90 Stat. 2056, provided that:

[*See main edition for text of* (a) *and* (b)]

(c) [*See main edition for text of* (1) *and* (2)]

"(3) The Director, in consultation with groups which have been active in seeking greater recognition of the scientific and technical capabilities of minorities, shall establish criteria for the award of the grants, and shall report to the Committee on Science and Technology of the House of Representatives and the Committee on Labor and Public Welfare [now the Committee on Labor and Human Resources] of the Senate on the results of activities including an evaluation and assessment of the entire program carried out under this subsection, not later than March 1, 1977."

§ 1873a. Financial or other interest of employees processing applications or proposals for Foundation grant or contract

(a) Written statement; availability to public; penalty

(1) Each officer or employee of the National Science Foundation who performs a decision-making function in the handling of any application or proposal for a grant from or contract with the Foundation shall provide a written statement for the record identifying (in accordance with the standards promulgated under subsection (b)) of this section any financial interest or other relevant interest he or she has in the person submitting the application or proposal and any academic affiliation he or she has with that person. If the application or proposal results in an award, the statement shall be made available to the public.

(2) The Director shall remove or take other appropriate disciplinary action against any employee who knowingly violates the requirements of this subsection.

(b) Promulgation of standards

(1) Within 60 days after August 15, 1977, the Director of the National Science Foundation shall publish—

(A) proposed standards to implement the requirements of subsection (a) of this section, designed to minimize conflicts of interest and to assure that the appropriate files of the Foundation relating to any grant or contract referred to in such subsection contain a statement of any financial or other relevant interest which any of the officers and employees involved may have in the person or institution applying for or proposing the grant or contract as well as any academic affiliation which any of such officers and employees may have with such person or institution; and

(B) proposed standards appropriately requiring identification of any conflicts of interest by peer reviewers.

(2) Within 120 days after August 15, 1977, the Director shall promulgate the standards published under paragraph (1), with such modifications as the Director may deem appropriate; and such standards shall take effect upon their promulgation.

(c) Annual report to Congress

The Director shall report annually to the Congress on the administration and enforcement of this section.

(d) Effect of Executive Order requiring disclosure

If the President issues an Executive order that requires financial disclosure by officers and employees of Federal agencies generally, only so much of this section as relates to peer reviewers and to academic affiliations of officers and employees shall remain effective.

(Pub. L. 95-99, § 10, Aug. 15, 1977, 91 Stat. 834.)

CODIFICATION

Section was not enacted as part of act May 10, 1950, ch. 171, 64 Stat. 149, known as the National Science Foundation Act of 1950, which comprises this chapter.

§ 1874. Security provisions

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 1881. Award of National Medal of Science

EXTENSION OF TERM OF PRESIDENT'S COMMITTEE ON THE NATIONAL MEDAL OF SCIENCE

Term of the President's Committee on the National Medal of Science extended until Dec. 31, 1980, see Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

§ 1882. Information furnished to congressional committees

Notwithstanding any other provision of this or any other Act, the Director of the National Science Foundation shall keep the Committee on Labor and Human Resources of the Senate and the Committee on Science and Technology of the House of Representatives fully and currently informed with respect to all of the activities of the National Science Foundation.

(Pub. L. 96-44, § 9, Aug. 2, 1979, 93 Stat. 335.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 96-44, known as the National Science Foundation Authorization Act for Fiscal Year 1980. For classification of this Act to the Code, see Tables.

CODIFICATION

Section was not enacted as part of act May 10, 1950, ch. 171, 64 Stat. 149, known as the National Science Foundation Act of 1950, which comprises this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following National Science Foundation Authorization Acts:

Pub. L. 95-434, § 7, Oct. 10, 1978, 92 Stat. 1050.
Pub. L. 95-99, § 13, Aug. 15, 1977, 91 Stat. 835.
Pub. L. 94-471, § 11, Oct. 11, 1976, 90 Stat. 2058.

§ 1884. Resource Center for Science and Engineering

(a) The National Science Foundation shall establish a Resource Center for Science and Engineering to be located at an educational institution which—

(1) enrolls substantial numbers of minority students, students from low-income families, or both;

(2) is geographically located near one or more population centers of low-income families or minority groups;

(3) demonstrates a commitment to encouraging and assisting minority students or students from low-income families, or both; and

(4) has an existing or developing capacity to offer doctoral programs in science and engineering.

(b) The Center established under this section shall—

(1) support basic research and the acquisition of necessary research facilities and equipment;

(2) serve as a regional resource in science and engineering for the community which the Center serves; and

(3) develop joint educational programs with nearby pre-college and undergraduate institutions which enroll a substantial number of minority students or students from low-income families.

(Pub. L. 95-99, § 6, Aug. 15, 1977, 91 Stat. 833.)

CODIFICATION

Section was not enacted as part of act May 10, 1950, ch. 171, 64 Stat. 149, known as the National Science Foundation Act of 1950, which comprises this chapter.

CHAPTER 16A—GRANTS FOR SUPPORT OF SCIENTIFIC RESEARCH

§§ 1891, 1892. Repealed. Pub. L. 95-224, § 10(a), Feb. 3, 1978, 92 Stat. 6

Section 1891, Pub. L. 85-934, § 1, Sept. 6, 1958, 72 Stat. 1793, authorized the head of each executive agency to make grants for support of scientific research with institutions of higher education, etc. See section 501 et seq. of Title 41, Public Contracts.

Section 1892, Pub. L. 85-934, § 2, Sept. 6, 1958, 72 Stat. 1793, authorized the head of each executive agency to vest title to equipment, where feasible, in institutions of higher education, etc., involved in basic or applied scientific research pursuant to grants.

EFFECTIVE DATE OF REPEAL

Section 10(a) of Pub. L. 95-224 provided in part that sections 1891 and 1892 of this title are repealed effective one year after the date of enactment of Pub. L. 95-224, which was approved Feb. 3, 1978.

CHAPTER 19—SALINE AND SALT WATERS

SUBCHAPTER III—SALINE WATER CONVERSION PROGRAM

Sec.	
1959 to 1959h.	Repealed.
1959i.	Transferred.

SUBCHAPTER III—SALINE WATER CONVERSION PROGRAM

§§ 1959 to 1959h. Repealed. Pub. L. 95-467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section 1959, Pub. L. 92-60, § 2, July 29, 1971, 85 Stat. 159, set out the Congressional findings and policy in enacting conversion of saline water legislation. See section 7831 of this title.

Section 1959a, Pub. L. 92-60, § 3, July 29, 1971, 85 Stat. 159, set out the general duties of the Secretary of Interior in the area of conversion of saline water. See section 7832 of this title.

Section 1959b, Pub. L. 92-60, § 4, July 29, 1971, 85 Stat. 160, set out additional duties of the Secretary of Interior in the area of conversion of saline water, such as conducting preliminary investigations, exploring potential cooperative agreements, reporting to the President and Congress, utilizing federal agencies' expertise and accepting financial assistance from state and other public agencies. See section 7833 of this title.

Section 1959c, Pub. L. 92-60, § 5, July 29, 1971, 85 Stat. 160, set out the powers of the Secretary of Interior. See section 7871 of this title.

Section 1959d, Pub. L. 92-60, § 6, July 29, 1971, 85 Stat. 161, provided for coordination of saline water conversion activities with the Department of Defense, cooperation of the Secretary of Interior's activities with the Environmental Protection Agency and other federal agencies, availability of research information and developments, continued validity of patent rights, publication of rules in the Federal Register, disposal of water and byproducts, dispositions of moneys and nonalteration of existing water ownership and control laws. See section 7877(a) and 7879 of this title.

Section 1959e, Pub. L. 92-60, § 7, July 29, 1971, 85 Stat. 162, authorized the Secretary of Interior to issue rules and regulations. See section 7834 of this title.

Section 1959f, Pub. L. 92-60, § 8, July 29, 1971, 85 Stat. 162, required the Secretary of Interior to submit a report to the President and Congress. See section 7880 of this title.

Section 1959g, Pub. L. 92-60, § 9, July 29, 1971, 85 Stat. 162, defined terms used in this chapter. See section 7835 of this title.

Section 1959h, Pub. L. 92-60, § 10, July 29, 1971, 85 Stat. 162; Pub. L. 95-84, § 1(a)(2), Aug. 2, 1977, 91 Stat. 400, authorized appropriations for saline water conversion programs. See sections 7873 and 7874 of this title.

Short Title

Pub. L. 92-60, § 1, July 29, 1971, 85 Stat. 159, which provided that Pub. L. 92-60, which enacted sections 1959 to 1959h of this title and repealed sections 1951 to 1958 of this title may be cited as "The Saline Water Conversion Act of 1971" was repealed by Pub. L. 95-467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316.

Annual Authorization of Appropriations

Annual authorization for appropriations for the saline water conversion programs for fiscal years authorized by former section 1959h(b) of this title were contained in the following appropriations Acts:

Pub. L. 95-84, § 1(b), Aug. 2, 1977, 91 Stat. 400.
Pub. L. 94-316, § 1, June 22, 1976, 90 Stat. 694.
Pub. L. 94-38, June 19, 1975, 89 Stat. 217.
Pub. L. 93-342, July 10, 1974, 88 Stat. 295.
Pub. L. 92-51, July 1, 1973, 87 Stat. 129.
Pub. L. 92-273, Apr. 17, 1972, 86 Stat. 122.

Inventions—Definition, Title, and Licensing

Pub. L. 94-316, § 3, June 22, 1976, 90 Stat. 694, which provided that relative to the definition of, title to, and licensing of investions made or conceived in the course of or under any contract or grant pursuant to the Water Resources Research Act of 1964 (42 U.S.C. 1961 et seq.) or the Saline Water Conversion Act of 1971 (42 U.S.C. 1959 et seq.), and that notwithstanding any other provision of law, the Secretary was to be governed by the provisions of sections 9 and 10 of the Federal Non-nuclear Energy, Research, and Development Act of 1974 (42 U.S.C. 5908, 5909), provided, however, that subsecs. (*l*) and (n) of section 5908 of this title were not to apply to this act, was omitted from the Code in view of the repeal of the Water Resources Research Act of 1964 and the Saline Water Conversion Act of 1971 by Pub. L. 95-467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316.

§ 1959i. Transferred

Codification

Section, Pub. L. 95-84, § 2, Aug. 2, 1977, 91 Stat. 400, which related to desalting plants, was transferred to section 7836 of this title.

CHAPTER 19A—WATER RESOURCES RESEARCH PROGRAM

GENERAL PROVISIONS

§ 1961. Repealed. Pub. L. 95-467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section Pub. L. 88-379, § 1(b), July 17, 1964, 78 Stat. 329, set out the Congressional purpose in enacting water resources research program legislation. See section 7802 of this title.

SUBCHAPTER I—STATE WATER RESOURCES RESEARCH INSTITUTE

§§ 1961a to 1961a-5. Repealed. Pub. L. 95-467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section 1961a, Pub. L. 88-379, title I, § 100, July 17, 1964, 78 Stat. 329; Pub. L. 92-175, §§ 1-3, Dec. 2, 1971, 85 Stat. 493, related to water resources research institutes. See section 7811 of this title.

Section 1961a-1, Pub. L. 88-379, title I, § 101, July 17, 1964, 78 Stat. 330, authorized appropriations for specific water resources research projects, including regional projects. See sections 7815(a) and 7872 of this title.

Section 1961a-2, Pub. L. 88-379, title I, § 102, July 17, 1964, 78 Stat. 330; Pub. L. 92-175, § 4, Dec. 2, 1971, 85 Stat. 493, set the time and amount of payments to institutes, directed that an accounting officer be appointed to each state institute and submit an annual report to the Secretary of Interior, and required that the state replace diminished, lost or misapplied funds. See section 7876 of this title.

Section 1961a-3, Pub. L. 88-379, title I, § 103, July 17, 1964, 78 Stat. 330, made appropriated funds available for printing and publishing results of research and for the planning, coordinating and conducting of cooperative research. See section 7812 of this title.

Section 1961a-4, Pub. L. 88-379, title I, § 104, July 17, 1964, 78 Stat. 331; Pub. L. 89-404, § 2, Apr. 19, 1966, 80 Stat. 130, related to the powers and duties of the Secretary of Interior. See section 7813 of this title.

Section 1961a-5, Pub. L. 88-379, title I, § 105, July 17, 1964, 78 Stat. 331, related to the legal relationship of educational institutions and State governments and federal control or direction of education. See section 7814 of this title.

SUBCHAPTER II—ADDITIONAL WATER RESOURCES RESEARCH PROGRAMS

§ 1961b. Repealed. Pub. L. 95-467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section, Pub. L. 88-379, title II, § 200, July 17, 1964, 78 Stat. 331; Pub. L. 89-404, § 1, Apr. 19, 1966, 80 Stat. 129; Pub. L. 92-175, § 5, Dec. 2, 1971, 85 Stat. 493; Pub. L. 93-608, § 1(17), Jan. 2, 1975, 88 Stat. 1970; Pub. L. 95-84, § 1(a)(1), Aug. 2, 1977, 91 Stat. 400, authorized

appropriations for research into water problems related to the mission of the Department of Interior and required that the Secretary's annual report to the President and Congress identify each approved contract and grant award. See section 7815 of this title.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§§ 1961c to 1961c-8. Repealed. Pub. L. 95-467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316

Section 1961c, Pub. L. 88-379, title III, § 300, July 17, 1964, 78 Stat. 332, related to the cooperation of Federal, State and private agencies with the Secretary of Interior who was directed to make information on relevant projects available. See section 7877(a) of this title.

Section 1961c-1, Pub. L. 88-379, title III, § 301, July 17, 1964, 78 Stat. 332, related to the lack of authority of the Secretary of Interior over water resources research of other federal agencies and the lack of effect that this chapter had on existing authorities and responsibilities of federal agencies. See section 7881 of this title.

Section 1961c-2, Pub. L. 88-379, title III, § 302, July 17, 1964, 78 Stat. 332, related to advance payments of initial expenses. See section 7818 of this title.

Section 1961c-3, Pub. L. 88-379, title III, § 303, July 17, 1964, 78 Stat. 332, made expenditures of funds for scientific or technological research or development activity conditioned upon the availability to public of resulting information and developments, and provided that background patent rights would be unaffected. See section 7879 of this title.

Section 1961c-4, Pub. L. 88-379, title III, § 304, July 17, 1964, 78 Stat. 332, established a cataloging center. See section 7853 of this title.

Section 1961c-5, Pub. L. 88-379, title III, § 305, July 17, 1964, 78 Stat. 332, related to interagency coordination of water resources research. See section 7877(b) of this title.

Section 1961c-6, Pub. L. 88-379, title III, § 306, July 17, 1964, 78 Stat. 333; Pub. L. 92-175, § 6, Dec. 2, 1971, 85 Stat. 494, defined "State". See section 7817 of this title.

Section 1961c-7, Pub. L. 88-379, title III, § 307, as added Pub. L. 89-404, § 2, Apr. 19, 1966, 80 Stat. 130, and amended Pub. L. 92-175, § 7, Dec. 2, 1971, 85 Stat. 494, required the Secretary of Interior to make an annual report to the President and Congress. See section 7880 of this title.

Section 1961c-8, Pub. L. 88-379, title III, § 308, as added Pub. L. 92-175, § 8, Dec. 2, 1971, 85 Stat. 494, empowered the Secretary of Interior to convey excess personal property to cooperating institutes, educational institutions and nonprofit organizations. See section 7878 of this title.

SHORT TITLE

Pub. L. 88-379, § 1(a), July 17, 1964, 78 Stat. 329, which provided that Pub. L. 88-379, which enacted sections 1961 to 1961c-8, may be cited as the "Water Resources Research Act of 1964", was repealed by Pub. L. 95-467, title IV, § 410(a), Oct. 17, 1978, 92 Stat. 1316.

CHAPTER 19B—WATER RESOURCES PLANNING

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 1962d-4 of this title; title 16 section 1275; title 33 sections 1252, 1289; title 43 section 1511.

§ 1962. Congressional statement of policy

EX. ORD. NO. 12113. INDEPENDENT WATER PROJECT REVIEW

Ex. Ord. No. 12113, Jan. 4, 1979, 44 F.R. 1955, as amended by Ex. Ord. No. 12141, June 5, 1979, 44 F.R. 32635, provided:

By the authority vested in me as President by the Constitution and laws of the United States of America, in furtherance of the Water Resources Planning Act (79 Stat. 244; 42 U.S.C. 1962 et seq.), and in order to ensure coordinated planning and independent review of Federal water resource programs and projects, it is hereby ordered as follows:

1-101. The Water Resources Council shall ensure that it has established a current set of principles, standards, and procedures for Federal participants in the preparation of comprehensive regional or river basin plans and for the formulation and evaluation of Federal water and related land resources projects (42 U.S.C. 1962a-2).

1-102. The Council shall ensure that an impartial technical review is performed on preauthorization reports or proposals and preconstruction plans for Federal and Federally assisted water, and related land resources, projects and programs, as they are defined in the Council's principles and standards.

1-103. The Council shall develop a planning manual for use by each agency (a) in calculating benefits and costs by using the best available techniques and (b) in applying the principles and standards in a consistent manner.

1-104. The impartial technical review shall evaluate each report, proposal, or plan for compliance with (a) the Council's principles and standards, (b) the planning manual or, pending issuance of the manual, established agency procedures, (c) other Federal laws, regulations and guidelines relevant to the planning process, and (d) the goal of wide public participation in the development of project plans, including adequate opportunity for public comment and adequate consideration of those views.

1-105. (a) Beginning April 1, 1979, all agencies shall submit, prior to their approval by the head of the agency, preauthorization reports or proposals and preconstruction plans for Federal and Federally assisted water, and related land resources, projects and programs to the Council at least 90 days prior to the scheduled time for their submission to the Office of Management and Budget in support of authorization or funding requests for those activities in fiscal year 1981 and subsequent years.

(b) After October 1, 1979, an agency shall not submit to the Council, during any calendar quarter, more than one-third of the total reports, proposals, and plans scheduled for review during any one fiscal year.

(c) The Chairman of the Council, or his designee, shall transmit the results of the impartial technical review to the appropriate agency head. The transmittal shall include identification of any specific variations from Council approved procedures and manuals and the steps necessary to bring the plan into conformance. The results of the review shall be transmitted to the agency head within 60 days of the agency's submission of the report, proposal, or plan provided that funds and other resources have been made available for the review.

1-106. (a) All agency reports, proposals and plans submitted to the Council for review shall include sufficient information to allow an adequate technical review. In particular, this information shall include:

(1) Sufficient documentation to allow a technical review of the analysis by the agency of the ratio of the benefit to the cost.

(2) Evidence that an adequate evaluation has been made of reasonable alternatives, including nonstructural ones, for addressing the water-related problems of the affected regions and communities.

(3) An explanation of the relationship of the plan to any approved regional water resource management plans.

(4) A summary of the consideration given to water conservation measures and a listing of those measures incorporated into the plan.

(5) Evidence that there has been compliance with relevant environmental and other laws and requirements.

(6) Evidence that the public and State and local officials have been involved in the plan formulation process.

(b) If the documents and information necessary for the review are not initially submitted, the Chairman may extend the review period by not more than 30 days. If the documents and information submitted do not demonstrate compliance, a finding detailing the areas of noncompliance will be transmitted to the agency head.

1-107. Before any agency submits to the Congress, or to any committee or member thereof, a report relating to, or affecting in whole or in part its advance programs, or the public works and improvement projects comprising such programs, or the results of any plan preparation for such programs or projects, such report or plan shall be submitted to the Office of Management and Budget for advice as to its relationship to the program of the President. When such report or plan is thereafter submitted to the Congress, or to any committee or member thereof, it shall include a statement of the advice received from the Office of Management and Budget.

1-108. Agency submissions to the Office of Management and Budget of the reports, proposals or plans reviewed pursuant to this Order shall be accompanied by a statement of the findings transmitted to the agency head.

1-109. Executive Order No. 9384 of October 4, 1943, as amended, is revoked.

JIMMY CARTER.

SUBCHAPTER I—WATER RESOURCES COUNCIL

§ 1962a. Establishment; composition; other Federal agency participation; designation of Chairman

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

SUBCHAPTER II—RIVER BASIN COMMISSIONS

§ 1962b. Creation of commissions; powers and duties

EX. ORD. NO. 11331. PACIFIC NORTHWEST RIVER BASINS COMMISSION

Ex. Ord. No. 11331, Mar. 6, 1967, 32 F.R. 3875, as amended by Ex. Ord. No. 11613, Aug. 2, 1971, 36 F.R. 14299; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

[See main edition for text of first six pars; Secs. 1 and 2]

SEC. 3. *Membership of the Commission.* It is hereby determined that, in accordance with section 202 of the Act [section 1962b-1 of this title], the Commission shall consist of the following:

(1) a Chairman to be appointed by the President,

(2) one member to be appointed by the head of each of the following Executive agencies: Department of Agriculture, Department of the Army, Department of Commerce, Department of Health, Education, and Welfare, Department of Housing and Urban Development, Department of the Interior, Department of Transportation, Federal Emergency Management Agency, Environmental Protection Agency, and the Department of Energy,

[See main edition for text of pars. (3) to (5); Secs. 4 to 7]

EX. ORD. NO. 11345. GREAT LAKES BASIN COMMISSION

Ex. Ord. No. 11345, Apr. 20, 1967, 32 F.R. 6329, as amended by Ex. Ord. No. 11613, Aug. 2, 1971, 36 F.R. 14299; Ex. Ord. No. 11646, Feb. 8, 1972, 37 F.R. 2925; Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

[See main edition for text of first five pars.; Secs. 1 and 2]

SEC. 3. *Membership of the Commission.* It is hereby determined that, in accordance with section 202 of the Act [section 1962b-1 of this title], the Commission shall consist of the following:

(1) a Chairman to be appointed by the President,

(2) one member from each of the following Federal departments and agencies: Department of State, Department of Agriculture, Department of the Army, Department of Commerce, Department of Health, Education, and Welfare, Department of Housing and Urban Development, Department of the Interior, Department of Justice, Department of Transportation, Federal Emergency Management Agency, Department of Energy, Environmental Protection Agency, and the Federal Power Commission, such member to be appointed by the head of each department or independent agency he represents,

[See main edition for text of (3) and (4); Secs. 4 to 6]

EX. ORD. NO. 11371. ESTABLISHMENT OF NEW ENGLAND RIVER BASINS COMMISSION

Ex. Ord. No. 11371, Sept. 6, 1967, 32 F.R. 12903, as amended by Ex. Ord. No. 11528, Apr. 24, 1970, 35 F.R. 6695; Ex. Ord. No. 11613, Aug. 2, 1971, 36 F.R. 14299; Ex. Ord. No. 11707, Mar. 12, 1973, 38 F.R. 6877; Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

[See main edition for text of first five pars.; Secs. 1 and 2]

SEC. 3. *Membership of Commission.* It is hereby determined, in accordance with section 202 of the Act [section 1962b-1 of this title], that the Commission shall consist of the following:

(1) a Chairman to be appointed by the President,

(2) one member from each of the following Federal departments and agencies: Department of Agriculture, Department of the Army, Department of Commerce, Department of Health, Education, and Welfare, Department of Housing and Urban Development, Department of the Interior, Department of Transportation, Federal Emergency Management Agency, Environmental Protection Agency, Department of Energy, and Federal Power Commission, each such member to be appointed by the head of each department or independent agency he represents,

[See main edition for text of (3) and (4); Secs. 4 to 6]

EX. ORD. NO. 11578. ESTABLISHMENT OF OHIO RIVER BASIN COMMISSION

Ex. Ord. No. 11578, Jan. 13, 1971, 36 F.R. 683, as amended by Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

[See main edition for text of first three pars.; Secs. 1 and 2]

SEC. 3. *Membership of the Commission.* It is hereby determined that, in accordance with section 202 of the Act (42 U.S.C. 1962b-1), the Commission shall consist of the following members:

(1) a Chairman to be appointed by the President,

(2) one member from each of the following Federal departments and agencies: Department of Agriculture, Department of the Army, Department of Commerce, Department of Health, Education, and Welfare, Department of Housing and Urban Development, Department of the Interior, Department of Transportation, Federal Emergency Management Agency, Federal Power Commission, Department of Energy, and the Environmental Protection Agency, such member to be appointed by the head of the department or independent agency he represents,

[*See main edition for text of* (*3*) *and* (*4*)*; Secs. 4 and 5*]

Ex. Ord. No. 11658. Establishment of Missouri River Basin Commission

Ex. Ord. No. 11658, Mar. 22, 1972, 37 F.R. 6045, as amended by Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

[*See main edition for text of first two pars.; Secs. 1 and 2*]

SEC. 3. *Membership of the Commission.* It is hereby determined that, in accordance with Section 202 of the Act (42 U.S.C. 1962b-1), the Commission shall consist of the following members:

(1) a Chairman to be appointed by the President,

(2) one member from each of the following Federal departments and agencies: Department of Agriculture; Department of the Army; Department of Commerce; Department of Health, Education, and Welfare; Department of Housing and Urban Development; Department of the Interior; Department of Transportation; Federal Emergency Management Agency; Federal Power Commission; Department of Energy; and the Environmental Protection Agency; such member to be appointed by the head of the department or independent agency he represents,

[*See main edition for text of* (*3*) *and* (*4*)*; Secs. 4 to 6*]

Ex. Ord. No. 11659. Establishment of Upper Mississippi River Basin Commission

Ex. Ord. No. 11659, Mar. 22, 1972, 37 F.R. 6047, as amended by Ex. Ord. No. 11737, Sept. 7, 1973, 38 F.R. 24883; Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

[*See main edition for text of first two pars.; Secs. 1 and 2*]

SEC. 3. *Membership of the Commission.* It is hereby determined that, in accordance with Section 202 of the Act (42 U.S.C. 1962b-1), the Commission shall consist of the following members:

(1) a Chairman to be appointed by the President,

(2) one member from each of the following Federal Departments and agencies: Department of Agriculture; Department of the Army; Department of Commerce; Department of Health, Education, and Welfare; Department of Housing and Urban Development; Department of the Interior; Department of Transportation; Federal Emergency Management Agency; Federal Power Commission; Department of Energy; and the Environmental Protection Agency; such member to be appointed by the head of the department or independent agency he represents.

[*See main edition for text of* (*3*) *and* (*4*)*; Secs. 4 to 7*]

Executive Order No. 11882

Ex. Ord. No. 11882, Oct. 6, 1975, 40 F.R. 46293, set out as a note under this section in the main edition, relating to membership of the Energy Research and Development Administration on established river basin commissions, was rendered obsolete by the provisions of Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under section 7151 of this title.

§ 1962b–3. Duties of commissions

Upper Mississippi River System Comprehensive Master Management Plan

Pub. L. 95-502, title I, § 101, Oct. 21, 1978, 92 Stat. 1693, provided that:

"(a) The Upper Mississippi River Basin Commission (referred to in this section as the 'Commission') shall prepare a comprehensive master plan for the management of the Upper Mississippi River System in cooperation with the appropriate Federal, State, and local officials. The Commission shall publish a preliminary plan not later than January 1, 1981. The Commission shall hold public hearings on the preliminary plan in each State which would be affected by the plan, shall review all comments presented at such hearings or submitted in writing to the Commission, and, after making any revisions in the plan it decides are necessary, submit to Congress a final master plan not later than January 1, 1982. All decisions of the Commission related to the master plan shall be made by a two-thirds majority vote of the Commission.

"(b) The Commission shall provide for public participation in the development, revision, and implementation of said plan and shall encourage and assist such participation. The Commission shall, within 150 days after the date of enactment of this Act [Oct. 21, 1978], publish guidelines in the Federal Register for public participation in the development, revision, and implementation of the plan. The final master plan shall not be implemented without the express approval of the plan by an Act of Congress enacted after the date of enactment of this Act. After such approval, no change may be made in the master plan except as may be provided by an Act of Congress enacted after the date of enactment of the Act approving the master plan. No person shall engage in any activity which violates any provision of the plan or which is inconsistent (as determined under regulations promulgated by the Commission) with the plan.

"(c) The Commission, in developing the plan, shall identify the various economic, recreational, and environmental objectives of the Upper Mississippi River System, recommend guidelines to achieve such objectives, and propose methods to assure compliance with such guidelines and coordination of future management decisions affecting the Upper Mississippi River System, and include with the proposed master plan any legislative proposals which may be necessary to carry out such recommendations and achieve such objectives.

"(d) For the purposes of developing the plan, the Commission shall conduct such studies as it deems necessary to carry out its responsibilities under this section, utilizing, to the fullest extent possible, the resources and results of the Upper Mississippi River resources management (GREAT) study conducted pursuant to section 117 of the Water Resources Development Act of 1976 (Public Law 94-587) [Pub. L. 94-587, § 117, Oct. 22, 1976, 90 Stat. 2924, which is not classified to the Code] and of other ongoing or past studies. The Commission may request appropriate Federal, State, or local agencies to prepare such studies. Any Federal agency to which such a request is submitted may conduct any such study for the purpose of this section.

"(e) Studies conducted pursuant to this section shall include, but not be limited to, the following:

"(1) The Secretary of the Interior and the Secretary of the Army, working through the Commission, shall undertake a study to determine the carrying capacity of the Upper Mississippi River System, and the long- and short-term systematic ecological impacts of (A) present and any projected expansion of navigation capacity on the fish and wildlife, water quality, wilderness, and public recreational opportunities of said rivers, (B) present operation and maintenance programs, (C) the means and measures that should be adopted to prevent or minimize loss of or damage to fish and wildlife, and (D) a specific analysis of the immediate and systematic environmental effects of any second lock at Alton, Illinois, and provide for the mitigation of any adverse impact on, and the enhancement of, such resources.

"(2) The Commission shall undertake studies to determine—

"(A) the relationship of any expansion of navigational capacity on the Upper Mississippi River System to national transportation policy,

"(B) the direct and indirect effects of any expansion of navigational capacity on the Nation's railroads and on shippers dependent upon rail service, and

"(C) transportation costs and benefits to the Nation to be derived from any expansion of navigational capacity on said River System.

The Commission is directed to immediately initiate a specific evaluation of the economic need for a second lock at Alton, Illinois, and the direct and indirect systematic effects and needs for such a second lock at Alton, Illinois.

"(3) The Commission shall undertake a program of studies, including a demonstration program to evaluate the benefits and costs of disposing of dredge spoil material in contained areas located out of the floodplain. The program shall include, but shall not be limited to, the evaluation of possible uses in the market-place for the dredge spoil studies and demonstration programs to minimize the environmental effects of channel operation and maintenance activities.

"(4) The development by the Commission of a computerized analytical inventory and system analysis for the Upper Mississippi River System to facilitate evaluation of the comparative environmental effects of alternative management proposals.

"(f) Any Secretary responsible for conducting a study under subsection (e) of this section, and other studies conducted under this section, shall produce one or more draft reports containing study conclusions and appropriate appendix materials and shall present the reports to the Commission for approval and inclusion in the master plan process.

"(g) To carry out the provisions of this section, there are authorized to be appropriated to the Commission, through the United States Water Resources Council, $12,000,000. The Commission is authorized to transfer funds to such Federal, State, or local government agencies as it deems necessary to carry out the studies and analysis authorized by this section.

"(h) For purposes of this section, the Upper Mississippi River System consists of those river reaches containing commercial navigation channels on the Mississippi River main stem north of Cairo, Illinois, the Minnesota River, Minnesota; Black River, Wisconsin; Saint Croix River, Minnesota and Wisconsin; Illinois River and Waterway, Illinois; and Kaskaskia River, Illinois.

"(i) No replacement, construction, or rehabilitation that expands the navigation capacity of locks, dams, and channels shall be undertaken by the Secretary of the Army to increase the navigation capacity of the Upper Mississippi River System, until the master plan prepared pursuant to this section has been approved by the Congress except as provided in section 102 [Pub. L. 95-502, title I, § 102, Oct. 21, 1978, 92 Stat. 1695, which is not classified to the Code] and except for necessary operating and maintenance activities.

"(j) The lock and dam authorized pursuant to section 102 [Pub. L. 95-502, title I, § 102, Oct. 21, 1978, 92 Stat. 1695, which was not classified to the Code] shall be designed and constructed to provide for possible future expansion. All other construction activities initiated by the Secretary of the Army on the Upper Mississippi River north of Cairo, Illinois, and on the Illinois River north of Grafton, Illinois, shall be initiated only in accordance with the guidelines set forth in the master plan."

SUBCHAPTER III—FINANCIAL ASSISTANCE TO STATES FOR COMPREHENSIVE PLANNING GRANT AUTHORIZATIONS

§ 1962c. Authorization of appropriations; coordination of related Federal planning assistance programs; utilization of Federal agencies administering programs contributing to water resources planning

(a) In recognition of the need for increased participation by the States in water and related land resources planning to be effective, there are hereby authorized to be appropriated to the Council, $3,000,000 for fiscal year 1979 for grants to States to assist them in developing and participating in the development of comprehensive water and related land resources plans.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 95-404, § 1(d), Sept. 30, 1978, 92 Stat. 864.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-404 substituted "$3,000,000 for fiscal year 1979" for "for fiscal years 1977 and 1978, $5,000,000 in each such year".

INCREASES IN SALARY, PAY, RETIREMENT, OR OTHER BENEFITS FOR FEDERAL EMPLOYEES

For authority for payment of increases in salary and other Federal employee benefits, see section 1(e) of Pub. L. 95-404, set out as a note under section 1962d of this title.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 1962d. Authorization of appropriations to the Water Resources Council

There are authorized to be appropriated to the Water Resources Council:

(a) Limitation for single river basin commission

The sum of $2,886,000 for fiscal year 1979 for the Federal share of the expenses of administration and operation of river basin commissions, including salaries and expenses of the chairmen, but not including funds authorized by subsection (c) below: *Provided,* That not more than $750,000 annually shall be available under this subsection for any single river basin commission;

(b) Limitation on the expenses of the Water Resources Council

the [1] sum of $2,668,000 for fiscal year 1979 for the expenses of the Water Resources Council in administering this chapter, not including funds authorized by subsection (c) below;

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[1] So in original. Probably should be "The".

(c) Limitation on availability of funds for preparation of certain studies and for assessments and plans

The sum of $3,179,900 for fiscal year 1979 for preparation of assessments, and for directing and coordinating the preparation of such river basin plans as the Council determines are necessary and desirable in carrying out the policy of this chapter: *Provided*, That $828,900 shall be available under this subsection for preparation of the Columbia River Estuary Special Study: *Provided further*, That $308,000 shall be available under this subsection for preparation of the New England Port and Harbor Study and $135,000 shall be available for completion of the Hudson River Basin Level B Study: *Provided further*, That $150,000 shall be available under this subsection for completion of Case Studies of the Application of Cost Sharing Policy Options for Flood Plain Management in the Connecticut River Basin: *Provided further*, That not more than $2,500,000 shall be available under this subsection for the preparation of assessments: *Provided further*, That the Council may transfer funds authorized by this subsection to river basin commissions and to Federal and State agencies upon such terms and conditions as it determines are necessary and desirable to carry out the above functions in an economical, efficient, and timely manner, and that such commissions and agencies are hereby authorized to receive and expend such funds pursuant to this subsection.

(As amended Pub. L. 95-41, § 1, June 6, 1977, 91 Stat. 209; Pub. L. 95-404, § 1(a)-(c), Sept. 30, 1978, 92 Stat. 864.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-404, § 1(a), substituted "The sum of $2,886,000 for fiscal year 1979" for "not to exceed $6,000,000 for fiscal year 1978".

Subsec. (b). Pub. L. 95-404, § 1(b), substituted "the sum of $2,668,000 for fiscal year 1979" for "not to exceed $2,000,000 for fiscal year 1978".

Subsec. (c). Pub. L. 95-404, § 1(c), substituted "The sum of $3,179,900 for fiscal year 1979" for "not to exceed the sum of $3,905,000 for fiscal year 1978" and adding provisions making available the sums of $828,900 for the Columbia River Estuary Special Study, $308,000 for the New England Port and Harbor Study, $135,000 for the Hudson River Basin Level B Study, and $150,000 for the Case Studies of the Application of Cost Sharing Policy Options for Flood Plan Management in the Connecticut River Basin.

1977—Subsec. (a). Pub. L. 95-41, § 1(b), substituted "for fiscal year 1978" for "annually".

Subsec. (b). Pub. L. 95-41, § 1(c), substituted "for fiscal year 1978" for "annually".

Subsec. (c). Pub. L. 95-41, § 1(a), substituted "not to exceed the sum of $3,905,000 for fiscal year 1978" for "not to exceed a total of $10,000,000 for fiscal years 1976 and 1977".

INCREASES IN SALARY, PAY, RETIREMENT, OR OTHER BENEFITS FOR FEDERAL EMPLOYEES

Section 1(e) of Pub. L. 95-404 provided that: "Appropriations authorized by this Act [amending sections 1962c and 1962d of this title] for salary, pay, retirement, or other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases authorized by law."

§ 1962d-17. Regional or river basin plans and Federal water and related land resources projects; preparation, formulation, and evaluation

RATES USED TO ASSESS RETURN ON FEDERAL GOVERNMENT'S INVESTMENT IN PROJECTS OF ARMY CORPS OF ENGINEERS AND BUREAU OF RECLAMATION

Pub. L. 95-28, title II, § 204, May 13, 1977, 91 Stat. 121, provided that: "It is hereby reiterated that the interest rates or rates of discount to be used to assess the return on the Federal Government's investment in projects of the United States Army Corps of Engineers or the Department of the Interior Bureau of Reclamation [now the Water and Power Resources Service], shall be those interest rates or rates of discount established by Public Law 93-251, the Water Resources Development Act of 1974 [see Short Title of 1974 Amendment note set out under section 1962 of this title] or by any prior law authorizing projects of the United States Army Corps of Engineers or the Department of the Interior Bureau of Reclamation."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 16 section 2704.

CHAPTER 20—ELECTIVE FRANCHISE

SUBCHAPTER I-E—VOTING RIGHTS OF OVERSEAS CITIZENS

Sec.	
1973dd-2a.	Current absentee voting information [New].
1973dd-2b.	Printing and transmitting of voting material [New]. (a) Official postcards; availability. (b) Facilitation of transmission; priority airmail; segregation from other mail. (c) Free postage.
1973dd-6.	Authorization of appropriations [New].

SUBCHAPTER I-A—ENFORCEMENT OF VOTING RIGHTS

§ 1973a. Proceeding to enforce the right to vote

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§§ 1973d to 1973g

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 1973k. Termination of listing procedures; basis for termination; survey or census by Director of the Census

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SUBCHAPTER I-D—FEDERAL ABSENTEE VOTING ASSISTANCE

Subchapter Referred to in Other Sections

This subchapter is referred to in section 1973dd-2a of this title; title 22 section 2504; title 39 sections 2401, 3627, 3684.

Part I—Recommendation to States

§ 1973cc. State enactment of absentee voting legislation; covered persons

(a) The Congress expresses itself as favoring, and recommends that the several States take, immediate legislative or administrative action to enable every person in any of the following categories who is absent from the place of his voting residence to vote by absentee ballot in any primary, special, or general election held in his election district or precinct, if he is otherwise eligible to vote in that election:

(1) Members of the Armed Forces while in the active service, and their spouses and dependents.

(2) Members of the merchant marine of the United States, and their spouses and dependents.

(3) Citizens of the United States temporarily residing outside the territorial limits of the United States and the District of Columbia and their spouses and dependents when residing with or accompanying them.

(b) Each State shall enable every citizen in the following categories who is absent from the place of his voting residence to register absentee and to vote by absentee ballot in any Federal election, as defined in section 1973dd(1) of this title, held in his election district or precinct if he is otherwise eligible to vote in that election:

(1) Members of the Armed Forces while in the active service, and their spouses and dependents.

(2) Members of the Merchant Marine of the United States, and their spouses and dependents.

The rights granted in this section shall be supplemental to the voting rights presently enjoyed by these citizens under other Federal and State laws.

(As amended Nov. 4, 1978, Pub. L. 95-593, § 7, 92 Stat. 2537.)

Amendments

1978—Pub. L. 95-593 designated existing provisions as subsec. (a) and added subsec. (b).

Part II—Responsibilities of Federal Government

§ 1973cc-11. Presidential designee to coordinate and facilitate actions to discharge Federal responsibilities; report

Section Referred to in Other Sections

This section is referred to in sections 1973cc-2, 1973dd-2a of this title.

§ 1973cc-12. Current absentee voting information

The Presidential designee shall request, annually or more often when appropriate, each State to furnish him with current absentee voting information for such State. Such information shall include election dates, officers to be elected, constitutional amendments, and other proposals to be voted on, absentee registration and voting procedures, any provision under such State's law requiring the removal of the name of any person from such State's registration roll (for whatever reason), information related to the number of absentee voters in a State who are entitled to vote in Federal elections under this subchapter, and other relevant data. As soon as possible after receipt of such information, he shall furnish it to the departments and agencies of the executive branch affected by this subchapter. Such departments and agencies are authorized to reprint and distribute such information to the extent necessary.

(As amended Nov. 4, 1978, Pub. L. 95-593, § 8, 92 Stat. 2537.)

Amendments

1978—Pub. L. 95-593 added provisions relating to information respecting removal from the registration roll and to the number of eligible absentee voters.

§ 1973cc-13. Cooperation of Government officials; drafts of state legislation; printing and transmitting of post cards

All Government officials shall, to the extent practicable and compatible with their primary responsibilities, cooperate with the Presidential designee in carrying out the purposes of this subchapter. All such officials shall, as far as practicable, take all reasonable measures to expedite, transmit, deliver, and return post cards, ballots, envelopes, and instructions for voting procedures mailed to or by persons to whom this subchapter is applicable. In addition, and as requested by the Presidential designee, it shall be the duty of—

(1) the Attorney General to cooperate and advise with the government of the several States in the formulation of drafts of State legislation designed to implement the recommendations for State action contained in this subchapter;

[*See main edition for text of (2)*]

(3) the Postmaster General and the heads of the departments and agencies concerned to facilitate the transmission of balloting materials to and from persons to whom this subchapter is applicable. Any balloting material sent from the United States to such persons

shall be sent by priority airmail or by the most expedited postal service available. Any balloting material sent to the United States by such persons shall be returned by priority airmail or by the most expedited service available, wherever practicable. In the case of ballots executed outside the United States by any such person, such ballots may be segregated from other forms of mail and placed in special bags marked with special tags printed and distributed for this purpose.

(As amended Nov. 4, 1978, Pub. L. 95-593, § 9, 92 Stat. 2538.)

AMENDMENTS

1978—Pub. L. 95-593 in par. (1) substituted "government of the several States" for "Council of State Governments", and revised par. (3) to provide that most expedited postal service available be used as alternative to priority airmail.

§ 1973cc-14. Form and content of post card application

The form of the Federal post card application shall be as follows:

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Notwithstanding the provisions of subsections (a), (b), and (c) of this section, the Presidential designee shall design, for purposes of carrying out the provisions of this subchapter and the Overseas Citizens Voting Rights Act of 1975 [42 U.S.C. 1973dd et seq.], a single form of postcard application for registration to vote and for an absentee ballot. The Presidential designee is empowered to promulgate such form by regulation and upon adoption of such form, subsections (a), (b), and (c) of this section shall have no effect.

(As amended Nov. 4, 1978, Pub. L. 95-593, § 10, 92 Stat. 2538.)

REFERENCES IN TEXT

The Overseas Citizens Voting Rights Act of 1975, referred to in subsec. (d), is Pub. L. 94-203, Jan. 2, 1976, 89 Stat. 1142, as amended, which is classified generally to subchapter I-E (§ 1973dd et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note under section 1971 of this title and Tables.

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-593 added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1973dd of this title.

SUBCHAPTER I-E—VOTING RIGHTS OF OVERSEAS CITIZENS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1973cc-14 of this title; title 39 sections 2401, 3627.

§ 1973dd. Definitions

For the purposes of this subchapter, the term—

[*See main edition for text of* (*1*)]

(2) "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands;

(3) "United States" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands, but does not include American Samoa, the Canal Zone, the Trust Territory of the Pacific Islands, or any other territory or possession of the United States; and

(4) "official postcard" means a postcard application for registration to vote and for an absentee ballot in the form provided in section 1973cc-14(d) of this title.

(As amended Pub. L. 95-593, § 1, Nov. 4, 1978, 92 Stat. 2535.)

AMENDMENTS

1978—Par. (4). Pub. L. 95-593 added par. (4).

EFFECTIVE DATE

Section 10, formerly § 8, of Pub. L. 94-203, as renumbered by Pub. L. 95-593, § 4(1), Nov. 4, 1978, 92 Stat. 2535, provided that: "The provisions of the Act [this subchapter] shall apply with respect to any Federal election held on or after January 1, 1976."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1973cc of this title.

§ 1973dd-1. Qualifications for registration and vote by absentee ballot

Each citizen residing outside the United States shall have the right to register absentee for, and to vote by, an absentee ballot in any Federal election in the State, or any election district of such State, in which he was last domiciled immediately prior to his departure from the United States and in which he could have met all qualifications (except any qualification relating to minimum voting age) to vote in Federal elections under any present law, even though while residing outside the United States he does not have a place of abode or other address in such State or district, and his intent to return to such State or district may be uncertain, if—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) he has a valid passport or card of identity and registration issued under the authority of the Secretary of State or, in lieu thereof, an alternative form of identification consistent with this subchapter and applicable State or district requirements, if a citizen does not possess a valid passport or card of identity and registration.

(As amended Pub. L. 95-593, § 2, Nov. 4, 1978, 92 Stat. 2535.)

AMENDMENTS

1978—Par. (3). Pub. L. 95-593 added provisions relating to an alternative form of identification.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1973dd-2, 1973dd-2a, 1973dd-2b, 1973dd-3 of this title.

§ 1973dd-2. State provisions for registration and vote by absentee ballot

[*See main edition for text of* (*a*) *and* (*b*)]

(c) In carrying out the provisions of this section, it is recommended that each State—

(1) accept any official postcard which is duly executed by any person who meets the requirements in section 1973dd-1 of this title as a simultaneous application for registration under such State's election laws and for an absentee ballot under such State's absentee balloting laws;

(2) if a special application is required for registration by mail, provide that the necessary forms will be sent with the absentee ballot and may be returned with it;

(3) authorize and instruct the State or local election officials, upon receipt of any official postcard application or any other application for registration to vote or an absentee ballot, to mail immediately to the applicant a ballot, instructions for voting and returning the ballot, and a self-addressed envelope; and

(4) provide that there be printed across the face of each envelope the words "Official Election Balloting Material—Via Air Mail", or similar language.

(As amended Pub. L. 95-593, § 3, Nov. 4, 1978, 92 Stat. 2535.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-593 added subsec. (c).

§ 1973dd-2a. Current absentee voting information

(a) The Presidential designee under section 1973cc-11 of this title (hereinafter in this subchapter referred to as the "Presidential designee") shall request, when appropriate, each State to furnish him with information on the current absentee registration and voting procedures of each State pertaining to citizens entitled to vote in Federal elections under this subchapter. Such information shall include election dates, officers to be elected, any provisions under such State's law requiring the removal of the name of any person from such State's voter registration roll (for whatever reason), and information related to the number of absentee voters in such State who are entitled to vote in Federal elections under this subchapter. Where consistent with their respective duties, appropriate departments or agencies of the Federal Government shall assist and cooperate with the Presidential designee, both in the collection of such information and in its dissemination to persons who meet the requirements in section 1973dd-1 of this title.

(b) The Secretary of State shall publicize, in the manner best designed to reach the persons meeting the requirements in section 1973dd-1 of this title—

(1) the right of such persons to vote in Federal elections and the procedures available to such persons to enforce that right, as provided in this subchapter; and

(2) with the assistance of the Postmaster General, the availability of expedited mail delivery of balloting material under this subchapter.

The Presidential designee shall notify all appropriate State and local election officials of such availability under this subchapter and under the Federal Voting Assistance Act of 1955 (42 U.S.C. 1973cc et seq.).

(Pub. L. 94-203, § 5, as added Pub. L. 95-593, § 4(2), Nov. 4, 1978, 92 Stat. 2535.)

REFERENCES IN TEXT

The Federal Voting Assistance Act of 1955, referred to in subsec. (b), is act Aug. 9, 1955, ch. 656, 69 Stat. 584, as amended, which is classified principally to subchapter I-D (§ 1973cc et seq.) of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1971 of this title and Tables.

PRIOR PROVISIONS

A prior section 5 of Pub. L. 94-203, Jan. 2, 1976, 89 Stat. 1143, which was classified to section 1973dd-3 of this title, was renumbered section 7 of Pub. L. 94-203 by Pub. L. 95-593, § 4(1), Nov. 4, 1978, 92 Stat. 2535.

§ 1973dd-2b. Printing and transmitting of voting material

(a) Official postcards; availability

The Administrator of General Services shall cause to be printed and distributed to the Department of Justice, the Department of State, and any other appropriate department or agency of the Federal Government official postcards for use in accordance with the provisions of this subchapter as directed by the Presidential designee. Such departments or agencies shall deliver or make available such postcards to persons meeting the requirements in section 1973dd-1 of this title not later than August 15 immediately before any general Federal election for use in such election. To the extent practicable, such postcards shall also be made available at appropriate times to such persons for use in special or primary Federal elections.

(b) Facilitation of transmission; priority airmail; segregation from other mail

(1) The Postmaster General, the Attorney General, the Secretary of State, and the head of any other appropriate department or agency of the Federal Government shall facilitate the transmission of balloting material, including official postcards, absentee ballots, voting instructions, and envelopes for the return of such ballots, to and from persons meeting the requirements in section 1973dd-1 of this title.

(2) Any balloting material sent from the United States to any person meeting the requirements in section 1973dd-1 of this title shall be sent by priority airmail or by the most expedited postal service available.

(3) Any balloting material sent to the United States by any person meeting the requirements in section 1973dd-1 of this title shall be returned by priority airmail or by the most expedited service available, wherever practicable. Such material may be mailed from any Armed Forces post office in an overseas area established as provided in section 406 of title 39, unless otherwise prohibited by any treaty or other agreement between the United States and a foreign country. In the case of ballots executed outside the United States by any person, such ballots may be segregated from other forms of mail and placed in special bags marked with special tags printed and distributed by the Postmaster General for this purpose.

(c) Free postage

Official postcards, ballots, voting instructions, and envelopes, whether transmitted individually or in bulk, shall be free of postage, including airmail postage, when sent from the United States in the United States mails.

(Pub. L. 94-203, § 6, as added Pub. L. 95-593, § 4(2), Nov. 4, 1978, 92 Stat. 2536.)

PRIOR PROVISIONS

A prior section 6 of Pub. L. 94-203, Jan. 2, 1976, 89 Stat. 1143, which was classified to section 1973dd-4 of this title, was renumbered section 8 of Pub. L. 94-203 by Pub. L. 95-593, § 4(1), Nov. 4, 1978, 92 Stat. 2535.

§ 1973dd-3. Enforcement by Attorney General

[*See main edition for text of section*]

(Pub. L. 94-203, § 7, formerly § 5, Jan. 2, 1976, 89 Stat. 1143; renumbered Pub. L. 95-593, § 4(1), Nov. 4, 1978, 92 Stat. 2535.)

PRIOR PROVISIONS

A prior section 7 of Pub. L. 94-203, Jan. 2, 1976, 89 Stat. 1144, which was classified to section 1973dd-5 of this title, was renumbered section 9 of Pub. L. 94-203 by Pub. L. 95-593, § 4(1), Nov. 4, 1978, 92 Stat. 2535.

§ 1973dd-4. Separability of provisions

[*See main edition for text of section*]

(Pub. L. 94-203, § 8, formerly § 6, Jan. 2, 1976, 89 Stat. 1143; renumbered Pub. L. 95-593, § 4(1), Nov. 4, 1978, 92 Stat. 2535.)

PRIOR PROVISIONS

A prior section 8 of Pub. L. 94-203, Jan. 2, 1976, 89 Stat. 1144, which was set out as an Effective Date note under section 1973dd of this title, was renumbered section 10 of Pub. L. 94-203 by Pub. L. 95-593, § 4(1), Nov. 4, 1978, 92 Stat. 2535.

§ 1973dd-5. Applicability to State registration requirements and voting practices; determination of residence or domicile for tax purposes

(a) Nothing in this subchapter shall—

(1) be deemed to require registration in any State or election district in which registration is not required as a precondition to voting in any Federal election; or

(2) prevent any State or election district from adopting or following any voting practice which is less restrictive than the practices prescribed by this subchapter.

(b) The exercise of any right to register or vote in Federal elections by any citizen outside the United States shall not affect the determination of his place of residence or domicile for purposes of any tax imposed under Federal, State, or local law.

(Pub. L. 94-203, § 9, formerly § 7, Jan. 2, 1976, 89 Stat. 1144; renumbered and amended Pub. L. 95-593, §§ 4(1), 5, Nov. 4, 1978, 92 Stat. 2535, 2537.)

AMENDMENTS

1978—Pub. L. 95-593, § 5, designated existing provisions as subsec. (a) and added subsec. (b).

§ 1973dd-6. Authorization of appropriations

There are hereby authorized to be appropriated such sums as may be necessary to carry out the purposes of this subchapter.

(Pub. L. 94-203, § 11, as added Pub. L. 95-593, § 6, Nov. 4, 1978, 92 Stat. 2537.)

CHAPTER 20A—CIVIL RIGHTS COMMISSION

§ 1975. Commission on Civil Rights

SHORT TITLE OF 1979 AMENDMENT

Pub. L. 96-81, § 1, Oct. 6, 1979, 93 Stat. 642, provided: "That this Act [amending sections 1975c and 1975e of this title] may be cited as the 'Civil Rights Commission Authorization Act of 1979'."

SHORT TITLE OF 1978 AMENDMENT

Pub. L. 95-444, § 1, Oct. 10, 1978, 92 Stat. 1067, provided: "That this Act [amending sections 1975b to 1975e of this title] may be cited as the 'Civil Rights Commission Act of 1978'."

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-132, § 1, Oct. 13, 1977, 91 Stat. 1157, provided: "That this Act [which amended section 1975e of this title] may be cited as the 'Civil Rights Commission Authorization Act of 1977'."

§ 1975b. Compensation of members

(a) Each member of the Commission who is not otherwise in the service of the Government of the United States shall receive a sum equivalent to the compensation paid at level IV of the Federal Executive Salary Schedule, pursuant to section 5315 of title 5, prorated on a daily basis for each day spent in the work of the Commission, shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with section 5703 of title 5.

(b) Each member of the Commission who is otherwise in the service of the Government of the United States shall serve without compensation in addition to that received for such other service, but while engaged in the work of the Commission shall be paid actual travel expenses, and per diem in lieu of subsistence expenses when away from his usual place of residence, in accordance with subchapter I of chapter 57 of title 5.

(As amended Pub. L. 95-444, § 2, Oct. 10, 1978, 92 Stat. 1067.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-444, § 2(a), substituted "section 5703 of title 5" for "section 5 of the Administrative Expenses Act of 1946, as amended.

Subsec. (b). Pub. L. 95-444, § 2(b), substituted "subchapter I of chapter 57 of title 5" for "the provisions of the Travel Expenses Act of 1949, as amended".

§ 1975c. Duties of Commission

(a) Investigate, study, collect information, etc., respecting denials of equal protection

The Commission shall—

(1) investigate allegations in writing under oath or affirmation that certain citizens of the United States are being deprived of their right to vote and have that vote counted by reason of their color, race, religion, sex, age,

handicap, or national origin; which writing, under oath or affirmation, shall set forth the facts upon which such belief or beliefs are based;

(2) study and collect information concerning legal developments constituting discrimination or a denial of equal protection of the laws under the Constitution, because of race, color, religion, sex, age, handicap, or national origin or in the administration of justice;

(3) appraise the laws and policies of the Federal Government with respect to discrimination or denials of equal protection of the laws under the Constitution because of race, color, religion, sex, age, handicap, or national origin or in the administration of justice;

(4) serve as a national clearinghouse for information in respect to discrimination or denials of equal protection of the laws because of race, color, religion, sex, age, handicap, or national origin, including but not limited to the fields of voting, education, housing, employment, the use of public facilities, and transportation, or in the administration of justice;

[*See main edition for text of* (5)]

(6) Redesignated (b)

(b) Investigation of membership practices or internal operations of fraternal organizations, etc., prohibited

Nothing in this chapter or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to inquire into or investigate any membership practices or internal operations of any fraternal organization, any college or university fraternity or sorority, any private club or any religious organization.

(c) Reports to President and Congress

The Commission shall submit interim reports to the President and to the Congress at such times as the Commission, the Congress or the President shall deem desirable, and shall submit to the President and to the Congress a final report of its activities, findings, and recommendations not later than the last day of the fiscal year ending September 30, 1983.

(d) Termination of Commission

Sixty days after the submission of its final report and recommendations the Commission shall cease to exist.

(e) Definition of "handicap"

As used in this section, the term "handicap" means, with respect to an individual, a circumstance that would make that individual a handicapped individual as defined in the second sentence of section 706(6) of title 29.

(f) Study and collection of information about laws and policies of Federal Government or any other governmental body prohibited

Nothing in this chapter or any other Act shall be construed as authorizing the Commission, its Advisory Committees, or any person under its supervision or control to appraise, or to study and collect information about, laws and policies of the Federal Government, or any other governmental authority in the United States, with respect to abortion.

(g) Appraisal of federal laws and policies denying constitutional rights to Americans who are members of eastern- and southern-European ethnic groups

The Commission shall continue to appraise the laws and policies of the Federal Government with respect to denials of equal protection of the laws under the Constitution involving Americans who are members of eastern- and southern-European ethnic groups and shall report its findings to the Congress. Such report shall include an analysis of the adverse consequences of affirmative action programs encouraged by the Federal Government upon the equal opportunity rights of these Americans.

(As amended Pub. L. 95-444, § 3, Oct. 10, 1978, 92 Stat. 1067; Pub. L. 96-81, § 2, Oct. 6, 1979, 93 Stat. 642.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (b) and (f), in the original read "this Act", meaning Pub. L. 85-315, Sept. 9, 1957, 71 Stat. 634, as amended, which enacted this chapter, section 1995 of this title, and section 295-1 of former Title 5, Executive Departments and Government Officers and Employees, amended section 1971 of this title and sections 1343 and 1861 of Title 28, Judiciary and Judicial Procedure, repealed section 1993 of this title, and enacted provisions set out as a note under section 1975 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1975 of this title and Tables.

Section 706(6) of title 29, referred to in subsec. (e), was redesignated section 706(7) and amended by Pub. L. 95-602, title I, § 122(6), (8), Nov. 6, 1978, 92 Stat. 2984, 2985. Provisions formerly contained in the second sentence of section 706(6) are covered by the first sentence of section 706(7)(B).

AMENDMENTS

1979—Subsec. (g). Pub. L. 96-81 added subsec. (g).

1978—Subsec. (a)(1). Pub. L. 95-444, § 3(a)(1), inserted "age, handicap," following "sex".

Subsec. (a)(2). Pub. L. 95-444, § 3(a)(1), (3), inserted "age, handicap", following "sex" and "discrimination or" preceding "a denial", respectively.

Subsec. (a)(3), (4). Pub. L. 95-444, § 3(a)(2), (4), inserted "age, handicap," following "sex", and "discrimination or" preceding "denials".

Subsec. (a)(6). Pub. L. 95-444, § 3(a)(5), redesignated former subsec. (a)(6) as (b).

Subsec. (b). Pub. L. 95-444, § 3(a)(5), redesignated subsec. (a)(6) as subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 95-444, § 3(a)(6), (b), redesignated former subsec. (b) as (c), and in subsec. (c) as so redesignated, substituted "the fiscal year ending September 30, 1983" for "fiscal year 1978". Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95-444, § 3(a)(6), redesignated former subsec. (c) as (d).

Subsecs. (e), (f). Pub. L. 95-444, § 3(a)(7), added subsecs. (e) and (f).

STUDY OF RACIAL AND ETHNIC DISCRIMINATION IN PROGRAMS FOR OLDER AMERICANS

Pub. L. 95-478, title III, Oct. 18, 1978, 92 Stat. 1554, provided that:

"SEC. 301. [Study authorized]. (a) The Commisson Civil Rights shall (1) undertake a comprehensive study of discrimination based on race or ethnic background in any federally-assisted programs and activities which affect older individuals; and (2) identify with particularity any such federally-assisted program or activity in which evidence is found of individuals or organizations who are otherwise qualified being, on the basis of race or ethnic background, excluded from participation in, denied the benefits of, refused employment or contracts with, or subject to discrimination under, such program or activity.

"(b) As part of the study required by this section, the Commission shall conduct public hearings to elicit the views of interested parties, including the heads of Federal departments and agencies, on issues relating to racial or ethnic discrimination in programs and activities affecting older individuals receiving Federal financial assistance, and particularly with respect to discrimination among potential participants in, or beneficiaries of, specific federally-assisted programs.

"Sec. 302 [Administrative provisions]. (a)(1) The Commission may obtain, through grant or contract, analyses, research, and studies by independent experts of issues relating to racial and ethnic discrimination in aging programs and activities and publish the results thereof.

"(2) For purposes of the study required by section 301, the Commission may accept and utilize the services of voluntary or uncompensated personnel, without regard to the provisions of section 105(b) of the Civil Rights Act of 1957 (42 U.S.C. 1975(b)) [section 1975d(b) of this title].

"(b) The head of each Federal department or agency shall cooperate in all respects with the Commission with respect to the study required by section 301, and shall provide to the Commission such data, reports, and documents in connection with the subject matter of such study as the Commission may request.

"Sec. 303 [Reports]. (a) Not later than 18 months after the date of the enactment of this Act [Oct. 18, 1978], the Commission shall transmit a report of its findings and its recommendations for any statutory changes and administrative action, including suggested general regulations, to the Congress and to the President. The Commission shall provide a copy of its report to the head of each Federal department or agency with respect to which the Commission makes findings or recommendations.

"(b) Not later than 45 working days after receiving a copy of the report required by subsection (a), the head of each Federal department or agency with respect to which the Commission makes its recommendations or findings shall submit his comments and recommendations regarding such report to the President and to the appropriate committees of the Congress.

"Sec. 304 [Authorization of appropriations]. There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this title."

§ 1975d. Powers

(a) Staff director; appointment and compensation; personnel and services

There shall be a full-time staff director for the Commission who shall be appointed by the President by and with the advice and consent of the Senate. The President shall consult with the Commission before submitting the nomination of any person for appointment to the position of staff director. Within the limitations of its appropriations, the Commission may appoint such other personnel as it deems advisable, in accordance with the civil service and classification laws, and may procure services as authorized by section 3109 of title 5, but at rates for individuals not in excess of the daily equivalent paid for positions at the maximum rate for GS-15 of the General Schedule under section 5332 of title 5.

[*See main edition for text of* (*b*)]

(c) Advisory committees

The Commission may constitute such advisory committees within States as it deems advisable, but the Commission shall constitute at least one advisory committee within each State composed of citizens of that State. The Commission may consult with governors, attorneys general, and other representatives of State and local governments, and private organizations, as it deems advisable.

(d) Exemption from conflict of interest statutes

Members of the Commission, and members of advisory committees constituted pursuant to subsection (c) of this section, shall be exempt from the operation of sections 203, 205, 207, 208, and 209 of title 18.

[*See main edition for text of* (*e*) *to* (*i*)]

(As amended Pub. L. 95-444, §§ 4-6, Oct. 10, 1978, 92 Stat. 1067, 1068.)

Amendments

1978—Subsec. (a). Pub. L. 95-444, § 4, struck out "and who shall receive compensation at a rate, to be fixed by the President, not in excess of $22,500 a year" following "consent of the Senate".

Subsec. (c). Pub. L. 95-444, § 5, added "as it deems advisable, but the Commission shall constitute at least one advisory committee within each State" following "within States", and substituted "The Commission may consult" for "and may consult".

Subsec. (d). Pub. L. 95-444, § 6, substituted "sections 203, 205, 207, 208, and 209 of title 18" for "sections 281, 283, 284, 434, and 1914 of title 18, and section 190 of the Revised Statutes (5 U.S.C. 99)".

§ 1975e. Authorization of appropriations

There are authorized to be appropriated not to exceed $14,000,000 to carry out the provisions of this chapter for the fiscal year ending September 30, 1980.

(As amended Pub. L. 95-132, § 2, Oct. 13, 1977, 91 Stat. 1157; Pub. L. 95-444, § 7, Oct. 10, 1978, 92 Stat. 1068; Pub. L. 96-81, § 3, Oct. 6, 1979, 93 Stat. 642.)

Amendments

1979—Pub. L. 96-81 substituted "There are authorized to be appropriated not to exceed $14,000,000 to carry out the provisions of this chapter for the fiscal year ending September 30, 1980" for "There are authorized to be appropriated such sums as are necessary to carry out the provisions of this chapter for the fiscal year ending September 30, 1979".

1978—Pub. L. 95-444 substituted provisions authorizing the appropriation of such sums as are necessary to carry out the provisions of this Act for the fiscal year ending September 30, 1979, for provisions authorizing the appropriation of $5,500,000 for the fiscal year ending June 30, 1973 and $7,000,000 for each fiscal year thereafter through June 30, 1978.

1977—Pub. L. 95-132 substituted provisions authorizing to be appropriated for the fiscal year ending Sept. 30, 1978, the sum of $10,480,000 and such additional amounts as may be necessary for increases in salary, etc., arising after Oct. 13, 1977, for provisions authorizing to be appropriated for the fiscal year ending June 30, 1976, the sum of $7,893,000, and for the period beginning July 1, 1976, and ending Sept. 30, 1976, the sum of $1,993,000, and for the fiscal year ending Sept. 30, 1977, the sum of $9,540,000, and such additional amounts for those fiscal years and period prior to Oct. 1, 1977, as may be necessary for increases in salary, etc., arising after May 27, 1976.

CHAPTER 21—CIVIL RIGHTS

SUBCHAPTER I—GENERALLY

Sec.	
1996.	Protection and preservation of traditional religions of Native Americans [New].

SUBCHAPTER I—GENERALLY

§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

(As amended Pub. L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.)

AMENDMENTS

1979—Pub. L. 96-170 added "or the District of Columbia" following "Territory", and provisions relating to Acts of Congress applicable solely to the District of Columbia.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-170 applicable with respect to any deprivation of rights, privileges, or immunities secured by the Constitution and laws occurring after Dec. 29, 1979, see section 3 of Pub. L. 96-170, set out as an Effective Date of 1979 Amendment note under section 1343 of Title 28, Judiciary and Judicial Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1988 of this title.

§ 1985. Conspiracy to interfere with civil rights

(1) Preventing officer from performing duties

If two or more persons in any State or Territory conspire to prevent, by force, intimidation, or threat, any person from accepting or holding any office, trust, or place of confidence under the United States, or from discharging any duties thereof; or to induce by like means any officer of the United States to leave any State, district, or place, where his duties as an officer are required to be performed, or to injure him in his person or property on account of his lawful discharge of the duties of his office, or while engaged in the lawful discharge thereof, or to injure his property so as to molest, interrupt, hinder, or impede him in the discharge of his official duties;

(2) Obstructing justice; intimidating party, witness, or juror

If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror; or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

(3) Depriving persons of rights or privileges

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or advocacy in a legal manner, toward or in favor of the election of any lawfully qualified person as an elector for President or Vice President, or as a Member of Congress of the United States; or to injure any citizen in person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

(R.S. § 1980.)

CODIFICATION

This section is set out in this supplement to change the designation of subsections appearing in the main edition to correspond to their designation as originally enacted in R.S. § 1980.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1986, 1988 of this title; title 28 section 1343.

§ 1996. Protection and preservation of traditional religions of Native Americans

On and after August 11, 1978, it shall be the policy of the United States to protect and preserve for American Indians their inherent right of freedom to believe, express, and exercise the traditional religions of the American Indian, Eskimo, Aleut, and Native Hawaiians, including but not limited to access to sites, use and possession of sacred objects, and the freedom to worship through ceremonials and traditional rites.

(Pub. L. 95-341, § 1, Aug. 11, 1978, 92 Stat. 469.)

Short Title

Pub. L. 95-341 is popularly known as the American Indian Religious Freedom Act.

Federal Implementation of Protective and Preservation Functions Relating to Native American Religious Cultural Rights and Practices; Presidential Report to Congress

Section 2 of Pub. L. 95-341 which provided that the President direct the various Federal departments, agencies, and other instrumentalities responsible for administering relevant laws to evaluate their policies and procedures in consultation with native traditional religious leaders to determine changes necessary to preserve Native American religious cultural rights and practices and report to the Congress 12 months after Aug. 11, 1978, was omitted from the Code as executed.

Section Referred to in Other Sections

This section is referred to in title 16 section 470ii.

SUBCHAPTER II—PUBLIC ACCOMMODATIONS

Subchapter Referred to in Other Sections

This subchapter is referred to in section 2000h of this title.

§ 2000a. Prohibition against discrimination or segregation in places of public accommodation

Act Referred to in Other Sections

The Civil Rights Act of 1964 [subchapters II to IX of this chapter] is referred to in sections 5304, 6727 of this title; title 20 sections 1221, 1221-3; title 31 section 1242.

SUBCHAPTER III—PUBLIC FACILITIES

Subchapter Referred to in Other Sections

This subchapter is referred to in section 2000h of this title.

SUBCHAPTER IV—PUBLIC EDUCATION

Subchapter Referred to in Other Sections

This subchapter is referred to in section 2000h of this title; title 20 sections 1656, 1720.

§ 2000c. Definitions

Transfer of Functions

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

§ 2000c-2. Technical assistance in preparation, adoption, and implementation of plans for desegregation of public schools

Transfer of Functions

The Office of Education of the Department of Health, Education, and Welfare was terminated and its functions were transferred to the Secretary of Education by sections 3441(a)(1) and 3503(a)(1)(A) of Title 20, Education.

SUBCHAPTER V—FEDERALLY ASSISTED PROGRAMS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 1988, 2000d-6, 2000h, 5057, 5309, 5891, 6709, 6870 of this title; title 15 sections 719*o*, 775, 3151; title 20 sections 1231e, 1232i, 1717, 3193, 3196, 3197, 3205, 3231; title 23 sections 117, 324; title 29 sections 794a, 834; title 40 section 476; title 43 section 1863; title 45 section 803; title 49 sections 1604, 1615, 1716, 1730.

§ 2000d-1. Federal authority and financial assistance to programs or activities by way of grant, loan, or contract other than contract of insurance or guaranty; rules and regulations; approval by President; compliance with requirements; reports to congressional committees; effective date of administrative action

Section Referred to in Other Sections

This section is referred to in sections 2000d-2, 2000d-5, 2930c, 2971c, 2985g, 5057 of this title; title 29 section 834; title 39 section 410.

§ 2000d-2. Judicial review; administrative procedure provisions

Section Referred to in Other Sections

This section is referred to in sections 2930c, 2971c, 2985g, 5057 of this title; title 29 section 834; title 39 section 410.

§ 2000d-5. Prohibited deferral of action on applications by local educational agencies seeking federal funds for alleged noncompliance with Civil Rights Act

The Commissioner of Education shall not defer action or order action deferred on any application by a local educational agency for funds authorized to be appropriated by this Act, by the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et seq.], by the Act of September 30, 1950 (Public Law 874, Eighty-first Congress) [20 U.S.C. 236 et seq.], by the Act of September 23, 1950 (Public Law 815, Eighty-first Congress) [20 U.S.C. 631 et seq.], or by the Cooperative Research Act [20 U.S.C. 331 et seq.], on the basis of alleged noncompliance with the provisions of this subchapter for more than sixty days after notice is given to such local agency of such deferral unless such local agency is given the opportunity for a hearing as provided in section 2000d-1 of this title, such hearing to be held within sixty days of such notice, unless the time for such hearing is extended by mutual consent of such local agency and the commissioner, and such deferral shall not continue for more than thirty days after the close of any such hearing unless there has been an express finding on the record of such hearing that such local educational agency has failed to comply with the provisions of this subchapter: *Provided*, That, for the purpose of determining whether a local educational agency is in compliance with this subchapter, compliance by such agency with a final order or judgment of a Federal court for the desegregation of the school or school system operated by such agency shall be deemed to be compliance with this subchapter, insofar as the matters covered in the order or judgment are concerned.

(Pub. L. 89-750, title I, § 182, Nov. 3, 1966, 80 Stat. 1209; Pub. L. 90-247, title I, § 112, Jan. 2, 1968, 81 Stat. 787.)

REFERENCES IN TEXT

The Elementary and Secondary Education Act of 1965, referred to in text, is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561 Nov. 1, 1978, 92 Stat. 2152, which is classified generally to chapter 47 (§ 2701 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 20 and Tables.

EFFECTIVE DATE

Pub. L. 89-750, § 191, provided that: "The provisions of this title [enacting this section and sections 241m, 871 to 880, and 886 of Title 20, Education, amending sections 241b, 241c, 241e, 241f, 241g, 241h, 241j, 241k, 241*l*, 244, 331a, 332a, 332b, 821, 822, 823, 841, 842, 843, 844, 861, 862, 863, 864, 883, and 884 of Title 20, repealing section 241d of Title 20, and enacting provisions set out as notes under sections 241a, 241b, and 241c of Title 20] shall be effective with respect to fiscal years beginning after June 30, 1966, except as specifically provided otherwise."

TRANSFER OF FUNCTIONS

The functions of the Commissioner of Education of the Department of Health, Education, and Welfare were transferred to the Secretary of Education by section 3441(a)(1) of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2000d-6 of this title; title 20 section 3193.

§ 2000d-6. Policy of United States as to application of nondiscrimination provisions in schools of local educational agencies

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER VI—EQUAL EMPLOYMENT OPPORTUNITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2000h, 5841 of this title; title 43 section 1863.

§ 2000e. Definitions

For the purposes of this subchapter—

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, or receivers.

[*See main edition for text of* (*b*) *to* (*j*)]

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion, except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: *Provided*, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(As amended Pub. L. 95-555, § 1, Oct. 31, 1978, 92 Stat. 2076; Pub. L. 95-598, title III, § 330, Nov. 6, 1978, 92 Stat. 2679.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-598 substituted "trustees in cases under title 11" for "trustees in bankruptcy".

Subsec. (k). Pub. L. 95-555 added subsec. (k).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as Effective Date note preceding section 101 of Title 11, Bankruptcy.

EFFECTIVE DATE OF 1978 AMENDMENT; EXCEPTIONS TO APPLICATION

Section 2 of Pub. L. 95-555 provided that:

"(a) Except as provided in subsection (b), the amendment made by this Act [amending this section] shall be effective on the date of enactment [Oct. 31, 1978].

"(b) The provisions of the amendment made by the first section of this Act [amending this section] shall not apply to any fringe benefit program or fund, or insurance program which is in effect on the date of enactment of this Act [Oct. 31, 1978] until 180 days after enactment of this Act."

READJUSTMENT OF BENEFITS

Section 3 of Pub. L. 95-555 provided that: "Until the expiration of a period of one year from the date of enactment of this Act [Oct. 31, 1978] or, if there is an applicable collective-bargaining agreement in effect on the date of enactment of this Act, until the termination of that agreement, no person who, on the date of enactment of this Act is providing either by direct payment or by making contributions to a fringe benefit fund or insurance program, benefits in violation with this Act [amending this section, and enacting provisions set out as a note above] shall, in order to come into compliance with this Act, reduce the benefits or the compensation provided any employee on the date of enactment of this Act, either directly or by failing to provide sufficient contributions to a fringe benefit fund or insurance program: *Provided*, That where the costs of such benefits on the date of enactment of this Act are apportioned between employers and employees, the payments or contributions required to comply with this Act may be made by employers and employees in the same proportion: *And provided further*, That nothing in this section shall prevent the readjustment of benefits or compensation for reasons unrelated to compliance with this Act."

EXECUTIVE ORDER NO. 11126

Ex. Ord. No. 11126, Nov. 1, 1963, 28 F.R. 11717, as amended by Ex. Ord. No. 11221, May 6, 1965, 30 F.R. 6427, which related to the Interdepartmental Committee on the Status of Women and the Citizens' Advisory Council on the Status of Women, was revoked by Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, set out as a note below.

Ex. Ord. No. 11246. Equal Opportunity in Federal Employment

Ex. Ord. No. 11246, Sept. 24, 1965, 30 F.R. 12319, as amended by Ex. Ord. No. 11375, Oct. 13, 1967, 32 F.R. 14303; Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985; Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501, provided:

[*See main edition for text of first par.; Part I*]

Part II—Nondiscrimination in Employment by Government Contractors and Subcontractors

SUBPART A—DUTIES OF THE SECRETARY OF LABOR

Sec. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.

SUBPART B—CONTRACTORS' AGREEMENTS

Sec. 202. Except in contracts exempted in accordance with Section 204 of this Order, all Government contracting agencies shall include in every Government contract hereafter entered into the following provisions:

"During the performance of this contract, the contractor agrees as follows:

[*See main edition for text of* (*1*) *to* (*6*)]

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965 [section 204 of this Order] so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States."

Sec. 203. [*See main edition for text of* (*a*) *and* (*b*)]

(c) Whenever the contractor or subcontractor has a collective bargaining agreement or other contract or understanding with a labor union or an agency referring workers or providing or supervising apprenticeship or training for such workers, the Compliance Report shall include such information as to such labor union's or agency's practices and policies affecting compliance as the Secretary of Labor may prescribe: *Provided,* That to the extent such information is within the exclusive possession of a labor union or any agency referring workers or providing or supervising apprenticeship or training and such labor union or agency shall refuse to furnish such information to the contractor, the contractor shall so certify to the Secretary of Labor as part of its Compliance Report and shall set forth what efforts he has made to obtain such information.

(d) The Secretary of Labor may direct that any bidder or prospective contractor or subcontractor shall submit, as part of his Compliance Report, a statement in writing, signed by an authorized officer or agent on behalf of any labor union or any agency referring workers or providing or supervising apprenticeship or other training, with which the bidder or prospective contractor deals, with supporting information, to the effect that the signer's practices and policies do not discriminate on the grounds of race, color, religion, sex or national origin, and that the signer either will affirmatively cooperate in the implementation of the policy and provisions of this order or that it consents and agrees that recruitment, employment, and the terms and conditions of employment under the proposed contract shall be in accordance with the purposes and provisions of the order. In the event that the union, or the agency shall refuse to execute such a statement, the Compliance Report shall so certify and set forth what efforts have been made to secure such a statement and such additional factual material as the Secretary of Labor may require.

[*See main edition for text of Sec. 204*]

SUBPART C—POWERS AND DUTIES OF THE SECRETARY OF LABOR AND THE CONTRACTING AGENCIES

Sec. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.

Sec. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.

(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.

Sec. 207. The Secretary of Labor shall use his best efforts, directly and through interested Federal, State, and local agencies, contractors, and all other available instrumentalities to cause any labor union engaged in work under Government contracts or any agency referring workers or providing or supervising apprenticeship or training for or in the course of such work to cooperate in the implementation of the purposes of this Order. The Secretary of Labor shall, in appropriate cases, notify the Equal Employment Opportunity Commission, the Department of Justice, or other appropriate Federal agencies whenever it has reason to believe that the practices of any such labor organization or agency violate Title VI or Title VII of the Civil Rights Act of 1964 [sections 2000d to 2000d-4 of this title and this subchapter] or other provision of Federal law.

[*See main edition for text of Sec. 208*]

SUBPART D—SANCTIONS AND PENALTIES

Sec. 209. (a) In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary may:

[*See main edition for text of* (*1*) *to* (*4*)]

(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.

[*See main edition for text of* (*6*)]

(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.

Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.

Sec. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.

Sec. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.

[*See main edition for text of Subpart E*]

Part III—Nondiscrimination Provisions in Federally Assisted Construction Contracts

Sec. 301. Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant, contract, loan, insurance, or guarantee thereunder, which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government or borrowed on the credit of the Federal Government pursuant to such grant, contract, loan, insurance, or guarantee, or undertaken pursuant to any Federal program involving such grant, contract, loan, insurance, or guarantee, the provisions prescribed for Government contracts by Section 202 of this Order or such modification thereof, preserving in substance the contractor's obligations thereunder, as may be approved by the Secretary of Labor; together with such additional provisions as the Secretary deems appropriate to establish and protect the interest of the United States in the enforcement of those obligations. Each such applicant shall also undertake and agree (1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order, and (4) to refrain from entering into any contract subject to this Order, or extension or other modification of such a contract with a contractor debarred from Government contracts under Part II, Subpart D, of this Order.

[*See main edition for text of Sec. 302*]

Sec. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.

(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.

(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.

[*See main edition for text of Sec. 304*]

Part IV—Miscellaneous

Sec. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.

[*See main edition for text of Secs. 402 to 405*]

Ex. Ord. No. 11478. Equal Employment Opportunity in Federal Government

Ex. Ord. No. 11478, Aug. 8, 1969, 34 F.R. 12985, as amended by Ex. Ord. No. 11590, Apr. 23, 1971, 36 F.R. 7831; Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053, provided:

NOW THEREFORE, under and by virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, it is ordered as follows:

Section 1. It is the policy of the Government of the United States to provide equal opportunity in Federal employment for all persons, to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age, and to promote the full realization of equal employment opportunity through a continuing affirmative program in each executive department and agency. This policy of equal opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of civilian employees of the Federal Government.

[*See main edition for text of Sec. 2*]

Sec. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

Sec. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

Sec. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the

Equal Employment Opportunity Commission pursuant to Section 4 of this Order.

[*See main edition for text of Secs. 6 to 8*]

Ex. Ord. No. 12050. National Advisory Committee for Women

Ex. Ord. No. 12050, Apr. 4, 1978, 43 F.R. 14431, as amended by Ex. Ord. No. 12057, May 8, 1978, 43 F.R. 19811; Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639, provided:

By virtue of my authority as President of the United States of America, and in order to promote equality for women in the cultural, social, economic and political life of this Nation, it is hereby ordered as follows:

Secs. 1 to 5. [Revoked by Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639.]

Sec. 6. *Interdepartmental Task Force.* The head of each agency within the Executive Branch shall designate persons responsible for reviewing the applicability of initiatives designed to promote full equality for American women, including recommendations of the 1977 National Women's Conference, to the agency's programs and policies. Persons so designated shall constitute the Interdepartmental Task Force, which shall consult regularly with the Committee. The President shall designate a person to chair the Task Force.

Secs. 7, 8. [Revoked by Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639.]

Jimmy Carter.

Ex. Ord. No. 12067. Coordination of Federal Equal Employment Opportunity Programs

Ex. Ord. No. 12067, June 30, 1978, 43 F.R. 28967, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

By virtue of the authority vested in me as President of the United States by the Constitution and statutes of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out in the Appendix to Title 5, Government Organizations and Employees], it is ordered as follows:

1-1. Implementation of Reorganization Plan

1-101. The transfer to the Equal Employment Opportunity Commission of all the functions of the Equal Employment Opportunity Coordinating Council, and the termination of that Council, as provided by Section 6 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out in the Appendix to Title 5, Government Organization and Employees] shall be effective on July 1, 1978.

1-2. Responsibilities of Equal Employment Opportunity Commission

1-201. The Equal Employment Opportunity Commission shall provide leadership and coordination to the efforts of Federal departments and agencies to enforce all Federal statutes, Executive orders, regulations, and policies which require equal employment opportunity without regard to race, color, religion, sex, national origin, age or handicap. It shall strive to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the Federal departments and agencies having responsibility for enforcing such statutes, Executive orders, regulations and policies.

1-202. In carrying out its functions under this order the Equal Employment Opportunity Commission shall consult with and utilize the special expertise of Federal departments and agencies with equal employment opportunity responsibilities. The Equal Employment Opportunity Commission shall cooperate with such departments and agencies in the discharge of their equal employment responsibilities.

1-203. All Federal departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this order and shall furnish the Commission such reports and information as it may request.

1-3. Specific Responsibilities

1-301. To implement its responsibilities under Section 1-2, the Equal Employment Opportunity Commission shall, where feasible:

(a) develop uniform standards, guidelines, and policies defining the nature of employment discrimination on the ground of race, color, religion, sex, national origin, age or handicap under all Federal statues, Executive orders, regulations, and policies which require equal employment opportunity;

(b) develop uniform standards and procedures for investigations and compliance reviews to be conducted by Federal departments and agencies under any Federal statue, Executive order, regulation or policy requiring equal employment opportunity;

(c) develop procedures with the affected agencies, including the use of memoranda of understanding, to minimize duplicative investigations or compliance reviews of particular employers or classes of employers or others covered by Federal statues, Executive orders, regulations or policies requiring equal employment opportunity;

(d) ensure that Federal departments and agencies develop their own standards and procedures for undertaking enforcement actions when compliance with equal employment opportunity requirements of any Federal statute, Executive order, regulation or policy cannot be secured by voluntary means;

(e) develop uniform record-keeping and reporting requirements concerning employment practices to be utilized by all Federal departments and agencies having equal employment enforcement responsibilities;

(f) provide for the sharing of compliance records, findings, and supporting documentation among Federal departments and agencies responsible for ensuring equal employment opportunity;

(g) develop uniform training programs for the staff of Federal departments and agencies with equal employment opportunity responsiblities;

(h) assist all Federal departments and agencies with equal employment opportunity responsibilities in developing programs to provide appropriate publications and other information for those covered and those protected by Federal equal employment opportunity statutes, Executive orders, regulations, and policies; and

(i) initiate cooperative programs, including the development of memoranda of understanding between agencies, designed to improve the coordination of equal employment opportunity compliance and enforcement.

1-302. The Equal Employment Opportunity Commission shall assist the Office of Personnel Management, or its successor, in establishing uniform job-related qualifications and requirements for job classifications and descriptions for Federal employees involved in enforcing all Federal equal employment opportunity provisions.

1-303. The Equal Employment Opportunity Commission shall issue such rules, regulations, policies, procedures or orders as it deems necessary to carry out its responsibilities under this order. It shall advise and offer to consult with the affected Federal departments and agencies during the development of any proposed rules, regulations, policies, procedures or orders and shall formally submit such proposed issuances to affected departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall use its best efforts to reach agreement with the agencies on matters in dispute. Departments and agencies shall comply with all final rules, regulations, policies, procedures or orders of the Equal Employment Opportunity Commission.

1-304. All Federal departments and agencies shall advise and offer to consult with the Equal Employment Opportunity Commission during the development of any proposed rules, regulations, policies, procedures or orders concerning equal employment opportunity. Departments and agencies shall formally submit such proposed issuances to the Equal Employment Opportunity Commission and other interested Federal departments and agencies at least 15 working days prior to public announcement. The Equal Employment Opportunity Commission shall review such proposed rules, regulations, policies, procedures or orders to ensure consistency among the operations of the various Federal departments and agencies. Issuances related to internal management and administration are exempt from this clearance process. Case handling procedures unique to a single program also are exempt, although the Equal Employment Opportunity Commission may review such procedures in order to assure maximum consistency within the Federal equal employment opportunity program.

1-305. Before promulgating significant rules, regulations, policies, procedures or orders involving equal employment opportunity, the Commission and affected departments and agencies shall afford the public an opportunity to comment.

1-306. The Equal Employment Opportunity Commission may make recommendations concerning staff size and resource needs of the Federal departments and agencies having equal employment opportunity responsibilities to the Office of Management and Budget.

1-307. (a) It is the intent of this order that disputes between or among agencies concerning matters covered by this order shall be resolved through good faith efforts of the affected agencies to reach mutual agreement. Use of the dispute resolution mechanism contained in Subsections (b) and (c) of this Section should be resorted to only in extraordinary circumstances.

(b) Whenever a dispute which cannot be resolved through good faith efforts arises between the Equal Employment Opportunity Commission and another Federal department or agency concerning the issuance of an equal employment opportunity rule, regulation, policy, procedure, order or any matter covered by this Order, the Chairman of the Equal Employment Opportunity Commission or the head of the affected department or agency may refer the matter to the Executive Office of the President. Such reference must be in writing and may not be made later than 15 working days following receipt of the initiating agency's notice of intent publicly to announce an equal employment opportunity rule, regulation, policy, prcedure or order. If no reference is made within the 15 day period, the decision of the agency which initiated the proposed issuance will become effective.

(c) Following reference of a disputed matter to the Executive Office of the President, the Assistant to the President for Domestic Affairs and Policy (or such other official as the President may designate) shall designate an official within the Executive Office of the President to meet with the affected agencies to resolve the dispute within a reasonable time.

1-4. Annual Report

1-401. The Equal Employment Opportunity Commission shall include in the annual report transmitted to the President and the Congress pursuant to Section 715 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-14), a statement of the progress that has been made in achieving the purpose of this order. The Equal Employment Opportunity Commission shall provide Federal departments and agencies an opportunity to comment on the report prior to formal submission.

1-5. General Provisions

1-501. Nothing in this order shall relieve or lessen the responsibilities or obligations imposed upon any person or entity by Federal equal employment law, Executive order, regulation or policy.

1-502. Nothing in this order shall limit the Attorney General's role as legal adviser to the Executive Branch.

Jimmy Carter.

Ex. Ord. No. 12086. Consolidation of Contract Compliance Functions for Equal Employment Opportunity

Ex. Ord. No. 12086, Oct. 5, 1978, 43 F.R. 46501, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), in order to provide for the transfer to the Department of Labor of certain contract compliance functions relating to equal employment opportunity, it is hereby ordered as follows:

1-1. Transfer of Functions

1-101. The functions concerned with being primarily responsible for the enforcement of the equal employment opportunity provisions under Parts II and III of Executive Order. No. 11246, as amended [set out as a note above], are transferred or reassigned to the Secretary of Labor from the following agencies:

(a) Department of the Treasury.
(b) Department of Defense.
(c) Department of the Interior.
(d) Department of Commerce.
(e) Department of Health, Education, and Welfare.
(f) Department of Housing and Urban Development.
(g) Department of Transportation.
(h) Department of Energy.
(i) Environmental Protection Agency.
(j) General Services Administration.
(k) Small Business Administration.

1-102. The records, property, personnel and positions, and unexpended balances of appropriations or funds related to the functions transferred or reassigned by this Order, that are available and necessary to finance or discharge those functions, are transferred to the Secretary of Labor.

1-103. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

1-2. Conforming Amendments to Executive Order No. 11246

1-201(a). In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, Section 201 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 201. The Secretary of Labor shall be responsible for the administration and enforcement of Parts II and III of this Order. The Secretary shall adopt such rules and regulations and issue such orders as are deemed necessary and appropriate to achieve the purposes of Parts II and III of this Order.".

(b) Paragraph (7) of the contract clauses specified in Section 202 of Executive Order No. 11246, as amended, is amended to read:

"(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to Section 204 of Executive Order No. 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however*, that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.".

1-202. In subsection (c) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency" in the proviso and substitute "Secretary of Labor" therefor.

1-203. In both the beginning and end of subsection (d) of Section 203 of Executive Order No. 11246, as amended, delete "contracting agency or the" in the phrase "contracting agency or the Secretary".

1-204. Section 205 of Executive Order No. 11246, as amended, is amended by deleting the last two sentences, which dealt with agency designation of compliance officers, and revising the rest of that Section to read:

"Sec. 205. The Secretary of Labor shall be responsible for securing compliance by all Government contractors and subcontractors with this Order and any implementing rules or regulations. All contracting agencies shall comply with the terms of this Order and any implementing rules, regulations, or orders of the Secretary of Labor. Contracting agencies shall cooperate with the Secretary of Labor and shall furnish such information and assistance as the Secretary may require.".

1-205. In order to delete references to the contracting agencies conducting investigations, Section 206 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 206. (a) The Secretary of Labor may investigate the employment practices of any Government contractor or subcontractor to determine whether or not the contractual provisions specified in Section 202 of this Order have been violated. Such investigation shall be conducted in accordance with the procedures established by the Secretary of Labor.".

"(b) The Secretary of Labor may receive and investigate complaints by employees or prospective employees of a Government contractor or subcontractor which allege discrimination contrary to the contractual provisions specified in Section 202 of this Order.".

1-206. In Section 207 of Executive Order No. 11246, as amended, delete "contracting agencies, other" in the first sentence.

1-207. The introductory clause in Section 209(a) of Executive Order No. 11246, as amended, is amended by deleting "or the appropriate contracting agency" from "In accordance with such rules, regulations, or orders as the Secretary of Labor may issue or adopt, the Secretary or the appropriate contracting agency may:".

1-208. In paragraph (5) of Section 209(a) of Executive Order No. 11246, as amended, insert at the beginning the phrase "After consulting with the contracting agency, direct the contracting agency to", and at the end of paragraph (5) delete "contracting agency" and substitute therefor "Secretary of Labor" so that paragraph (5) is amended to read:

"(5) After consulting with the contracting agency, direct the contracting agency to cancel, terminate, suspend, or cause to be cancelled, terminated, or suspended, any contract, or any portion or portions thereof, for failure of the contractor or subcontractor to comply with equal employment opportunity provisions of the contract. Contracts may be cancelled, terminated, or suspended absolutely or continuance of contracts may be conditioned upon a program for future compliance approved by the Secretary of Labor.".

1-209. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions, substitute "Secretary of Labor" for "each contracting agency" in Section 209(b) of Executive Order No. 11246, as amended, so that Section 209(b) is amended to read:

"(b) Pursuant to rules and regulations prescribed by the Secretary of Labor, the Secretary shall make reasonable efforts, within a reasonable time limitation, to secure compliance with the contract provisions of this Order by methods of conference, conciliation, mediation, and persuasion before proceedings shall be instituted under subsection (a)(2) of this Section, or before a contract shall be cancelled or terminated in whole or in part under subsection (a)(5) of this Section.".

1-210. In order to reflect the responsibility of the contracting agencies for prompt compliance with the directions of the Secretary of Labor, Sections 210 and 211 of Executive Order No. 11246, as amended, are amended to read:

"Sec. 210. Whenever the Secretary of Labor makes a determination under Section 209, the Secretary shall promptly notify the appropriate agency. The agency shall take the action directed by the Secretary and shall report the results of the action it has taken to the Secretary of Labor within such time as the Secretary shall specify. If the contracting agency fails to take the action directed within thirty days, the Secretary may take the action directly.".

"Sec. 211. If the Secretary of Labor shall so direct, contracting agencies shall not enter into contracts with any bidder or prospective contractor unless the bidder or prospective contractor has satisfactorily complied with the provisions of this Order or submits a program for compliance acceptable to the Secretary of Labor.".

1-211. Section 212 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 212. When a contract has been cancelled or terminated under Section 209(a)(5) or a contractor has been debarred from further Government contracts under Section 209(a)(6) of this Order, because of noncompliance with the contract provisions specified in Section 202 of this Order, the Secretary of Labor shall promptly notify the Comptroller General of the United States.".

1-212. In order to reflect the transfer of enforcement responsibility to the Secretary of Labor, references to the administering department or agency are deleted in clauses (1), (2), and (3) of Section 301 of Executive Order No. 11246, as amended, and those clauses are amended to read:

"(1) to assist and cooperate actively with the Secretary of Labor in obtaining the compliance of contractors and subcontractors with those contract provisions and with the rules, regulations and relevant orders of the Secretary, (2) to obtain and to furnish to the Secretary of Labor such information as the Secretary may require for the supervision of such compliance, (3) to carry out sanctions and penalties for violation of such obligations imposed upon contractors and subcontractors by the Secretary of Labor pursuant to Part II, Subpart D, of this Order,".

1-213. In order to reflect the transfer from the agencies to the Secretary of Labor of the enforcement functions "Secretary of Labor" shall be substituted for "administering department or agency" in Section 303 of Executive Order No. 11246, as amended, and Section 303 is amended to read:

"Sec. 303(a). The Secretary of Labor shall be responsible for obtaining the compliance of such applicants with their undertakings under this Order. Each administering department and agency is directed to cooperate with the Secretary of Labor and to furnish the Secretary such information and assistance as the Secretary may require in the performance of the Secretary's functions under this Order.".

"(b) In the event an applicant fails and refuses to comply with the applicant's undertakings pursuant to this Order, the Secretary of Labor may, after consulting with the administering department or agency, take any or all of the following actions: (1) direct any administering department or agency to cancel, terminate, or suspend in whole or in part the agreement, contract or other arrangement with such applicant with respect to which the failure or refusal occurred; (2) direct any administering department or agency to refrain from extending any further assistance to the applicant under the program with respect to which the failure or refusal occurred until satisfactory assurance of future compliance has been received by the

Secretary of Labor from such applicant; and (3) refer the case to the Department of Justice or the Equal Employment Opportunity Commission for appropriate law enforcement or other proceedings.".

"(c) In no case shall action be taken with respect to an applicant pursuant to clause (1) or (2) of subsection (b) without notice and opportunity for hearing.".

1-214. Section 401 of Executive Order No. 11246, as amended, is amended to read:

"Sec. 401. The Secretary of Labor may delegate to any officer, agency, or employee in the Executive branch of the Government, any function or duty of the Secretary under Parts II and III of this Order.".

1-3. General Provisions

1-301. The transfers or reassignments provided by Section 1-1 of this Order shall take effect at such time or times as the Director of the Office of Management and Budget shall determine. The Director shall ensure that all such transfers or reassignments take effect within 60 days.

1-302. The conforming amendments provided by Section 1-2 of this Order shall take effect on October 8, 1978; except that, with respect to those agencies identified in Section 1-101 of this Order, the conforming amendments shall be effective on the effective date of the transfer or reassignment of functions as specified pursuant to Section 1-301 of this Order.

Jimmy Carter.

Ex. Ord. No. 12135. President's Advisory Committee for Women

Ex. Ord. No. 12135, May 9, 1979, 44 F.R. 27639, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), and in order to amend the organization and responsibilities of the National Advisory Committee for Women, it is hereby ordered as follows:

1-1. Establishment of the Committee

1-101. The National Advisory Committee for Women is continued and redesignated the President's Advisory Committee for Women.

1-102. The President shall appoint not more than thirty individuals to serve on the Committee. The President shall designate one member to chair the Committee and may designate two members as vice-chairs.

1-2. Functions of the Committee

1-201. The Committee shall advise the President on a regular basis of initiatives needed to promote full equality for American women.

1-202. The Committee shall assist in reviewing the applicability of such initiatives, including recommendations of the 1977 National Women's Conference, to particular programs and policies.

1-203. The Committee shall provide advice on appropriate ways to promote the national observance of the United Nations Decade for Women, Equality, Development and Peace (1975-1985).

1-204. The Committee shall gather information relating to its responsibilities and shall disseminate such information, through newsletters or other appropriate means, to the Executive Branch and to interested members of the public.

1-205. The Committee shall consult regularly with the Interdepartmental Task Force, whose existence is continued by Section 1-402.

1-206. The Committee shall establish such procedural regulations as are necessary to carry out its responsibilities.

1-3. Administrative Provisions

1-301. The Committee may request any agency of the Executive Branch of the government to furnish it with such information, advice, funds and services as may be useful for the fulfillment of the Committee's functions under this Order. Such agencies are authorized, to the extent permitted by law, to honor the Committee's requests.

1-302. Each member of the Committee may receive compensation at the maximum rate now or hereafter prescribed by law for each day such member is attending a regularly scheduled meeting of the Committee or a subcommittee thereof. Each member may receive travel expenses, including per diem in lieu of subsistence (5 U.S.C. 5702 and 5703).

1-4. General Provisions

1-401. Notwithstanding the provisions of any other Executive Order, the functions of the President under the Federal Advisory Committee Act [5 U.S.C. App.] which are applicable to the Committee, except that of reporting annually to the Congress, shall be performed by the Secretary of Labor in accordance with guidelines and procedures established by the Administrator of General Services.

1-402. The Interdepartmental Task Force (created by Section 6 of Executive Order No. 12050) [set out as a note above] is continued.

1-403. The Committee shall conclude its work and shall make a final report to the President by December 31, 1980, at which time it shall terminate.

1-404. Executive Order No. 12050, except for Section 6, and Executive Order No. 12057, are revoked.

Jimmy Carter.

§ 2000e-2. Unlawful employment practices

Section Referred to in Other Sections

This section is referred to in sections 2000e, 2000e-5 of this title.

§ 2000e-4. Equal Employment Opportunity Commission.

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of title 5 governing appointments in the competitive service, such officers, agents, attorneys, administrative

law judges, and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of title 5, relating to classification and General Schedule pay rates: *Provided,* That assignment, removal, and compensation of administrative law judges shall be in accordance with sections 3105, 3344, 5372, and 7521 of title 5.

[*See main edition for text of* (b) *to* (i)]

(As amended Pub. L. 95-251, § 2(a)(11), Mar. 27, 1978, 92 Stat. 183.)

CODIFICATION

In subsec. (a), reference to section 5372 of title 5 was substituted for section 5362 on authority of Pub. L. 95-454, § 801(a)(3)(A)(ii), Oct. 13, 1978, 92 Stat. 1221, which redesignated sections 5361 through 5365 of title 5 as sections 5371 through 5375.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners" wherever appearing.

REORGANIZATION PLAN NO. 1 OF 1978

43 F.R. 19807, 92 Stat. 3781

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 23, 1978, pursuant to the provisions of Chapter 9 of Title 5 of the United States Code.

EQUAL EMPLOYMENT OPPORTUNITY

SECTION 1. TRANSFER OF EQUAL PAY ENFORCEMENT FUNCTIONS

All functions related to enforcing or administering Section 6(d) of the Fair Labor Standards Act, as amended, (29 U.S.C. 206(d)) are hereby transferred to the Equal Employment Opportunity Commission. Such functions include, but shall not be limited to, the functions relating to equal pay administration and enforcement now vested in the Secretary of Labor, the Administrator of the Wage and Hour Division of the Department of Labor, and the Civil Service Commission pursuant to Sections 4(d)(1); 4(f); 9; 11(a), (b), and (c); 16(b) and (c) and 17 of the Fair Labor Standards Act, as amended, (29 U.S.C. 204(d)(1); 204(f); 209; 211(a), (b), and (c); 216(b) and (c) and 217) and Section 10(b)(1) of the Portal-to-Portal Act of 1947, as amended, (29 U.S.C. 259).

SECTION 2. TRANSFER OF AGE DISCRIMINATION ENFORCEMENT FUNCTIONS

All functions vested in the Secretary of Labor or in the Civil Service Commission pursuant to Sections 2, 4, 7, 8, 9, 10, 11, 12, 13, 14, and 15 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 621, 623, 626, 627, 628, 629, 630, 631, 632, 633, and 633a) are hereby transferred to the Equal Employment Opportunity Commission. All functions related to age discrimination administration and enforcement pursuant to Sections 6 and 16 of the Age Discrimination in Employment Act of 1967, as amended, (29 U.S.C. 625 and 634) are hereby transferred to the Equal Employment Opportunity Commission.

SECTION 3. TRANSFER OF EQUAL OPPORTUNITY IN FEDERAL EMPLOYMENT ENFORCEMENT FUNCTIONS

(a) All equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to Section 717(b) and (c) of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16(b) and (c)), are hereby transferred to the Equal Employment Opportunity Commission.

(b) The Equal Employment Opportunity Commission may delegate to the Civil Service Commission or its successor the function of making a preliminary determination on the issue of discrimination whenever, as a part of a complaint or appeal before the Civil Service Commission on other grounds, a Federal employee alleges a violation of Section 717 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-16) provided that the Equal Employment Opportunity Commission retains the function of making the final determination concerning such issue of discrimination.

SECTION 4. TRANSFER OF FEDERAL EMPLOYMENT OF HANDICAPPED INDIVIDUALS ENFORCEMENT FUNCTIONS

All Federal employment of handicapped individuals enforcement functions and related functions vested in the Civil Service Commission pursuant to Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) are hereby transferred to the Equal Employment Opportunity Commission. The function of being co-chairman of the Interagency Committee on Handicapped Employees now vested in the Chairman of the Civil Service Commission pursuant to Section 501 is hereby transferred to the Chairman of the Equal Employment Opportunity Commission.

SECTION 5. TRANSFER OF PUBLIC SECTOR 707 FUNCTIONS

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under Section 707 of Title VII of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-6) and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, are hereby transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with said Title VII. The Attorney General is authorized to delegate any function under Section 707 of said Title VII to any officer or employee of the Department of Justice.

SECTION 6. TRANSFER OF FUNCTIONS AND ABOLITION OF THE EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

All functions of the Equal Employment Opportunity Coordinating Council, which was established pursuant to Section 715 of the Civil Rights Act of 1964, as amended, (42 U.S.C. 2000e-14), are hereby transferred to the Equal Employment Opportunity Commission. The Equal Employment Opportunity Coordinating Council is hereby abolished.

SECTION 7. SAVINGS PROVISION

Administrative proceedings including administrative appeals from the acts of an executive agency (as defined by Section 105 of Title 5 of the United States Code) commenced or being conducted by or against such executive agency will not abate by reason of the taking effect of this Plan. Consistent with the provisions of this Plan, all such proceedings shall continue before the Equal Employment Opportunity Commission otherwise unaffected by the transfers provided by this Plan. Consistent with the provisions of this Plan, the Equal Employment Opportunity Commission shall accept appeals from those executive agency actions which occurred prior to the effective date of this Plan in accordance with law and regulations in effect on such effective date. Nothing herein shall affect any right of any person to judicial review under applicable law.

SECTION 8. INCIDENTAL TRANSFERS

So much of the personnel, property, records and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the functions transferred under this Plan, as the Director of the Office of Management and Budget shall determine, shall be transferred to the appropriate department, agency, or component at such time or times as the Director of the Office of Management and Budget shall provide, except that no such unexpended balances transferred shall be used for purposes other than those for which the appropriation was originally made. The Director of the Office of Management and Budget shall provide for terminating the affairs of the Council abolished herein and for such further measures and dispositions as such Director deems necessary to effectuate the purposes of this Reorganization Plan.

SECTION 9. EFFECTIVE DATE

This Reorganization Plan shall become effective at such time or times, on or before October 1, 1979, as the President shall specify, but not sooner than the earliest time allowable under Section 906 of Title 5 of the United States Code.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

I am submitting to you today Reorganization Plan No. 1 of 1978. This Plan makes the Equal Employment Opportunity Commission the principal Federal agency in fair employment enforcement. Together with actions I shall take by Executive Order, it consolidates Federal equal employment opportunity activities and lays, for the first time, the foundation of a unified, coherent Federal structure to combat job discrimination in all its forms.

In 1940 President Roosevelt issued the first Executive Order forbidding discrimination in employment by the Federal government. Since that time the Congress, the courts and the Executive Branch—spurred by the courage and sacrifice of many people and organizations—have taken historic steps to extend equal employment opportunity protection throughout the private as well as public sector. But each new prohibition against discrimination unfortunately has brought with it a further dispersal of Federal equal employment opportunity responsibility. This fragmentation of authority among a number of Federal agencies has meant confusion and ineffective enforcement for employees, regulatory duplication and needless expense for employers.

Fair employment is too vital for haphazard enforcement. My Administration will aggressively enforce our civil rights laws. Although discrimination in any area has severe consequences, limiting economic opportunity affects access to education, housing and health care. I, therefore, ask you to join with me to reorganize administration of the civil rights laws and to begin that effort by reorganizing the enforcement of those laws which ensure an equal opportunity to a job.

Eighteen government units now exercise important responsibilities under statutes, Executive Orders and regulations relating to equal employment opportunity:

The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964, [section 2000e et seq. of this title] which bans employment discrimination based on race, national origin, sex or religion. The EEOC acts on individual complaints and also initiates private sector cases involving a "pattern or practice" of discrimination.

The Department of Labor and 11 other agencies enforce Executive Order 11246 [set out as a note under section 2000e of this title]. This prohibits discrimination in employment on the basis of race, national origin, sex, or religion and requires affirmative action by government contractors. While the Department now coordinates enforcement of this "contract compliance" program, it is actually administered by eleven other departments and agencies. The Department also administers those statutes requiring contractors to take affirmative action to employ handicapped people, disabled veterans and Vietnam veterans.

In addition, the Labor Department enforces the Equal Pay Act of 1963 [section 206(d) of Title 29, Labor], which prohibits employers from paying unequal wages based on sex, and the Age Discrimination in Employment Act of 1967 [section 621 et seq. of Title 29], which forbids age discrimination against persons between the ages of 40 and 65.

The Department of Justice litigates Title VII cases involving public sector employers—State and local governments. The Department also represents the Federal government in lawsuits against Federal contractors and grant recipients who are in violation of Federal nondiscrimination prohibitions.

The Civil Service Commission (CSC) enforces Title VII and all other nondiscrimination and affirmative action requirements for Federal employment. The CSC rules on complaints filed by individuals and monitors affirmative action plans submitted annually by other Federal agencies.

The Equal Employment Opportunity Coordinating Council includes representatives from EEOC, Labor, Justice, CSC and the Civil Rights Commission. It is charged with coordinating the Federal equal employment opportunity enforcement effort and with eliminating overlap and inconsistent standards.

In addition to these major government units, other agencies enforce various equal employment opportunity requirements which apply to specific grant programs. The Department of Treasury, for example, administers the anti-discrimination prohibitions applicable to recipients of revenue sharing funds.

These programs have had only limited success. Some of the past deficiencies include:

—inconsistent standards of compliance;

—duplicative, inconsistent paperwork requirements and investigative efforts;

—conflicts within agencies between their program responsibilities and their responsibility to enforce the civil rights laws;

—confusion on the part of workers about how and where to seek redress;

—lack of accountability.

I am proposing today a series of steps to bring coherence to the equal employment enforcement effort. These steps, to be accomplished by the Reorganization Plan and Executive Orders, constitute an important step toward consolidation of equal employment opportunity enforcement. They will be implemented over the next two years, so that the agencies involved may continue their internal reform.

Its experience and broad scope make the EEOC suitable for the role of principal Federal agency in fair employment enforcement. Located in the Executive Branch and responsible to the President, the EEOC has developed considerable expertise in the field of employment discrimination since Congress created it by the Civil Rights Act of 1964 [section 200e-4 of Title 42]. The Commission has played a pioneer role in defining both employment discrimination and its appropriate remedies.

While it has had management problems in past administrations, the EEOC's new leadership is making substantial progress in correcting them. In the last seven months the Commission has redesigned its internal structures and adopted proven management techniques. Early experience with these procedures indicates a high degree of success in reducing and expediting new cases. At my direction, the Office of Management and Budget is actively assisting the EEOC to ensure that these reforms continue.

The Reorganization Plan I am submitting will accomplish the following:

On July 1, 1978, abolish the Equal Employment Opportunity Coordinating Council (42 U.S.C. 2000e-14) and transfer its duties to the EEOC (no positions or funds shifted).

On October 1, 1978, shift enforcement of equal employment opportunity for Federal employees from the CSC to the EEOC (100 positions and $6.5 million shifted).

On July 1, 1979, shift responsibility for enforcing both the Equal Pay Act and the Age Discrimination in Employment Act from the Labor Department to the EEOC (198 positions and $5.3 million shifted for Equal Pay; 119 positions and $3.5 million for Age Discrimination).

Clarify the Attorney General's authority to initiate "pattern or practice" suits under Title VII in the public sector.

In addition, I will issue an Executive Order on October 1, 1978, to consolidate the contract compliance program—now the responsibility of Labor and eleven "compliance agencies"—into the Labor Department (1,517 positions and $33.1 million shifted).

These proposed transfers and consolidations reduce from fifteen to three the number of Federal agencies having important equal employment opportunity responsibilities under Title VII of the Civil Rights Act of 1964 and Federal contract compliance provisions.

Each element of my Plan is important to the success of the entire proposal.

By abolishing the Equal Employment Opportunity Coordinating Council and transferring its responsibilities to the EEOC, this plan places the Commission at the center of equal employment opportunity enforcement. With these new responsibilities, the EEOC can give coherence and direction to the government's efforts by developing strong uniform enforcement standards to apply throughout the government: standardized data collection procedures, joint training programs, programs to ensure the sharing of enforcement related data among agencies, and methods and priorities for complaint and compliance reviews. Such direction has been absent in the Equal Employment Opportunity Coordinating Council.

It should be stressed, however, that affected agencies will be consulted before EEOC takes any action. When the Plan has been approved, I intend to issue an Executive Order which will provide for consultation, as well as a procedure for reviewing major disputed issues within the Executive Office of the President. The Attorney General's responsibility to advise the Executive Branch on legal issues will also be preserved.

Transfer of the Civil Service Commission's equal employment opportunity responsibilities to EEOC is needed to ensure that: (1) Federal employees have the same rights and remedies as those in the private sector and in State and local government; (2) Federal agencies meet the same standards as are required of other employers; and (3) potential conflicts between an agency's equal employment opportunity and personnel management functions are minimized. The Federal government must not fall below the standard of performance it expects of private employers.

The Civil Service Commission has in the past been lethargic in enforcing fair employment requirements within the Federal government. While the Chairman and other Commissioners I have appointed have already demonstrated their personal commitment to expanding equal employment opportunity, responsibility for ensuring fair employment for Federal employees should rest ultimately with the EEOC.

We must ensure that the transfer in no way undermines the important objectives of the comprehensive civil service reorganization which will be submitted to Congress in the near future. When the two plans take effect; I will direct the EEOC and the CSC to coordinate their procedures to prevent any duplication and overlap.

The Equal Pay Act now administered by the Labor Department, prohibits employers from paying unequal wages based on sex. Title VII of the Civil Rights Act, which is enforced by EEOC, contains a broader ban on sex discrimination. The transfer of Equal Pay responsibility from the Labor Department to the EEOC will minimize overlap and centralize enforcement of statutory prohibitions against sex discrimination in employment.

The transfer will strengthen efforts to combat sex discrimination. Such efforts would be enhanced still further by passage of the legislation pending before you, which I support, that would prohibit employers from excluding women disabled by pregnancy from participating in disability programs.

There is now virtually complete overlap in the employers, labor organizations, and employment agencies covered by Title VII and by the Age Discrimination in Employment Act. This overlap is burdensome to employers and confusing to victims of discrimination. The proposed transfer of the age discrimination program from the Labor Department to the EEOC will eliminate the duplication.

The Plan I am proposing will not affect the Attorney General's responsibility to enforce Title VII against State or local governments or to represent the Federal government in suits against Federal contractors and grant recipients. In 1972, the Congress determined that the Attorney General should be involved in suits against State and local governments. This proposal reinforces that judgment and clarifies the Attorney General's authority to initiate litigation against State or local governments engaged in a "pattern or practice" of discrimination. This in no way diminishes the EEOC's existing authority to investigate complaints filed against State or local governments and, where appropriate, to refer them to the Attorney General. The Justice Department and the EEOC will cooperate so that the Department sues on valid referrals, as well as on its own "pattern or practice" cases.

A critical element of my proposals will be accomplished by Executive Order rather than by the Reorganization Plan. This involves consolidation in the Labor Department of the responsibility to ensure that Federal contractors comply with Executive Order 11246. Consolidation will achieve the following: promote consistent standards, procedures, and reporting requirements; remove contractors from the jurisdiction of multiple agencies; prevent an agency's equal employment objectives from being outweighed by its procurement and construction objectives; and produce more effective law enforcement through unification of planning, training and sanctions. By 1981, after I have had an opportunity to review the manner in which both the EEOC and the Labor Department are exercising their new responsibilities, I will determine whether further action is appropriate.

Finally, the responsibility for enforcing grant-related equal employment provisions will remain with the agencies administering the grant programs. With the EEOC acting as coordinator of Federal equal employment programs, we will be able to bring overlap and duplication to a minimum. We will be able, for example, to see that a university's employment practices are not subject to duplicative investigations under both Title IX of the Education Amendments of 1972 [section 1681 et seq. of Title 20, Education] and the contract compliance program. Because of the similarities between the Executive Order program and those statutes requiring Federal contractors to take affirmative action to employ handicapped individuals and disabled and Vietnam veterans, I have determined that enforcement of these statues should remain in the Labor Department.

Each of the changes set forth in the Reorganization Plan accompanying this message is necessary to accomplish one or more of the purposes set forth in Section 901(a) of Title 5 of the United States Code. I have taken care to determine that all functions abolished by the Plan are done only under the statutory authority provided by Section 903(b) of Title 5 of the United States Code.

I do not anticipate that the reorganizations contained in this Plan will result in any significant change in expenditures. They will result in a more efficient and manageable enforcement program.

The Plan I am submitting is moderate and measured. It gives the Equal Employment Opportunity Commission—an agency dedicated solely to this purpose—the primary Federal responsibility in the area of job discrimination, but it is designed to give this agency sufficient time to absorb its new responsibilities. This reorganization will produce consistent agency standards, as well as increased accountability. Combined with the intense commitment of those charged with these responsibilites, it will become possible for us to accelerate this nation's progress in ensuring equal job opportunities for all our people.

Jimmy Carter.

The White House, February 23, 1978.

Ex. Ord. No. 12106. Transfer of Certain Equal Employment Enforcement Functions

Ex. Ord. No. 12106, Dec. 26, 1978, 44 F.R. 1053, provided:

By the authority vested in me as President of the United States of America by Section 9 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out above], in order to effectuate the transfer of certain functions relating to the enforcement of equal employment programs, and in order to make certain technical amendments in other Orders to reflect this transfer of functions, it is hereby ordered as follows:

1-101. The transfer to the Equal Employment Opportunity Commission of certain functions of the Civil Service Commission, relating to enforcement of equal employment opportunity programs as provided by Sections 1, 2, 3 and 4 of Reorganization Plan No. 1 of 1978 (43 FR 19807) shall be effective on January 1, 1979.

1-102. Executive Order No. 11478, as amended [set out as a note under section 2000e of this title], is further amended by deleting the preamble, by substituting "national origin, handicap, or age" for "or national origin" in the first sentence of Section 1, and revising Sections 3, 4, and 5 to read as follows:

"Sec. 3. The Equal Employment Opportunity Commission shall be responsible for directing and furthering the implementation of the policy of the Government of the United States to provide equal opportunity in Federal employment for all employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) and to prohibit discrimination in employment because of race, color, religion, sex, national origin, handicap, or age.

"Sec. 4. The Equal Employment Opportunity Commission, after consultation with all affected departments and agencies, shall issue such rules, regulations, orders, and instructions and request such information from the affected departments and agencies as it deems necessary and appropriate to carry out this Order.

"Sec. 5. All departments and agencies shall cooperate with and assist the Equal Employment Opportunity Commission in the performance of its functions under this Order and shall furnish the Commission such reports and information as it may request. The head of each department or agency shall comply with rules, regulations, orders and instructions issued by the Equal Employment Opportunity Commission pursuant to Section 4 of this Order."

1-103. Executive Order No. 11022, as amended [set out as a note under section 3001 of this title], is further amended by revising Section 1(b) to read as follows:

"(b) The Council shall be composed of the Secretary of Health, Education, and Welfare, who shall be Chairman, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of Veterans Affairs, the Director of the Office of Personnel Management, the Director of the Community Services Administration, and the Chairman of the Equal Employment Opportunity Commission."

1-104. Executive Order No. 11480 of September 9, 1969 [set out as a note under section 791 of Title 29, Labor], is amended by deleting "and the Chairman of the United States Civil Service Commission" in Section 4 and substituting therefor "Director of the Office of Personnel Management, and the Chairman of the Equal Employment Opportunity Commission".

1-105. Executive Order No. 11830 of January 9, 1975 [set out as a note under section 791 of Title 29, Labor], is amended by deleting Section 2 and revising Section 1 to read as follows:

"In accord with Section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791) and Section 4 of Reorganization Plan No. 1 of 1978 (43 FR 19808) the Interagency Committee on Handicapped Employees is enlarged and composed of the following, or their designees whose positions are Executive level IV or higher:

(1) Secretary of Defense.

(2) Secretary of Labor.

(3) Secretary of Health, Education, and Welfare, Co-Chairman.

(4) Director of the Office of Personnel Management.

(5) Administrator of Veterans Affairs.

(6) Administrator of General Services.

(7) Chairman of the Federal Communications Commission.

(8) Chairman of the Equal Employment Opportunity Commission, Co-Chairman.

(9) Such other members as the President may designate."

1-106. This Order shall be effective on January 1, 1979.

Jimmy Carter.

Ex. Ord. No. 12144. Transfer of Certain Equal Pay and Age Discrimination in Employment Enforcement Functions

Ex. Ord. No. 12144, June 22, 1979, 44 F.R. 37193, provided:

By the authority vested in me as President of the United States of America by the Constitution and laws of the United States, including Section 9 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out as a note above], in order to effectuate the transfer of certain functions relating to the enforcement of equal pay and age discrimination in employment programs from the Department of Labor to the Equal Employment Opportunity Commission, it is hereby ordered as follows:

1-101. Sections 1 and 2 of Reorganization Plan No. 1 of 1978 (43 FR 19807) [set out as a note above] shall become effective on July 1, 1979, with the exception of the transfer of functions from the Civil Service Commission, already effective January 1, 1979 (Executive Order No. 12106 [set out as a note above]).

1-102. The records, property, personnel and positions, and unexpended balances of appropriations or funds, available or to be made available, which relate to the functions transferred as provided in this Order are hereby transferred from the Department of Labor to the Equal Employment Opportunity Commission.

1-103. The Director of the Office of Management and Budget shall make such determinations, issue such Orders, and take all actions necessary or appropriate to effectuate the transfers provided in this Order, including the transfer of funds, records, property, and personnel.

1-104. This Order shall be effective July 1, 1979.

Jimmy Carter.

§ 2000e–5. Enforcement provisions

Section Referred to in Other Sections

This section is referred to in sections 2000e–4, 2000e–6, 2000e–8, 2000e–16 of this title; title 5 section 7701; title 29 section 794a.

§ 2000e–6. Civil actions by Attorney General

Transfer of Functions

Any function of the Equal Employment Opportunity Commission concerning initiation of litigation with respect to State or local government, or political subdivisions under this section, and all necessary functions related thereto, including investigation, findings, notice and an opportunity to resolve the matter without contested litigation, were transferred to the Attorney General, to be exercised by him in accordance with procedures consistent with this subchapter, and with the Attorney General authorized to delegate any function under this section to any officer or employee of the Department of Justice, by Reorg. Plan No. 1 of 1978, § 5, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e-4 of this title.

EX. ORD. NO. 12068. TRANSFER OF CERTAIN FUNCTIONS TO ATTORNEY GENERAL

Ex. Ord. No. 12068, June 30, 1978, 43 F.R. 28971, provided:

By virtue of the authority vested in me as President of the United States by the Constitution and laws of the United States, including Section 9 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out as a note under section 2000e-4 of this title], in order to clarify the Attorney General's authority to initiate public sector litigation under Section 707 of Title VII of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000e-6), it is ordered as follows:

1-1. SECTION 707 FUNCTIONS OF THE ATTORNEY GENERAL

1-101. Section 5 of Reorganization Plan Number 1 of 1978 (43 FR 19807) [set out as a note under section 2000e-4 of this title] shall become effective on July 1, 1978.

1-102. The functions transfered to the Attorney General by Section 5 of Reorganization Plan Number 1 of 1978 [set out as a note under section 2000e-4 of this title] shall, consistent with Section 707 of Title VII of the Civil Rights Act of 1964, as amended [this section], be performed in accordance with Department of Justice procedures heretofore followed under Section 707.

JIMMY CARTER.

§ 2000e-14. Equal Employment Opportunity Coordinating Council; establishment; composition; duties; report to President and Congress

ABOLITION OF EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL

The Equal Employment Opportunity Coordinating Council, established pursuant to this section was abolished and its functions transferred to the Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 6, 43 F.R. 19807, 92 Stat. 3781, set out as a note under section 2000e-4 of this title.

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 2000e-16. Employment by Federal Government

TRANSFER OF FUNCTIONS

All equal opportunity in Federal employment enforcement and related functions vested in the Civil Service Commission pursuant to subsecs. (b) and (c) of this section were transferred to the Equal Employment Opportunity Commission by Reorg. Plan No. 1 of 1978, § 3, 43 F.R. 19807, 92 Stat. 3781, set out under section 2000e-4 of this title, effective Jan. 1, 1979, as provided by section 1-101 of Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053, set out under section 2000e-4 of this title, with the Equal Employment Opportunity Commission authorized to delegate to the Civil Service Commission or its successor the function of making a preliminary determination on the issue of discrimination whenever, as a part of a complaint or appeal before the Civil Service Commission on other grounds, a Federal employee alleges a violation of this section, provided that the Equal Employment Opportunity Commission retains the function of making the final determination concerning such issue of discrimination.

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5057 of this title; title 5 sections 2302, 7201, 7702, 7703; title 29 section 794a.

SUBCHAPTER VII—REGISTRATION AND VOTING STATISTICS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 2000h of this title.

SUBCHAPTER VIII—COMMUNITY RELATIONS SERVICE

§ 2000g. Establishment of Service; Director of Service: appointment, term; personnel

There is hereby established in and as a part of the Department of Commerce a Community Relations Service (hereinafter referred to as the "Service"), which shall be headed by a Director who shall be appointed by the President with the advice and consent of the Senate for a term of four years. The Director is authorized to appoint, subject to the civil service laws and regulations, such other personnel as may be necessary to enable the Service to carry out its functions and duties, and to fix their compensation in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(As amended Pub. L. 95-624, § 5, Nov. 9, 1978, 92 Stat. 3462.)

AMENDMENTS

1978—Pub. L. 95-624 struck out provision authorizing the Director to procure the services of experts and consultants at rates for individuals not in excess of $75 per diem.

CHAPTER 22—INDIAN HOSPITALS AND HEALTH FACILITIES

SUBCHAPTER I—MAINTENANCE AND OPERATION

§§ 2001 to 2003

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 2004. Transfer of personnel, property, records, monies

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER II—CONSTRUCTION OF HEALTH FACILITIES AND COMMUNITY HOSPITALS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 229b of this title; title 25 section 861c.

§ 2005a. Amount of assistance; determination of costs

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 25 section 1300f.

CHAPTER 23—DEVELOPMENT AND CONTROL OF ATOMIC ENERGY

SUBCHAPTER I—GENERAL PROVISIONS

Sec.

- 2021a. Storage or disposal facility planning [New].
- 2022. Health and environmental standards for uranium mill tailings [New].
  - (a) Promulgation and revision of rules for protection from hazards at inactive or depository sites.
  - (b) Promulgation and revision of rules for protection from hazards at processing or disposal sites.
  - (c) Publication in Federal Register; notice and hearing; consultations; judicial review; time for petition; venue; copy to Administrator; record; administrative jurisdiction; review by Supreme Court; effective date of rule.
  - (d) Federal and State implementation and enforcement.
  - (e) Other authorities of Administrator unaffected.

SUBCHAPTER II—ORGANIZATION

- 2040. Fellowship program of Advisory Committee on Reactor Safety; selection of fellows [new].

SUBCHAPTER VII—BYPRODUCT MATERIALS

- 2113. Ownership and custody of certain byproduct material and disposal sites [New].
  - (a) Specific assurances in license for pretermination actions.
  - (b) Transfer of title; health and environmental protection through maintenance of property and materials; use of surface or subsurface estates: first refusal rights of transferor; maintenance, monitoring, and emergency measures and other authorized action; licensee-transferor liability for fraud or negligence; administrative and legal costs limitation; government retransfers under section 7914(h) of this title.
  - (c) Compliance with applicable standards and license requirements; determination upon termination of license.
- 2114. Authorities of Commission respecting certain byproduct material [New].
  - (a) Management function.
  - (b) Rules, regulations, or orders for certain activities; civil penalty.

SUBCHAPTER IX—ATOMIC ENERGY LICENSES

Sec.

- 2139a. Regulations implementing requirements relating to licensing for components and other parts of facilities [New].
- 2141. Licensing by Nuclear Regulatory Commission of distribution of special nuclear material, source material, and byproduct material by Department of Energy [New].

SUBCHAPTER X—INTERNATIONAL ACTIVITIES

- 2153a. Approval for enrichment after export of source or special nuclear material; export of major critical components of enrichment facilities [New].
- 2153b. Export policies relating to peaceful nuclear activities and international nuclear trade [New].
  - (a) Undertakings by transferee nations receiving nuclear material and equipment or sensitive nuclear technology.
  - (b) Enrichment of source or special nuclear material only under effective international auspices and inspection.
  - (c) Establishment of physical security measures.
  - (d) United States military activities.
- 2153c. Renegotiation of agreements for cooperation [New].
  - (a) Application to existing agreements of undertakings required of new agreements after March 10, 1978.
  - (b) Presidential review of export agreement conditions and policy goals.
  - (c) Presidential proposals for additional export criteria.
  - (d) Congressional action.
- 2153d. Authority to continue agreements for cooperation entered into prior to March 10, 1978 [New].
- 2153e. Protection of environment [New].
- 2153e-1. Effectiveness of rule, regulation, or procedure with regard to exports subject to Nuclear Non-Proliferation Act of 1978 [New].
- 2153f. Savings clause; Nuclear Non-Proliferation Act of 1978 [New].
- 2155. Export licensing procedures [New].
  - (a) Executive branch judgment on export applications; criteria governing United States nuclear exports.
  - (b) Requests to be given timely consideration; Presidential review if Commission is unable to make required statutory determinations; Commission review.
  - (c) Additional export criteria.
- 2155a. Regulations establishing Commission procedures covering grant, suspension, revocation, or amendment of nuclear export licenses or exemptions [New].
- 2156. Criteria governing United States nuclear exports [New].
- 2156a. Regulations establishing levels of physical security to protect facilities and material [New].
- 2157. Additional export criterion and procedures [New].
- 2158. Conduct resulting in termination of nuclear exports [New].
- 2159. Congressional review procedures [New].
  - (a) Committee consideration of Presidential submissions; reports.
  - (b) Consideration of resolution by respective Houses of Congress.
  - (c) Debate.
  - (d) Vote on final approval.
  - (e) Appeals from decisions of the Chair.

Sec.
- (f) Resolution.
- (g) Continuity of Congressional sessions; computation of time.
- (h) Supersedure or change in rules.

2160. Subsequent arrangements [New].
- (a) Consultation and concurrence; negotiations of a policy nature; notice of proposed subsequent arrangements; Nuclear Proliferation Assessment Statement; reprocessing of material.
- (b) Reports to Congressional committees; increase in risk of proliferation.
- (c) Procedures for consideration of requests for subsequent arrangements.
- (d) Activities not prohibited, precluded, or limited.
- (e) Jurisdiction of Secretary of Energy.
- (f) Subsequent arrangements involving direct or indirect commitment of United States for storage or other disposition of foreign spent nuclear fuel in United States.

2160a. Review of Nuclear Proliferation Assessment Statements [New].

SUBCHAPTER XIII—GENERAL AUTHORITY OF COMMISSION

2205a. Report to Congress on use of contractors, consultants, and National Laboratories [New].

2210a. Conflicts of interest relating to contracts and other arrangements [New].
- (a) Disclosure requirements.
- (b) Preliminary contract findings.
- (c) Promulgation and publication of rules.

SUBCHAPTER XVI—JOINT COMMITTEE ON ATOMIC ENERGY

2258. Joint Committee on Atomic Energy abolished [new].

2259. Information and assistance to Congressional Committees [new].
- (a) Secretary of Energy and Nuclear Regulatory Commission.
- (b) Department of Defense and Department of State.
- (c) Governmental agencies.
- (d) Utilization of services, facilities, and personnel of governmental agencies; reimbursement; prior written consent.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 263e, 1437f, 1874, 2291, 2301, 2305, 5812, 5817, 5841, 5842, 5843, 5844, 5846, 5848, 5851, 5876, 5902, 5908, 6903, 6905, 7135a, 7911, 7918, 7920, 7925, 7941 of this title; title 5 sections 7533, 8312; title 15 sections 2080, 2602; title 18 section 2516; title 22 sections 2022, 2024, 2403, 2793, 2794, 3203, 3303; title 30 sections 541b, 541c, 541d; title 50 section 47f.

SUBCHAPTER I—GENERAL PROVISIONS

§ 2014. Definitions

The intent of Congress in the definitions as given in this section should be construed from the words or phrases used in the definitions. As used in this chapter:

[*See main edition for text of* (*a*) *to* (*d*)]

(e) The term "byproduct material" means (1) any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content.

[*See main edition for text of* (*f*) *to* (*cc*)]

(As amended Nov. 8, 1978, Pub. L. 95-604, title II, § 201, 92 Stat. 3033.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-604 designated existing provisions as cl. (1) and added cl. (2).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 208 of Pub. L. 95-604 provided that: "Except as otherwise provided in this title [see section 202(b) of Pub. L. 95-604, set out as an Effective Date note under section 2113 of this title] the amendments made by this title [enacting sections 2022 and 2114 of this title, amending sections 2014, 2021, 2111, and 2201 of this title, and enacting provisions set out as notes under sections 2021 and 2113 of this title] shall take effect on the date of the enactment of this Act [Nov. 8, 1978]."

ABOLITION OF THE JOINT COMMITTEE ON ATOMIC ENERGY

The Joint Committee on Atomic Energy, referred to in subsec. (o), was abolished by section 2258 of this title and references to the Joint Committee are deemed, on or after Sept. 20, 1977, to refer to the committees of the Senate or House of Representatives which, under the rules of the Senate or House, have jurisdiction over the subject matter with records and files of the Joint Committee being transferred to the respective committees of the House or Senate.

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission by section 5841 of this title, except that the determinations and criteria in subsec. (j) were to be the responsibility of the Administrator, Energy Research and Development Administration, only in regard to activities and matters not covered by the licensing and related regulatory facets of section 2210 of this title, and the determinations in subsecs. (v), (z), (aa), and (cc), were to be the responsibility of the Administrator only in regard to facilities and materials not subject to licensing and related regulatory control by the Nuclear Regulatory Commission. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021, 2022, 2077, 2113, 2114, 2139, 2153b, 2201, 2291 of this title.

§§ 2015, 2016

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under these sections were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2017. Authorization of appropriations

Transfer of Functions

The Atomic Energy Commission was abolished and all functions under these sections were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Section Referred to in Other Sections

This section is referred to in sections 2292, 2293, 5821 of this title.

§ 2018. Agency jurisdiction

Transfer of Functions

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§§ 2019, 2020

Transfer of Functions

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2021. Cooperation with States

[*See main edition for text of* (*a*)]

(b) Agreements with States

Except as provided in subsection (c) of this section, the Commission is authorized to enter into agreements with the Governor of any State providing for discontinuance of the regulatory authority of the Commission under subchapters V, VI, and VII of this chapter, and section 2201 of this title, with respect to any one or more of the following materials within the State—

(1) byproduct materials as defined in section 2014(e)(i) of this title;

(2) byproduct materials as defined in section 2014(e)(2) of this title;

(3) source materials;

(4) special nuclear materials in quantities not sufficient to form a critical mass.

During the duration of such an agreement it is recognized that the State shall have authority to regulate the materials covered by the agreement for the protection of the public health and safety from radiation hazards.

(c) Commission regulation of certain activities

No agreement entered into pursuant to subsection (b) of this section shall provide for discontinuance of any authority and the Commission shall retain authority and responsibility with respect to regulation of—

[*See main edition for text of* (*1*) *to* (*4*)]

The Commission shall also retain authority under any such agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material, as defined in section 2014(e)(2) of this title. Notwithstanding any agreement between the Commission and any State pursuant to subsection (b) of this section, the Commission is authorized by rule, regulation, or order to require that the manufacturer, processor, or producer of any equipment, device, commodity, or other product containing source, byproduct, or special nuclear material shall not transfer possession or control of such product except pursuant to a license issued by the Commission.

(d) Conditions

The Commission shall enter into an agreement under subsection (b) of this section with any State if—

[*See main edition for text of* (*1*)]

(2) the Commission finds that the State program is in accordance with the requirements of subsection (*o*) of this section and in all other respects compatible with the Commission's program for the regulation of such materials, and that the State program is adequate to protect the public health and safety with respect to the materials covered by the proposed agreement.

[*See main edition for text of* (*e*) *to* (*i*)]

(j) Reserve power to terminate or suspend agreements; review

The Commission, upon its own initiative after reasonable notice and opportunity for hearing to the State with which an agreement under subsection (b) of this section has become effective, or upon request of the Governor of such State, may terminate or suspend all or part of its agreement with the State and reassert the licensing and regulatory authority vested in it under this chapter, if the Commission finds that (1) such termination or suspension is required to protect the public health and safety, or (2) the State has not complied with one or more of the requirements of this section. The Commission shall periodically review such agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

[*See main edition for text of* (*k*) *to* (*m*)]

(n) Definitions

As used in this section, the term State means any State, Territory, or possession of the United States, the Canal Zone, Puerto Rico, and the District of Columbia. As used in this section, the term "agreement" includes any amendment to any agreement.

(o) State compliance requirements: compliance with section 2113(b) of this title and health and environmental protection standards; procedures for licenses, rulemaking, and license impact analysis; amendment of agreements for transfer of State collected funds; proceedings duplication restriction

In the licensing and regulation of byproduct material, as defined in section 2014(e)(2) of this title, or of any activity which results in the production of byproduct material as so defined under an agreement entered into pursuant to subsection (b) of this section, a State shall require—

(1) compliance with the requirements of subsection (b) of section 2113 of this title (respecting ownership of byproduct material and land), and

(2) compliance with standards which shall be adopted by the State for the protection of the public health, safety, and the environment from hazards associated with such material which are equivalent, to the extent practicable, or more stringent than, standards adopted and enforced by the Commission for the same purpose, including requirements and standards promulgated by the Commission and the Administrator of the Environmental Protection Agency pursuant to sections 2113, 2114, and 2022 of this title, and

(3) procedures which—

(A) in the case of licenses, provide procedures under State law which include—

(i) an opportunity, after public notice, for written comments and a public hearing, with a transcript,

(ii) an opportunity for cross examination, and

(iii) a written determination which is based upon findings included in such determination and upon the evidence presented during the public comment period and which is subject to judicial review;

(B) in the case of rulemaking, provide an opportunity for public participation through written comments or a public hearing and provide for judicial review of the rule;

(C) require for each license which has a significant impact on the human environment a written analysis (which shall be available to the public before the commencement of any such proceedings) of the impact of such license, including any activities conducted pursuant thereto, on the environment, which analysis shall include—

(i) an assessment of the radiological and nonradiological impacts to the public health of the activities to be conducted pursuant to such license;

(ii) an assessment of any impact on any waterway and groundwater resulting from such activities;

(iii) consideration of alternatives, including alternative sites and engineering methods, to the activities to be conducted pursuant to such license; and

(iv) consideration of the long-term impacts, including decommissioning, decontamination, and reclamation impacts, associated with activities to be conducted pursuant to such license, including the management of any byproduct material, as defined by section 2014(e)(2) of this title; and

(D) prohibit any major construction activity with respect to such material prior to complying with the provisions of subparagraph (C).

If any State under such agreement imposes upon any licensee any requirement for the payment of funds to such State for the reclamation or long-term maintenance and monitoring of such material, and if transfer to the United States of such material is required in accordance with section 2113(b) of this title, such agreement shall be amended by the Commission to provide that such State shall transfer to the United States upon termination of the license issued to such licensee the total amount collected by such State from such licensee for such purpose. If such payments are required, they must be sufficient to ensure compliance with the standards established by the Commission pursuant to section 2201(x) of this title. No State shall be required under paragraph (3) to conduct proceedings concerning any license or regulation which would duplicate proceedings conducted by the Commission.

(As amended Nov. 8, 1978, Pub. L. 95-604, title II, § 204(a)-(f), 92 Stat. 3036-3038.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-604, § 204(a), inserted in par. (1) "as defined in section 2014(e)(1) of this title" following "byproduct materials", added par. (2), and redesignated former pars. (2) and (3) as (3) and (4), respectively.

Subsec. (c). Pub. L. 95-604, § 204(f), required the Commission to retain authority under the agreement to make a determination that all applicable standards and requirements have been met prior to termination of a license for byproduct material as defined in section 2014(e)(2) of this title.

Subsec. (d)(2). Pub. L. 95-604, § 204(b), inserted "in accordance with the requirements of subsection (o) of this section and in all other respects" preceding "compatible".

Subsec. (j). Pub. L. 95-604, § 204(d), inserted "all or part of" following "suspend", designated provision requiring termination or suspension be necessary to protect the public health and safety as cl. (1), added cl. (2), and added provision requiring the Commission to periodically review the agreements and actions taken by the States under the agreements to ensure compliance with the provisions of this section.

Subsec. (n). Pub. L. 95-604, § 204(c), added definition of "agreement".

Subsec. (o). Pub. L. 95-604, § 204(e)(1), added subsec. (o).

EFFECTIVE DATE OF 1978 AMENDMENT

Section 204(e)(2) of Pub. L. 95-604, as added by Pub. L. 96-106, § 22(d), Nov. 9, 1979, 93 Stat. 800, provided that: "The provisions of the amendment made by paragraph (1) of this subsection (which adds a new subsection o. to section 274 of the Atomic Energy Act of 1954 [this section]) shall apply only to the maximum extent practicable during the three-year period beginning on the date of the enactment of this Act [Nov. 8, 1978]."

Amendment by Pub. L. 95-604 effective Nov. 8, 1978, see section 208 of Pub. L. 95-604, set out as an Effective Date of 1978 Amendment note under section 2014 of this title.

STATE AUTHORITIES AND AGREEMENTS RESPECTING BYPRODUCT MATERIAL; ENTRY AND EFFECTIVE DATES OF AGREEMENTS

Section 204(g) and (h) of Pub. L. 95-604, as amended by Pub. L. 96-106, § 22(a), (b), Nov. 9, 1979, 93 Stat. 799, provided that:

"(g) Nothing in any amendment made by this section [amending this section] shall preclude any State from exercising any other authority as permitted under the Atomic Energy Act of 1954 [this chapter] respecting any byproduct material, as defined in section 11 e. (2) of the Atomic Energy Act of 1954 [section 2014(e)(2) of this title].

"(h)(1) During the three-year period beginning on the date of the enactment of this Act [Nov. 8, 1978], notwithstanding any other provision of this title [See Effective Date of 1978 Amendment note set out under section 2014 of this title], any State may exercise any authority under State law (including authority exercised pursuant to an agreement entered into pursuant to section 274 of the Atomic Energy Act of 1954 [this section]) respecting (A) byproduct material, as defined in section 11 e. (2) of the Atomic Energy Act of 1954 [section 2044(e)(2) of this title], or (B) any activity which results in the production of byproduct material as so defined, in the same manner and to the same extent as permitted before the date of the enactment of this Act, except that such State authority shall be exercised in a manner which, to the extent practicable, is consistent with the requirements of section 274 *o.* of the Atomic Energy Act of 1954 (as added by section 204(e) of this Act) [subsec. (*o*) of this section]. The Commission shall have the authority to ensure that such section 274 *o.* is implemented by any such State to the extent practicable during the three-year period beginning on the date of the enactment of this Act. Nothing in this section shall be construed to preclude the Commission or the Administrator of the Environmental Protection Agency from taking such action under section 275 of the Atomic Energy Act of 1954 [section 2022 of this title] as may be necessary to implement title I of this Act [section 7911 et seq. of this title].

"(2) An agreement entered into with any State as permitted under section 274 of the Atomic Energy Act of 1954 [this section] with respect to byproduct material as defined in section 11 e. (2) of such Act. [section 2014(e)(2) of this title], may be entered into at any time after the date of the enactment of this Act [Nov. 8, 1978] but no such agreement may take effect before the date three years after the date of the enactment of this Act.

"(3) Notwithstanding any other provision of this title [See Effective Date of 1978 Amendment note set out under section 2014 of this title], where a State assumes or has assumed, pursuant to an agreement entered into under section 274b. of the Atomic Energy Act of 1954 [subsec. (b) of this section], authority over any activity which results in the production of byproduct material, as defined in section 11 e. (2) of such Act [section 2014(e)(2) of this title], the Commission shall not, until the end of the three-year period beginning on the date of the enactment of this Act [Nov. 8, 1978], have licensing authority over such byproduct material produced in any activity covered by such agreement, unless the agreement is terminated, suspended, or amended to provide for such Federal licensing. If, at the end of such three-year period, a State has not entered into such an agreement with respect to byproduct material, as defined in section 11 e. (2) of the Atomic Energy Act of 1954, the Commission shall have authority over such byproduct material."

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 263e, 2022, 7911, 7918, 7925, 7941 of this title; title 29 section 653.

§ 2021a. Storage or disposal facility planning

(a) Any person, agency, or other entity proposing to develop a storage or disposal facility, including a test disposal facility, for high-level radioactive wastes, non-high-level radioactive wastes including transuranium contaminated wastes, or irradiated nuclear reactor fuel, shall notify the Commission as early as possible after the commencement of planning for a particular proposed facility. The Commission shall in turn notify the Governor and the State legislature of the State of proposed situs whenever the Commission has knowledge of such proposal.

(b) Omitted

(Pub. L. 95-601, § 14, Nov. 6, 1978, 92 Stat. 2953.)

CODIFICATION

Subsec. (b) of this section, which authorized and directed the Commission to prepare a report on means of improving the opportunities for State participation in the process for siting, licensing, and developing nuclear waste storage or disposal facilities and to submit such report to the Congress on or before Mar. 1, 1979, was omitted from the Code as executed.

Section was enacted as part of an act authorizing appropriations to the Nuclear Regulatory Commission for fiscal year 1979, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2022. Health and environmental standards for uranium mill tailings

(a) Promulgation and revision of rules for protection from hazards at inactive or depository sites

As soon as practicable, but not later than one year after November 8, 1978, the Administrator of the Environmental Protection Agency (hereinafter referred to in this section as the "Administrator") shall, by rule, promulgate standards of general application (including standards applicable to licenses under section 104(h) of the Uranium Mill Tailings Radiation Control Act of 1978 [42 U.S.C. 7914(h)]) for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with residual radioactive materials (as defined in section 101 of the Uranium Mill Tailings Radiation Control Act of 1978 [42 U.S.C. 7911]) located at inactive uranium mill tailings sites and depository sites for such materials selected by the Secretary of Energy, pursuant to title I of the Uranium Mill Tailings Radiation Control Act of 1978. [42 U.S.C. 7911 et seq.] Standards promulgated pursuant to this subsection shall, to the maximum extent practicable, be consistent with the requirements of the Solid Waste Disposal Act, as amended [42 U.S.C. 6901 et seq.]. The Administrator may periodically revise any standard promulgated pursuant to this subsection.

(b) Promulgation and revision of rules for protection from hazards at processing or disposal sites

(1) As soon as practicable, but not later than eighteen months after November 8, 1978, the Administrator shall, by rule, promulgate standards of general application for the protection of

the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material, as defined in section 2014(e)(2) of this title, at sites at which ores are processed primarily for their source material content or which are used for the disposal of such byproduct material.

(2) Such generally applicable standards promulgated pursuant to this subsection for nonradiological hazards shall provide for the protection of human health and the environment consistent with the standards required under subtitle C of the Solid Waste Disposal Act, as amended [42 U.S.C. 6921 et seq.], which are applicable to such hazards: *Provided, however,* That no permit issued by the Administrator is required under this chapter or the Solid Waste Disposal Act, as amended [42 U.S.C. 6901 et seq.], for the processing, possession, transfer, or disposal of byproduct material, as defined in section 2014(e)(2) of this title. The Administrator may periodically revise any standard promulgated pursuant to this subsection. Within three years after such revision of any such standard, the Commission and any State permitted to exercise authority under section 2021(b)(2) of this title shall apply such revised standard in the case of any license for byproduct material as defined in section 2014(e)(2) of this title or any revision thereof.

(c) Publication in Federal Register; notice and hearing; consultations; judicial review; time for petition; venue; copy to Administrator; record; administrative jurisdiction; review by Supreme Court; effective date of rule

(1) Before the promulgation of any rule pursuant to this section, the Administrator shall publish the proposed rule in the Federal Register, together with a statement of the research, analysis, and other available information in support of such proposed rule, and provide a period of public comment of at least thirty days for written comments thereon and an opportunity, after such comment period and after public notice, for any interested person to present oral data, views, and arguments at a public hearing. There shall be a transcript of any such hearing. The Administrator shall consult with the Commission and the Secretary of Energy before promulgation of any such rule.

(2) Judicial review of any rule promulgated under this section may be obtained by any interested person only upon such person filing a petition for review within sixty days after such promulgation in the United States court of appeals for the Federal judicial circuit in which such person resides or has his principal place of business. A copy of the petition shall be forthwith transmitted by the clerk of court to the Administrator. The Administrator thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which such rule was based as provided in section 2112 of title 28. The court shall have jurisdiction to review the rule in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter. The judgement of the court affirming, modifying, or setting aside, in whole or in part, any such rule shall be final, subject to judicial review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(3) Any rule promulgated under this section shall not take effect earlier than sixty calendar days after such promulgation.

(d) Federal and State implementation and enforcement

Implementation and enforcement of the standards promulgated pursuant to subsection (b) of this section shall be the responsibility of the Commission in the conduct of its licensing activities under this chapter. States exercising authority pursuant to section 2021(b)(2) of this title shall implement and enforce such standards in accordance with subsection (*o*) of such section.

(e) Other authorities of Administrator unaffected

Nothing in this chapter applicable to byproduct material, as defined in section 2014(e)(2) of this title, shall affect the authority of the Administrator under the Clean Air Act of 1970, as amended [42 U.S.C. 7401 et seq.], or the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.].

(Aug. 1, 1946, ch. 724, § 275, as added Nov. 8, 1978, Pub. L. 95-604, title II, § 206(a), 92 Stat. 3039.)

REFERENCES IN TEXT

The Uranium Mill Tailings Radiation Control Act of 1978, referred to in subsec. (a), is Pub. L. 95-604, Nov. 8, 1978, 92 Stat. 3021. Title I of such act is classified generally to subchapter I (§ 7911 et seq.) of chapter 88 of this title. For complete classification of this act to the Code, see Short Title note set out under section 7901 of this title and Tables.

The Solid Waste Disposal Act, as amended, referred to in subsecs. (a) and (b)(2), is title II of Pub. L. 89-272, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. Subtitle C of the Solid Waste Disposal Act is classified generally to subchapter III (§ 6921 et seq.) of chapter 82 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Clean Air Act of 1970, as amended, referred to in subsec. (e), probably means the Clean Air Act, which is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, as amended, referred to in subsec. (e), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

EFFECTIVE DATE

Section effective Nov. 8, 1978, see section 208 of Pub. L. 95-604, set out as an Effective Date of 1978 Amendment note under section 2014 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021, 2114, 7913, 7914, 7918 of this title.

SUBCHAPTER II—ORGANIZATION

§§ 2033, 2034

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under these sections were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration, with certain exceptions, by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2035. Divisions, offices, and positions

TRANSFER OF FUNCTIONS

* * * * *

The Division of Naval Reactors and the Division of Military Applications, both established under this section, were transferred to the Department of Energy by section 7158 of this title, with such organizational units to be deemed organizational units established by chapter 84 (§ 7101 et seq.) of this title. The Energy Research and Development Administration was terminated pursuant to sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5814, 7158 of this title.

§ 2036. Repealed. Pub. L. 95-91, title VII, § 709(c)(1), Aug. 4, 1977, 91 Stat. 608

Section, act Aug. 1, 1946, ch. 724, § 26, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 926, established a General Advisory Committee to advise the Atomic Energy Commission on scientific and technical matters relating to materials, production, and research and development.

§ 2037. Military Liaison Committee; composition; duties; authority of Defense Department

TRANSFER OF FUNCTIONS

* * * * *

The functions of the Energy Research and Development Administration with respect to the Military Liaison Committee established by this section were transferred to the Department of Energy by section 7158 of this title, with that organizational unit deemed to be an organizational unit established by chapter 84 (§ 7101 et seq.) of this title. The Energy Research and Development Administration was terminated pursuant to sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5814, 7158 of this title.

§ 2038. Appointment of Army, Navy, or Air Force officer as Assistant General Manager for Military Application; Chairman of Military Liaison Committee; compensation

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2039. Advisory Committee on Reactor Safeguards; composition; tenure; duties; compensation; reactor safety research study; annual report to Congress

There is established an Advisory Committee on Reactor Safeguards consisting of a maximum of fifteen members appointed by the Commission for terms of four years each. The Committee shall review safety studies and facility license applications referred to it and shall make reports thereon, shall advise the Commission with regard to the hazards of proposed or existing reactor facilities and the adequacy of proposed reactor safety standards, and shall perform such other duties as the Commission may request. One member shall be designated by the Committee as its Chairman. The members of the Committee shall receive a per diem compensation for each day spent in meetings or conferences, or other work of the Committee, and all members shall receive their necessary traveling or other expenses while engaged in the work of the Committee. The provisions of section 2203 of this title shall be applicable to the Committee. In addition to its other duties under this section, the committee, making use of all available sources, shall undertake a study of reactor safety research and prepare and submit annually to the Congress a report containing the results of such study. The first such report shall be submitted to the Congress not later than December 31, 1977.

(As amended Dec. 13, 1977, Pub. L. 95-209, § 5, 91 Stat. 1483.)

AMENDMENTS

1977—Pub. L. 95-209 added provisions which called for a study of reactor safety research and an annual report on the results of the study.

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2040. Fellowship program of Advisory Committee on Reactor Safety; selection of fellowship

To assist the Advisory Committee on Reactor Safeguards in carrying out its function, the committee shall establish a fellowship program under which persons having appropriate engineering or scientific expertise are assigned particular tasks relating to the functions of the committee. Such fellowship shall be for 2-year periods and the recipients of such fellowships shall be selected pursuant to such criteria as may be established by the committee.

(Pub. L. 95-209, § 6, Dec. 13, 1977, 91 Stat. 1483.)

CODIFICATION

Section was not enacted as part of the Atomic Energy Act of 1954, which comprises this chapter.

SUBCHAPTER III—RESEARCH

§ 2051. Research and Development Assistance

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under subsec. (b) of this section were transferred to the Administrator of the Energy Research and Development Administration, and the functions under subsecs. (a), (c), and (d) of this section were transferred jointly to the Nuclear Regulatory Commission and the Administrator by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

STUDY ON HEALTH EFFECTS OF LOW-LEVEL RADIATION; REPORT TO CONGRESS

Pub. L. 95-601, § 5, Nov. 6, 1978, 92 Stat. 2949, which provided that the Commission and the Environmental Protection Agency, in consultation with the Secretary of Health, Education, and Welfare, conduct preliminary planning and design studies for epidemiological research on the health effects of low-level ionizing radiation and that the Commission and the Environmental Protection Agency submit before certain dates various reports to Congress with respect to such study, was omitted from the Code as executed.

§ 2052. Research by the Commission

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2053. Research for others; charges

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title, with the exception that the Nuclear Regulatory Commission retains authority to contract out for research as it deems necessary to exercise its licensing and regulatory functions. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SUBCHAPTER V—SPECIAL NUCLEAR MATERIAL

§ 2071. Determination of other material as special nuclear material; Presidential assent; effective date

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

ABOLITION OF THE JOINT COMMITTEE ON ATOMIC ENERGY

The Joint Committee on Atomic Energy, referred to in text, was abolished by section 2258 of this title and references to the Joint Committee are deemed, on or after Sept. 20, 1977, to refer to the committees of the Senate or House of Representatives which, under the rules of the Senate or House, have jurisdiction over the subject matter with records and files of the Joint Committee being transferred to the respective committees of the House or Senate.

§ 2073. Domestic distribution of special nuclear material

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator, Energy Research and Development Administration by sections 5814 and 5841 of this title, with the exception that functions under subsec. (a)(ii), (iii) of this section apply only to the Administrator, and the functions under subsec. (i) of this section apply only to the Nuclear Regulatory Commission. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2074. Foreign distribution of special nuclear material

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Laboratory samples; medical devices; monitoring or other instruments; emergencies

The authority to distribute special nuclear material under this section other than under an export license granted by the Nuclear Regulatory Commission shall extend only to the following small quantities of special nuclear material (in no event more than five hundred grams per year of the uranium isotope 233, the uranium isotope 235, or plutonium contained in special nuclear material to any recipient):

(1) which are contained in laboratory samples, medical devices, or monitoring or other instruments; or

(2) the distribution of which is needed to deal with an emergency situation in which time is of the essence.

(e) Arrangements for storage or disposition of irradiated fuel elements

The authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 2160(a)(2)(E) of this title shall be subject to the requirements of section 2160 of this title.

(As amended Mar. 10, 1978, Pub. L. 95-242, title III, §§ 301(a), 303(b)(1), 92 Stat. 125, 131.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-242, § 301(a), added subsec. (d).

Subsec. (e). Pub. L. 95-242, § 303(b)(1), added subsec. (e).

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

Transfer of Functions

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Abolition of the Joint Committee on Atomic Energy

The Joint Committee on Atomic Energy, referred to in subsec. (a), was abolished by section 2258 of this title and references to the Joint Committee are deemed, on or after Sept. 20, 1977, to refer to the committees of the Senate or House of Representatives which, under the rules of the Senate or House, have jurisdiction over the subject matter with records and files of the Joint Committee being transferred to the respective committees of the House or Senate.

Section Referred to in Other Sections

This section is referred to in sections 2014, 2075, 2077, 2141, 2153, 2154, 2155, 2160, 2294 of this title.

§ 2075. Acquisition of special nuclear material; payments; just compensation

The Commission is authorized, to the extent it deems necessary to effectuate the provisions of this chapter, to purchase without regard to the limitations in section 2074 of this title or any guaranteed purchase prices established pursuant to section 2076 of this title, and to take, requisition, condemn, or otherwise acquire any special nuclear material or any interest therein. Any contract of purchase made under this section may be made without regard to the provisions of section 5 of title 41, upon certification by the Commission that such action is necessary in the interest of the common defense and security, or upon a showing by the Commission that advertising is not reasonably practicable. Partial and advance payments may be made under contracts for such purposes. Just compensation shall be made for any right, property, or interest in property taken, requisitioned, or condemned under this section: *Providing*, That the authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 2160(a)(2)(E) of this title shall be subject to the requirements of section 2160 of this title.

(As amended Mar. 10, 1978, Pub. L. 95-242, title III, § 303(b)(2), 92 Stat. 131.)

Amendments

1978—Pub. L. 95-424 provided that the authority in this section to commit United States funds for any activities pursuant to any subsequent arrangement under section 2160(a)(2)(E) of this title shall be subject to the requirement of section 2160 of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

Transfer of Functions

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Section Referred to in Other Sections

This section is referred to in sections 2160, 2221 of this title.

§ 2076. Guaranteed purchase prices

Transfer of Functions

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2077. Unauthorized dealings in special nuclear material

[*See main edition for text of* (*a*)]

(b) Production; subsequent arrangements; authorization; determination by Secretary of Energy that activity will not be inimical to interests of United States; procedures

It shall be unlawful for any person to directly or indirectly engage in the production of any special nuclear material outside of the United States except (1) as specifically authorized under an agreement for cooperation made pursuant to section 2153 of this title, including a specific authorization in a subsequent arrangement under section 2160 of this title, or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States: *Provided*, That any such determination by the Secretary of Energy shall be made only with the concurrence of the Department of State and after consultation with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, the Department of Commerce, and the Department of Defense. The Secretary of Energy shall, within ninety days after March 10, 1978, establish orderly and expeditious procedures, including provision for necessary administrative actions and interagency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, the Director of

the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for the consideration of requests for authorization under this subsection. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an interagency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decision required under this subsection. The processing of any request proposed and filed as of March 10, 1978, shall not be delayed pending the development and establishment of procedures to implement the requirements of this subsection. Any trade secrets or proprietary information submitted by any person seeking an authorization under this subsection shall be afforded the maximum degree of protection allowable by law: *Provided further,* That the export of component parts as defined in section 2014(v)(2) or (cc)(2) of this title shall be governed by sections 2139 and 2155 of this title: *Provided further,* That notwithstanding section 7172(d) of this title, Secretary of Energy and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section, section 2074(d), section 2094, or section 2141(b) of this title.

[*See main edition for text of* (c) *and* (d)]

(As amended Mar. 10, 1978, Pub. L. 95-242, title III, § 302, 92 Stat. 126.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-242 substituted "except (1) as specifically authorized under an agreement for cooperation made pursuant to section 2153 of this title, including a specific authorization in a subsequent arrangement under section 2160 of this title, or (2) upon authorization by the Secretary of Energy after a determination that such activity will not be inimical to the interest of the United States" for "except (1) under an agreement for cooperation made pursuant to section 2153 of this title, or (2) upon authorization by the Commission after a determination that such activity will not be inimical to the interest of the United States" in the existing provisions and added provisos relating to determinations by the Secretary of Energy, the procedures to be followed in processing authorization requests, the export of component parts, and the jurisdiction of the Secretary of Energy.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2078. Congressional review of guaranteed purchase price, guaranteed purchase price period, and criteria for waiver of charges

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

ABOLITION OF THE JOINT COMMITTEE ON ATOMIC ENERGY

The Joint Committee on Atomic Energy, referred to in text, was abolished by section 2258 of this title and references to the Joint Committee are deemed, on or after Sept. 20, 1977, to refer to the committees of the Senate or House of Representatives which, under the rules of the Senate or House, have jurisdiction over the subject matter with records and files of the Joint Committee being transferred to the respective committees of the House or Senate.

SUBCHAPTER VI—SOURCE MATERIAL

§ 2091. Determination of source material

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

ABOLITION OF THE JOINT COMMITTEE ON ATOMIC ENERGY

The Joint Committee on Atomic Energy, referred to in text, was abolished by section 2258 of this title and references to the Joint Committee are deemed, on or after Sept. 20, 1977, to refer to the committees of the Senate or House of Representatives which, under the rules of the Senate or House, have jurisdiction over the subject matter with records and files of the Joint Committee being transferred to the respective committees of the House or Senate.

§ 2092. License requirements for transfers

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2113, 2121, 2183, 2282 of this title.

§ 2093. Domestic distribution of source material

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section relating to distribution of source material were transferred to the Administrator of the Energy Research and Development Administration and the functions relating to licensing transferred to the Nuclear Regulatory Commission by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2094. Foreign distribution of source material

The Commission is authorized to cooperate with any nation by distributing source material and to distribute source material pursuant to the terms of an agreement for cooperation to which such nation is a party and which is made in accordance with section 2153 of this title. The Commission is also authorized to distribute source material outside of the United States upon a determination by the Commission that such activity will not be inimical to the interests of the United States. The authority to distribute source material under this section other than under an export license granted by the Nuclear Regulatory Commission shall in no case extend to quantities of source material in excess of three metric tons per year per recipient.

(As amended Mar. 10, 1978, Pub. L. 95-242, title III, § 301(b), 92 Stat. 125.)

AMENDMENTS

1978—Pub. L. 95-242 provided that the authority to distribute source material under this section other than under an export license granted by the Nuclear Regulatory Commission shall in no case extend to quantities of source material in excess of three metric tons per year per recipient.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2014, 2077, 2141, 2153, 2154, 2155 of this title.

§§ 2095, 2096

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under these sections were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2097. Operations on lands belonging to the United States

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2098. Public and acquired lands

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SUBCHAPTER VII—BYPRODUCT MATERIALS

§ 2111. Domestic distribution; license; price limitations

No person may transfer or receive in interstate commerce, manufacture, produce, transfer, acquire, own, possess, import, or export any byproduct material, except to the extent authorized by this section, section 2112 or section

2114 of this title. The Commission is authorized to issue general or specific licenses to applicants seeking to use byproduct material for research or development purposes, for medical therapy, industrial uses, agricultural uses, or such other useful applications as may be developed. The Commission may distribute, sell, loan, or lease such byproduct material as it owns to qualified applicants with or without charge: *Provided, however,* That, for byproduct material to be distributed by the Commission for a charge, the Commission shall establish prices on such equitable basis as, in the opinion of the Commission, (a) will provide reasonable compensation to the Government for such material, (b) will not discourage the use of such material or the development of sources of supply of such material independent of the Commission, and (c) will encourage research and development. In distributing such material, the Commission shall give preference to applicants proposing to use such material either in the conduct of research and development or in medical therapy. The Commission shall not permit the distribution of any byproduct material to any licensee, and shall recall or order the recall of any distributed material from any licensee, who is not equipped to observe or who fails to observe such safety standards to protect health as may be established by the Commission or who uses such material in violation of law or regulation of the Commission or in a manner other than as disclosed in the application therefor or approved by the Commission. The Commission is authorized to establish classes of byproduct material and to exempt certain classes or quantities of material or kinds of uses or users from the requirements for a license set forth in this section when it makes a finding that the exemption of such classes or quantities of such material or such kinds of uses or users will not constitute an unreasonable risk to the common defense and security and to the health and safety of the public.

(As amended Nov. 8, 1978, Pub. L. 95-604, title II, § 205(b), 92 Stat. 3039.)

AMENDMENTS

1978—Pub. L. 95-604 inserted reference to section 2114 of this title.

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under these sections relating to distribution of byproduct material were transferred to the Administrator, Energy Research and Development Administration and the functions relating to licensing transferred to the Nuclear Regulatory Commission by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2113, 2114, 2121, 2183, 2201, 2210, 2282 of this title.

§ 2112. Foreign distribution of byproduct material

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under these sections relating to distribution of byproduct material were transferred to the Administrator, Energy Research and Development Administration and the functions relating to licensing transferred to the Nuclear Regulatory Commission by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2014, 2111, 2141, 2153, 2154, 2155, 2282 of this title.

§ 2113. Ownership and custody of certain byproduct material and disposal sites

(a) Specific assurances in license for pretermination actions

Any license issued or renewed after the effective date of this section under section 2092 or section 2111 of this title for any activity which results in the production of any byproduct material, as defined in section 2014(e)(2) of this title, shall contain such terms and conditions as the Commission determines to be necessary to assure that, prior to termination of such license—

(1) the licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the Commission for sites (A) at which ores were processed primarily for their source material content and (B) at which such byproduct material is deposited, and

(2) ownership of any byproduct material, as defined in section 2014(e)(2) of this title, which resulted from such licensed activity shall be transferred to (A) the United States or (B) in the State in which such activity occurred if such State exercises the option under subsection (b)(1) of this section to acquire land used for the disposal of byproduct material.

Any license which is in effect on the effective date of this section and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination.

(b) Transfer of title; health and environmental protection through maintenance of property and materials; use of surface or subsurface estates: first refusal rights of transferor; maintenance, monitoring, and emergency measures and other authorized action; licensee-transferor liability for fraud or negligence; administrative and legal costs limitation; government retransfers under section 7914(h) of this title

(1)(A) The Commission shall require by rule, regulation, or order that prior to the termination of any license which is issued after the effective date of this section, title to the land, including any interests therein (other than land owned by the United States or by a State) which is used for the disposal of any byproduct material, as defined by section 2014(e)(2) of this title, pursuant to such license shall be transferred to—

(i) the United States, or

(ii) the State in which such land is located, at the option of such State, unless the Commission determines prior to such termination that transfer of title to such land and such byproduct material is not necessary or desirable to protect the public health, safety, or welfare or to minimize or eliminate danger to life or property. Such determination shall be made in accordance with section 2231 of this title. Notwithstanding any other provision of law or any such determination, such property and materials shall be maintained pursuant to a license issued by the Commission pursuant to section 2111 of this title in such manner as will protect the public health, safety, and the environment.

(B) If the Commission determines by order that use of the surface or subsurface estates, or both, of the land transferred to the United States or to a State under subparagraph (A) would not endanger the public health, safety, welfare, or environment, the Commission, pursuant to such regulations as it may prescribe, shall permit the use of the surface or subsurface estates, or both, of such land in a manner consistent with the provisions of this section. If the Commission permits such use of such land, it shall provide the person who transferred such land with the right of first refusal with respect to such use of such land.

(2) If transfer to the United States of title to such byproduct material and such land is required under this section, the Secretary of Energy or any Federal agency designated by the President shall, following the Commission's determination of compliance under subsection (c) of this section, assume title and custody of such byproduct material and land transferred as provided in this subsection. Such Secretary or Federal agency shall maintain such material and land in such manner as will protect the public health and safety and the environment. Such custody may be transferred to another officer or instrumentality of the United States only upon approval of the President.

(3) If transfer to a State of title to such byproduct material is required in accordance with this subsection, such State shall, following the Commission's determination of compliance under subsection (d) of this section, assume title and custody of such byproduct material and land transferred as provided in this subsection. Such State shall maintain such material and land in such manner as will protect the public health, safety, and the environment.

(4) In the case of any such license under section 2092 of this title, which was in effect on the effective date of this section, the Commission may require, before the termination of such license, such transfer of land and interests therein (as described in paragraph (1) of this subsection) to the United States or a State in which such land is located, at the option of such State, as may be necessary to protect the public health, welfare, and the environment from any effects associated with such byproduct material. In exercising the authority of this paragraph, the Commission shall take into consideration the status of the ownership of such land and interests therein and the ability of the licensee to transfer title and custody thereof to the United States or a State.

(5) The Commission may, pursuant to a license, or by rule or order, require the Secretary or other Federal agency or State having custody of such property and materials to undertake such monitoring, maintenance, and emergency measures as are necessary to protect the public health and safety and such other actions as the Commission deems necessary to comply with the standards promulgated pursuant to section 2114 of this title. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring, and emergency measures, but shall take no other action pursuant to such license, rule or order, with respect to such property and materials unless expressly authorized by Congress after November 8, 1978.

(6) The transfer of title to land or byproduct materials, as defined in section 2014(e)(2) of this title, to a State or the United States pursuant to this subsection shall not relieve any licensee of liability for any fraudulent or negligent acts done prior to such transfer.

(7) Material and land transferred to the United States or a State in accordance with this subsection shall be transferred without cost to the United States or a State (other than administrative and legal costs incurred in carrying out such transfer). Subject to the provisions of paragraph (1)(B) of this subsection, the United States or a State shall not transfer title to material or property acquired under this subsection to any person, unless such transfer is in the same manner as provided under section 7914(h) of this title.

(8) The provisions of this subsection respecting transfer of title and custody to land shall not apply in the case of lands held in trust by the United States for any Indian tribe or lands owned by such Indian tribe subject to a restriction against alienation imposed by the United States. In the case of such lands which are used for the disposal of byproduct material, as defined in section 2014(e)(2) of this title, the licensee shall be required to enter into such arrangements with the Commission as may be appropriate to assure the long-term maintenance and monitoring of such lands by the United States.

(c) Compliance with applicable standards and license requirements; determination upon termination of license

Upon termination on[1] any license to which this section applies, the Commission shall determine whether or not the licensee has complied with all applicable standards and requirements under such license.

(Aug. 1, 1946, ch. 724, § 83, as added Nov. 8, 1978, Pub. L. 95-604, title II, § 202(a), 92 Stat. 3033, and amended Nov. 9, 1979, Pub. L. 96-106, § 22(c), (e), 93 Stat. 800.)

REFERENCES IN TEXT

Effective date of this section, referred to in subsecs. (a) and (b)(1)(A), (4), is three years after Nov. 8, 1978, see section 202(b) of Pub. L. 95-604, set out as an Effective Date note below.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-106, § 22(c), substituted "Any license which is in effect on the effective date of this section and which is subsequently terminated without renewal shall comply with paragraphs (1) and (2) upon termination" for "Any license in effect on November 8, 1978, shall either contain such terms and conditions on renewal thereof after the effective date of this section, or comply with paragraphs (1) and (2) upon the termination of such license, whichever first occurs".

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[1] So in original. Probably should be "of".

Subsec. (b)(1)(A). Pub. L. 96-106, § 22(e), among other changes, substituted reference to section 2111 of this title for reference to section 2114(b) of this title.

Effective Date

Section 202(b) of Pub. L. 95-604 provided that: "This section [enacting this section] shall be effective three years after the enactment of this Act [Nov. 8, 1978]."

Consolidation of Licenses and Procedures

Section 209 of Pub. L. 95-604 provided that: "The Nuclear Regulatory Commission shall consolidate, to the maximum extent practicable, licenses and licensing procedures under amendments made by this title [see Effective Date of 1978 Amendment note under section 2014 of this title] with licenses and licensing procedures under other authorities contained in the Atomic Energy Act of 1954 [this chapter]."

[Provision effective Nov. 8, 1978, see section 208 of Pub. L. 95-604, set out as an Effective Date of 1978 Amendment note under section 2014 of this title].

Cross References

Remedial action at inactive uranium mill tailings sites to minimize environmental hazards, see section 7901 et seq. of this title.

Section Referred to in Other Sections

This section is referred to in sections 2021, 2114 of this title.

§ 2114. Authorities of Commission respecting certain byproduct material

(a) Management function

The Commission shall insure that the management of any byproduct material, as defined in section 2014(e)(2) of this title, is carried out in such manner as—

(1) the Commission deems appropriate to protect the public health and safety and the environment from radiological and non-radiological hazards associated with the processing and with the possession and transfer of such material.

(2) conforms with applicable general standards promulgated by the Administrator of the Environmental Protection Agency under section 2022 of this title, and

(3) conforms to general requirements established by the Commission, with the concurrence of the Administrator, which are, to the maximum extent practicable, at least comparable to requirements applicable to the possession, transfer, and disposal of similar hazardous material regulated by the Administrator under the Solid Waste Disposal Act, as amended [42 U.S.C. 6901 et seq.].

(b) Rules, regulations, or orders for certain activities; civil penalty

In carrying out its authority under this section, the Commission is authorized to—

(1) by rule, regulation, or order require persons, officers, or instrumentalities exempted from licensing under section 2111 of this title to conduct monitoring, perform remedial work, and to comply with such other measures as it may deem necessary or desirable to protect health or to minimize danger to life or property, and in connection with the disposal or storage of such byproduct material; and

(2) make such studies and inspections and to conduct such monitoring as may be necessary.

Any violation by any person other than the United States or any officer or employee of the United States or a State of any rule, regulation, or order or licensing provision, of the Commission established under this section or section 2113 of this title shall be subject to a civil penalty in the same manner and in the same amount as violations subject to a civil penalty under section 2282 of this title. Nothing in this section affects any authority of the Commission under any other provision of this chapter.

(Aug. 1, 1946, ch. 724, § 84, as added Nov. 8, 1978, Pub. L. 95-604, title II, § 205(a), 92 Stat. 3039.)

References in Text

The Solid Waste Disposal Act, as amended, referred to in subsec. (a)(3), is title II of Pub. L. 89-272, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classifed generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

Effective Date

Section effective Nov. 8, 1978, see section 208 of Pub. L. 95-604, set out as an Effective Date of 1978 Amendment note under section 2014 of this title.

Cross References

Remedial action at inactive uranium mill tailings sites to minimize environmental hazards, see section 7901 et seq. of this title.

Section Referred to in Other Sections

This section is referred to in sections 2021, 2111, 2113 of this title.

SUBCHAPTER VIII—MILITARY APPLICATION OF ATOMIC ENERGY

§ 2121. Authority of Commission

Transfer of Functions

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Section Referred to in Other Sections

This section is referred to in sections 2014, 2122, 2131, 2140, 2153, 2153a, 2153f, 2159, 2160 of this title.

SUBCHAPTER IX—ATOMIC ENERGY LICENSES

§ 2135. Antitrust provisions governing licenses

Transfer of Functions

The Atomic Energy Commission was abolished and all functions under subsec. (c) of this section were transferred to and vested exclusively in the Nuclear Regulatory Commission, and similar functions under subsecs. (a) and (b) of this section were transferred to and vested jointly in the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2138. Suspension of licenses during war or national emergency

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2139. Component and other parts of facilities

(a) Licenses for domestic activities

With respect to those utilization and production facilities which are so determined by the Commission pursuant to section 2014(v)(2) or 2014(cc)(2) of this title the Commission may issue general licenses for domestic activities required to be licensed under section 2131 of this title, if the Commission determines in writing that general licensing will not constitute an unreasonable risk to the common defense and security.

(b) Export licenses

After consulting with the Secretaries of State, Energy, and Commerce and the Director, the Commission is authorized and directed to determine which component parts as defined in section 2014(v)(2) or 2014(cc)(2) of this title and which other items or substances are especially relevant from the standpoint of export control because of their significance for nuclear explosive purposes. Except as provided in section 2155(b)(2) of this title, no such component, substance, or item which is so determined by the Commission shall be exported unless the Commission issues a general or specific license for its export after finding, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the following criteria or their equivalent are met: (1) IAEA safeguards as required by Article III (2) of the Treaty will be applied with respect to such component, substance, or item; (2) no such component, substance, or item will be used for any nuclear explosive device or for research on or development of any nuclear explosive device; and (3) no such component, substance, or item will be retransferred to the jurisdiction of any other nation or group of nations unless the prior consent of the United States is obtained for such retransfer; and after determining in writing that the issuance of each such general or specific license or category of licenses will not be inimical to the common defense and security: *Provided*, That a specific license shall not be required for an export pursuant to this section if the component, item or substance is covered by a facility license issued pursuant to section 2155 of this title.

(c) Exports inimical to common defense and security of United States

The Commission shall not issue an export license under the authority of subsection (b) of this section if it is advised by the executive branch, in accordance with the procedures established under section 2155(a) of this title, that the export would be inimical to the common defense and security of the United States.

(As amended Mar. 10, 1978, Pub. L. 95-242, title III, § 309(a), 92 Stat. 141.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-242 designated existing provisions as subsec. (a) and in subsec. (a) as so designated substituted "the Commission may issue general licenses for domestic activities required to be licensed under section 2131 of this title, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security" for "the Commission may (a) issue general licenses for activities required to be licensed under section 2131 of this title, if the Commission determines in writing that such general licensing will not constitute an unreasonable risk to the common defense and security, and (b) issue licenses for the export of such facilities, if the Commission determines in writing that each export will not constitute an unreasonable risk to the common defense and security".

Subsecs. (b), (c). Pub. L. 95-242 added subsecs. (b) and (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

EXPORTS CONTRACTED FOR PRIOR TO NOV. 1, 1977, MADE WITHIN ONE YEAR OF MARCH 10, 1978; SAVINGS PROVISIONS

Section 309(d) of Pub. L. 95-242 provided that: "The amendments to section 109 of the 1954 Act [this section] made by this section [see 1978 Amendment notes above] shall not affect the approval of exports contracted for prior to November 1, 1977, which are made within one year of the date of enactment of such amendments [Mar. 10, 1978]."

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2077, 2133, 2134, 2139a, 2160, 2282 of this title; title 22 section 3203.

§ 2139a. Regulations implementing requirements relating to licensing for components and other parts of facilities

(a) The Commission, not later than one hundred and twenty days after March 10, 1978, shall publish regulations to implement the provisions of subsections (b) and (c) of section 2139 of this title. Among other things, these regulations shall provide for the prior consultation by the Commission with the Department of State, the Department of Energy, the Department of Defense, the Department of Commerce, and the Arms Control and Disarmament Agency.

(b) The President, within not more than one hundred and twenty days after March 10, 1978, shall publish procedures regarding the control by the Department of Commerce over all export items, other than those licensed by the Commission, which could be, if used for purposes other than those for which the export is intended, of significance for nuclear explosive purposes. Among other things, these procedures shall provide for prior consultations, as required, by the Department of Commerce with the Department of State, the Arms Control and Disarmament Agency, the Commission, the Department of Energy, and the Department of Defense.

(Pub. L. 95-242, title III, § 309(b), (c), Mar. 10, 1978, 92 Stat. 141.)

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

As originally enacted, this section consisted of subsecs. (b) and (c) of section 309 of Pub. L. 95-242 which, for purposes of codification, were designated as subsecs. (a) and (b) of this section.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

The Secretary of Commerce to be responsible for performing the function vested in the President by subsec. (b) of this section, see section 3 of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 50 App. section 2416.

§ 2140. Exclusions from license requirement

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2141. Licensing by Nuclear Regulatory Commission of distribution of special nuclear material, source material, and byproduct material by Department of Energy

(a) The Nuclear Regulatory Commission is authorized to license the distribution of special nuclear material, source material, and byproduct material by the Department of Energy pursuant to section 2074, 2094, and 2112 of this title, respectively, in accordance with the same procedures established by law for the export licensing of such material by any person: *Provided*, That nothing in this section shall require the licensing of the distribution of byproduct material by the Department of Energy under section 2112 of this title.

(b) The Department of Energy shall not distribute any special nuclear material or source material under section 2074 or 2094 of this title other than under an export license issued by the Nuclear Regulatory Commission until (1) the Department has obtained the concurrence of the Department of State and has consulted with the Arms Control and Disarmament Agency, the Nuclear Regulatory Commission, and the Department of Defense under mutually agreed procedures which shall be established within not more than ninety days after March 10, 1978, and (2) the Department finds based on a reasonable judgment of the assurances provided and the information available to the United States Government, that the criteria in section 2156 of this title or their equivalent and any applicable criteria in section 2157 of this title are met, and that the proposed distribution would not be inimical to the common defense and security.

(Aug. 1, 1946, ch. 724, § 111, as added Mar. 10, 1978, Pub. L. 95-242, title III, § 301(c), 92 Stat. 125.)

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2077, 2160 of this title.

SUBCHAPTER X—INTERNATIONAL ACTIVITIES

§§ 2151, 2152

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under these sections were transferred to the Administrator of the Energy Research and Development Administration, except for any licensing or regulatory functions of the Commission, which were transferred to the Nuclear Regulatory Commission, by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2153. Cooperation with other nations

No cooperation with any nation, group of nations or regional defense organization pursuant to sections 2073, 2074(a), 2077, 2094, 2112, 2121, 2133, 2134, or 2164 of this title shall be undertaken until—

(a) Terms, conditions, duration, nature, scope, and other requirements of proposed agreements for cooperation; Presidential exemptions; negotiations; Nuclear Proliferation Assessment Statement

the proposed agreement for cooperation has been submitted to the President, which proposed agreement shall include the terms, conditions, duration, nature, and scope of the cooperation; and shall include the following requirements:

(1) a guaranty by the cooperating party that safeguards as set forth in the agreement for cooperation will be maintained with respect to all nuclear materials and equipment transferred pursuant thereto, and with respect to all special nuclear material used in or produced through the use of such nuclear materials and equipment, so long as the material or equipment remains under the jurisdiction or control of the cooperating party, irrespective of the duration of other provisions in the agreement or whether the agreement is terminated or suspended for any reason;

(2) in the case of non-nuclear-weapon states, a requirement, as a condition of continued United States nuclear supply under the agreement for cooperation, that IAEA safeguards be maintained with respect to all nuclear materials in all peaceful nuclear activities within the territory of such state, under its jurisdiction, or carried out under its control anywhere;

(3) except in the case of those agreements for cooperation arranged pursuant to section 2121(c) of this title, a guaranty by the cooperating party that no nuclear materials and equipment or sensitive nuclear technology to be transferred pursuant to such agreement, and no special nuclear material produced through the use of any nuclear materials and equipment or sensitive nuclear technology transferred pursuant to such agreement, will be used for any nuclear explosive device, or for research on or development of any nuclear explosive device, or for any other military purpose;

(4) except in the case of those agreements for cooperation arranged pursuant to section 2121(c) of this title and agreements for cooperation with nuclear-weapon states, a stipulation that the United States shall have the right to require the return of any nuclear materials and equipment transferred pursuant thereto and any special nuclear material produced through the use thereof if the cooperating party detonates a nuclear explosive device or terminates or abrogates an agreement providing for IAEA safeguards;

(5) a guaranty by the cooperating party that any material or any Restricted Data transferred pursuant to the agreement for cooperation and, except in the case of agreements arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, any production or utilization facility transferred pursuant to the agreement for cooperation or any special nuclear material produced through the use of any such facility or through the use of any material transferred pursuant to the agreement, will not be transferred to unauthorized persons or beyond the jurisdiction or control of the cooperating party without the consent of the United States;

(6) a guaranty by the cooperating party that adequate physical security will be maintained with respect to any nuclear material transferred pursuant to such agreement and with respect to any special nuclear material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to such agreement;

(7) except in the case of agreements for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, a guaranty by the cooperating party that no material transferred pursuant to the agreement for cooperation and no material used in or produced through the use of any material, production facility, or utilization facility transferred pursuant to the agreement for cooperation will be reprocessed, enriched or (in the case of plutonium, uranium 233, or uranium enriched to greater than twenty percent in the isotope 235, or other nuclear materials which have been irradiated) otherwise altered in form or content without the prior approval of the United States;

(8) except in the case of agreements for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, a guaranty by the cooperating party that no plutonium, no uranium 233, and no uranium enriched to greater than twenty percent in the isotope 235, transferred pursuant to the agreement for cooperation, or recovered from any source or special nuclear material so transferred or from any source or special nuclear material used in any production fa-

cility or utilization facility transferred pursuant to the agreement for cooperation, will be stored in any facility that has not been approved in advance by the United States; and

(9) except in the case of agreements for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, a guaranty by the cooperating party that any special nuclear material, production facility, or utilization facility produced or constructed under the jurisdiction of the cooperating party by or through the use of any sensitive nuclear technology transferred pursuant to such agreement for cooperation will be subject to all the requirements specified in this subsection.

The President may exempt a proposed agreement for cooperation (except an agreement arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title) from any of the requirements of the foregoing sentence if he determines that inclusion of any such requirement would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security. Except in the case of those agreements for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, any proposed agreement for cooperation shall be negotiated by the Secretary of State, with the technical assistance and concurrence of the Secretary of Energy and in consultation with the Director of the Arms Control and Disarmament Agency ("the Director"); and after consultation with the Commission shall be submitted to the President jointly by the Secretary of State and the Secretary of Energy accompanied by the views and recommendations of the Secretary of State, the Secretary of Energy, the Nuclear Regulatory Commission, and the Director, who shall also provide to the President an unclassified Nuclear Proliferation Assessment Statement regarding the adequacy of the safeguards and other control mechanisms and the peaceful use assurances contained in the agreement for cooperation to ensure that any assistance furnished thereunder will not be used to further any military or nuclear explosive purpose. In the case of those agreements for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, any proposed agreement for cooperation shall be submitted to the President by the Secretary of Energy or, in the case of those agreements for cooperation arranged pursuant to section 2121(c) or 2164(b) of this title which are to be implemented by the Department of Defense, by the Secretary of Defense;

(b) Presidential approval and authorization for execution of proposed agreements for cooperation

the President has approved and authorized the execution of the proposed agreement for cooperation and has made a determination in writing that the performance of the proposed agreement will promote, and will not constitute an unreasonable risk to, the common defense and security;

(c) Submittal of proposed agreements for cooperation to Congressional Committees

the proposed agreement for cooperation (if not an agreement subject to subsection (d) of this section), together with the approval and determination of the President, has been submitted to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of thirty days of continuous session (as defined in section 2159(g) of this title): *Provided, however,* That these committees, after having received such agreement for cooperation, may by resolution in writing waive the conditions of all or any portion of such thirty-day period; and

(d) Congressional action

the proposed agreement for cooperation (if arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, or if entailing implementation of section 2073, 2074(a), 2133, or 2134 of this title in relation to a reactor that may be capable of producing more than five thermal megawatts or special nuclear material for use in connection therewith) has been submitted to the Congress, together with the approval and determination of the President, for a period of sixty days of continuous session (as defined in section 2159(g) of this title) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, but such proposed agreement for cooperation shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that the Congress does not favor the proposed agreement for cooperation: *Provided,* That the sixty-day period shall not begin until a Nuclear Proliferation Assessment Statement prepared by the Director of the Arms Control and Disarmament Agency, when required by subsection (a) of this section, has been submitted to the Congress. Any such proposed agreement for cooperation shall be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions.

Following submission of a proposed agreement for cooperation (except an agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title) to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, the Nuclear Regulatory Commission, the Department of State, the Department of Energy, the Arms Control and Disarmament Agency, and the Department of Defense shall, upon the request of either of those committees, promptly furnish to those committees their views as to whether the safeguards and other controls contained therein provide an adequate framework to ensure that any exports as contemplated by such agreement will not be inimical to or constitute an unreasonable risk to the common defense and security.

If, after March 10, 1978, the Congress fails to disapprove a proposed agreement for cooperation which exempts the recipient nation from the requirement set forth in subsection (a)(2) of this section, such failure to act shall constitute a failure to adopt a resolution of disapproval pursuant to section 2157(b)(3) of this title for purposes of the Commission's consideration of applications and requests under section 2155(a)(2) of this title and there shall be no congressional review pursuant to section 2157 of this title of any subsequent license or authorization with respect to that state until the first such license or authorization which is issued after twelve months from the elapse of the sixty-day period in which the agreement for cooperation in question is reviewed by the Congress.

(As amended Mar. 10, 1978, Pub. L. 95-242, title IV, § 401, 92 Stat. 142; H. Res. 89, Feb. 5, 1979.)

Amendments

1978—Subsec. (a). Pub. L. 95-242 amended and carried forward into pars. (3), (5), and (6) the existing provisions relating to the terms and conditions required for inclusion in all new agreements for cooperation, added new terms and conditions set out in pars. (1), (2), (4), (7), (8), and (9), added provisions empowering the President to exempt proposed agreements from any of the requirements if he determines that inclusion of the requirement would be seriously prejudicial to the achievement of United States nonproliferation objectives or jeopardize the common defense and security for any other reason, provided for Congressional rejection of any such Presidential exemption, and provided that agreements be negotiated by the Department of State, with an exception for defense related agreements.

Subsec. (b). Pub. L. 95-242 re-enacted existing provisions with only minor changes in punctuation.

Subsec. (c). Pub. L. 95-242 inserted "(if not an agreement subject to subsection (d) of this section)" following "the proposed agreement for cooperation", substituted "submitted to the Committee on International Relations of the House of Representatives and the Committee on Foreign Relations for a period of thirty days of continuous session (as defined in section 2159(g) of this title)" for "submitted to the Joint Committee and a period of thirty days has elapsed while Congress is in session (in computing such thirty days, there shall be excluded the days on which either House is not in session because of the adjournment of more than three days)", and substituted reference to "these committees" for reference to "the Joint Committee" in the proviso.

Subsec. (d). Pub. L. 95-242 provided that proposed agreements be laid before the Committees on International Relations and Foreign Relations rather than the Joint Committee on Atomic Energy and that for major agreements the Nuclear Proliferation Assessment Statement, if any, prepared in conjunction with the President's review of the proposed agreement, also be submitted to the committees, and added unlettered paragraphs following subsec. (d) relating to the submission of agency views to Congressional committees and the failure of the Congress to act on agreements which exempt the recipient nation from the requirements of subsec. (a)(2).

Change of Name

The name of the Committee on International Relations of the House of Representatives was changed to Committee on Foreign Affairs on Feb. 5, 1979, by House Resolution 89, 96th Congress.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-242 effective Mar. 10, 1978, except as otherwise provided and regardless of any requirement for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

Transfer of Functions

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Administrator of the Energy Research and Development Administration, except for any licensing or regulatory functions of the Commission, which were transferred to the Nuclear Regulatory Commission, by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Performance of Functions Pending Development of Procedures

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

Fuel Cycle Evaluations; Report to Congress

Pub. L. 95-601, § 9, Nov. 6, 1978, 92 Stat. 2951, provided that: "The Commission shall monitor and assist, as requested, the International Fuel Cycle Evaluation and the studies and evaluations of the various nuclear fuel cycle systems by the Department of Energy in progress as of the date of enactment, [Nov. 6, 1978], and report to the Congress semiannually through calendar year 1980 and annually through calendar year 1982 on the status of domestic and international evaluations of nuclear fuel cycle systems. This report shall include, but not be limited to, a summary of the information developed by and available to the Commission on the health, safety and safeguards implications of the leading fuel cycle technologies."

Section Referred to in Other Sections

This section is referred to in sections 2014, 2073, 2074, 2077, 2094, 2112, 2121, 2133, 2134, 2153c, 2153d, 2153e, 2154, 2159, 2160, 2164, 2201, 2291, 2294, 2295 of this title; title 22 section 3281.

§ 2153a. Approval for enrichment after export of source or special nuclear material; export of major critical components of enrichment facilities

(a) Except as specifically provided in any agreement for cooperation, no source or special nuclear material hereafter exported from the United States may be enriched after export without the prior approval of the United States for such enrichment: *Provided*, That the procedures governing such approvals shall be identical to those set forth for the approval of proposed subsequent arrangements under section 2160 of this title, and any commitments from the recipient which the Secretary of Energy and the Secretary of State deem necessary to ensure that such approval will be obtained prior to such enrichment shall be obtained prior to the submission of the executive branch judgment regarding the export in question and shall be set forth in such submission: *And provided further,* That no source or special nuclear material shall be exported for the purpose of enrichment or reactor fueling to any nation or group of nations which has, after March 10, 1978, entered into a new or amended agreement for cooperation with the United States, except pursuant to such agreement.

(b) In addition to other requirements of law, no major critical component of any uranium enrichment, nuclear fuel reprocessing, or heavy water production facility shall be exported under any agreement for cooperation (except an agreement for cooperation pursuant to section 2121(c), 2164(b), or 2164(c) of this title) unless such agreement for cooperation specifically designates such components as items to be exported pursuant to the agreement for cooperation. For purposes of this subsection, the term "major critical component" means any component part or group of component parts which the President determines to be essential to the operation of a complete uranium enrichment, nuclear fuel reprocessing, or heavy water production facility.

(Pub. L. 95-242, title IV, § 402, Mar. 10, 1978, 92 Stat. 145.)

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Delegation or assignment to the Secretary of Energy of the function vested in the President under subsec. (b) of this section, see section 1(a) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2158 of this title.

§ 2153b. Export policies relating to peaceful nuclear activities and international nuclear trade

The President shall take immediate and vigorous steps to seek agreement from all nations and groups of nations to commit themselves to adhere to the following export policies with respect to their peaceful nuclear activities and their participation in international nuclear trade:

(a) Undertakings by transferee nations receiving nuclear material and equipment or sensitive nuclear technology

No nuclear materials and equipment and no sensitive nuclear technology within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be transferred to the jurisdiction of any other nation or group of nations unless the nation or group of nations receiving such transfer commits itself to strict undertakings including, but not limited to, provisions sufficient to ensure that—

(1) no nuclear materials and equipment and no nuclear technology in, under the jurisdiction of, or under the control of any non-nuclear-weapon state, shall be used for nuclear explosive devices for any purpose or for research on or development of nuclear explosive devices for any purpose, except as permitted by Article V, the Treaty;

(2) IAEA safeguards will be applied to all peaceful nuclear activities in, under the jurisdiction of, or under the control of any non-nuclear-weapon state;

(3) adequate physical security measures will be established and maintained by any nation or group of nations on all of its nuclear activities;

(4) no nuclear materials and equipment and no nuclear technology intended for peaceful purposes in, under the jurisdiction of, or under the control of any nation or group of nations shall be transferred to the jurisdiction of any other nation or group of nations which does not agree to stringent undertakings meeting the objectives of this section; and

(5) no nation or group of nations will assist, encourage, or induce any non-nuclear-weapon state to manufacture or otherwise acquire any nuclear explosive device.

(b) Enrichment of source or special nuclear material only under effective international auspices and inspection

(1) No source or special nuclear material within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere will be enriched (as described in section 2014(aa)(2) of this title) or reprocessed, no irradiated fuel elements containing such material which are to be removed from a reactor will be altered in form or content, and no fabrication or stockpiling involving plutonium, uranium 233, or uranium enriched to greater than 20 percent in the isotope 235 shall be performed except in a facility under effective international auspices and inspection, and any such irradiated fuel elements shall be transferred to such a facility as soon as practicable after removal from a reactor consistent with safety requirements. Such facilities shall be limited in number to the greatest extent feasible and shall be carefully sited and managed so as to minimize the proliferation and environmental risks associated with such facilities. In addition, there shall be conditions to limit the access of non-nuclear-weapon states other than the host country to sensitive nuclear technology associated with such facilities.

(2) Any facilities within the territory of any nation or group of nations, under its jurisdiction, or under its control anywhere for the necessary short-term storage of fuel elements containing plutonium, uranium 233, or uranium enriched to greater than 20 percent in the isotope 235 prior to placement in a reactor or of irradiated fuel elements prior to transfer as required in subparagraph (1) shall be placed under effective international auspices and inspection.

(c) Establishment of physical security measures

Adequate physical security measures will be established and maintained with respect to all nuclear activities within the territory of each nation and group of nations, under its jurisdiction, or under its control anywhere, and with respect to any international shipment of significant quantities of source or special nuclear material or irradiated source or special nuclear material, which shall also be conducted under international safeguards.

(d) United States military activities

Nothing in this section shall be interpreted to require international control or supervision of any United States military activities.

(Pub. L. 95-242, title IV, § 403, Mar. 10, 1978, 92 Stat. 146.)

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

The Secretary of State to be responsible for performing the functions vested in the President under this section, see section 2(a) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2153c, 2155 of this title; title 22 sections 3223, 3281.

§ 2153c. Renegotiation of agreements for cooperation

(a) Application to existing agreements of undertakings required of new agreements after March 10, 1978

The President shall initiate a program immediately to renegotiate agreements for cooperation in effect on March 10, 1978, or otherwise to obtain the agreement of parties to such agreements for cooperation to the undertakings that would be required for new agreements under this chapter. To the extent that an agreement for cooperation in effect on March 10, 1978, with a cooperating party contains provisions equivalent to any or all of the criteria set forth in section 2156 of this title with respect to materials and equipment transferred pursuant thereto or with respect to any special nuclear material used in or produced through the use of any such material or equipment, any renegotiated agreement with that cooperating party shall continue to contain an equivalent provision with respect to such transferred materials and equipment and such special nuclear material. To the extent that an agreement for cooperation in effect on March 10, 1978, with a cooperating party does not contain provisions with respect to any nuclear materials and equipment which have previously been transferred under an agreement for cooperation with the United States and which are under the jurisdiction or control of the cooperating party and with respect to any special nuclear material which is used in or produced through the use thereof and which is under the jurisdiction or control of the cooperating party, which are equivalent to any or all of those required for new and amended agreements for cooperation under section 2153(a) of this title, the President shall vigorously seek to obtain the application of such provisions with respect to such nuclear materials and equipment and such special nuclear material. Nothing in this Act or in this chapter shall be deemed to relinquish any rights which the United States may have under any agreement for cooperation in force on March 10, 1978.

(b) Presidential review of export agreement conditions and policy goals

The President shall annually review each of requirements (1) through (9) set forth for inclusion in agreements for cooperation under section 2153(a) of this title and the export policy goals set forth in section 2153b of this title to determine whether it is in the interest of United States non-proliferation objectives for any such requirements or export policies which are not already being applied as export criteria to be enacted as additional export criteria.

(c) Presidential proposals for additional export criteria

If the President proposes enactment of any such requirements or export policies as additional export criteria or to take any other action with respect to such requirements or export policy goals for the purpose of encouraging adherence by nations and groups of nations to such requirements and policies, he shall submit such a proposal together with an explanation thereof to the Congress.

(d) Congressional action

If the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, after reviewing the President's annual report or any proposed legislation, determines that it is in the interest of United States non-proliferation objectives to take any action with respect to such requirements or export policy goals, it shall report a joint resolution to implement such determination. Any joint resolution so reported shall be considered in the Senate and the House of Representatives, respectively, under applicable procedures provided for the consideration of resolutions pursuant to section 2159(b) through (g) of this title.

(Pub. L. 95-242, title IV, § 404, Mar. 10, 1978, 92 Stat. 147; H. Res. 89, Feb. 5, 1979.)

References in Text

This Act, referred to in subsec. (a), means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

Codification

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

Section 2153b of this title, referred to in subsec. (b), in the original read "section 401", meaning section 401 of Pub. L. 95-242, which amended section 2153 of this title. Section 401 has been translated as section 2153b of this title, which was enacted by section 403 of Pub. L. 95-242, to reflect the probable intent of Congress in view of the reference to the export policy goals which are set forth in section 2153b of this title.

Change of Name

The name of the Committee on International Relations of the House of Representatives was changed to Committee on Foreign Affairs on Feb. 5, 1979, by House Resolution 89, 96th Congress.

Effective Date

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

Delegation of Functions

The Secretary of State to be responsible for performing the functions vested in the President under this section, see section 2(a) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

Performance of Functions Pending Development of Procedures

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

Section Referred to in Other Sections

This section is referred to in section 2155 of this title; title 22 section 3281.

§ 2153d. Authority to continue agreements for cooperation entered into prior to March 10, 1978

(a) The amendments to section 2153 of this title made by this Act shall not affect the authority to continue cooperation pursuant to agreements for cooperation entered into prior to March 10, 1978.

(b) Nothing in this Act shall affect the authority to include dispute settlement provisions, including arbitration, in any agreement made pursuant to an Agreement for Cooperation.

(Pub. L. 95-242, title IV, § 405, Mar. 10, 1978, 92 Stat. 148.)

References in Text

This Act, referred to in text, means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

Codification

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

Effective Date

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2153e. Protection of environment

The President shall endeavor to provide in any agreement entered into pursuant to section 2153 of this title for cooperation between the parties in protecting the international environment from radioactive, chemical or thermal contamination arising from peaceful nuclear activities.

(Pub. L. 95-242, title IV, § 407, Mar. 10, 1978, 92 Stat. 148.)

Codification

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

Effective Date

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

Delegation of Functions

The Secretary of State to be responsible for performing the functions vested in the President under this section, see section 2(a) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

Performance of Functions Pending Development of Procedures

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

Section Referred to in Other Sections

This section is referred to in section 2153e-1 of this title.

§ 2153e-1. Effectiveness of rule, regulation, or procedure with regard to exports subject to Nuclear Non-Proliferation Act of 1978

No environmental rule, regulation, or procedure shall become effective with regard to exports subject to the provisions of 22 U.S.C. 3201 et seq., the Nuclear Non-Proliferation Act of 1978, until such time as the President has reported to Congress on the progress achieved pursuant to section 407 of the Act (42 U.S.C. 2153e) entitled "Protection of the Environment" which requires the President to seek to provide, in agreements required under the Act, for cooperation between the parties in protecting the environment from radioactive, chemical or thermal contaminations arising from peaceful nuclear activities.

(Pub. L. 95-630, title XIX, § 1913, Nov. 10, 1978, 92 Stat. 3727.)

References in Text

The Nuclear Non-Proliferation Act of 1978, referred to in text, is Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

Codification

Section was enacted as part of the Export-Import Bank Act Amendments of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

Effective Date

Section effective Nov. 10, 1978, see section 1917 of Pub. L. 95-630, set out as an Effective Date of 1978 Amendment note under section 635 of Title 12, Banks and Banking.

§ 2153f. Savings clause; Nuclear Non-Proliferation Act of 1978

(a) All orders, determinations, rules, regulations, permits, contracts, agreements, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective in the exercise of functions which are the subject of this Act, by (i) any agency or officer, or part thereof, in exercising the functions which are affected by this Act, or (ii) any court of competent jurisdiction, and

(2) which are in effect at the time this Act takes effect,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or repealed as the case may be, by the parties thereto or by any court of competent jurisdiction.

(b) Nothing in this Act shall affect the procedures or requirements applicable to agreements for cooperation entered into pursuant to sections 2121(c), 2164(b), or 2164(c) of this title or arrangements pursuant thereto as it was in effect immediately prior to March 10, 1978.

(Pub. L. 95-242, title VI, § 603(a), (b), Mar. 10, 1978, 92 Stat. 152.)

References in Text

This Act, referred to in text, means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

Codification

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

Effective Date

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

Performance of Functions Pending Development of Procedures

The performance of functions the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 2154. International atomic pool

Section Referred to in Other Sections

This section is referred to in sections 2074, 2155 of this title.

§ 2155. Export licensing procedures

(a) Executive branch judgment on export applications; criteria governing United States nuclear exports

No license may be issued by the Nuclear Regulatory Commission (the "Commission") for the export of any production or utilization facility, or any source material or special nuclear material, including distributions of any material by the Department of Energy under sections 2074, 2094, or 2112 of this title, for which a license is required or requested, and no exemption from any requirement for such an export license may be granted by the Commission, as the case may be, until—

(1) the Commission has been notified by the Secretary of State that it is the judgment of the executive branch that the proposed export or exemption will not be inimical to the common defense and security, or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes. The Secretary of State shall, within ninety days after March 10, 1978, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of Energy, Defense, and Commerce, the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for the preparation of the execu-

tive branch judgment on export applications under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such applications, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such applications, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending applications, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial applications should be identified as quickly as possible so that any required policy decisions or diplomatic consultations con[1] be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurances or evidentiary showings, for the decisions required under this section. The processing of any export application proposed and filed as of March 10, 1978, shall not be delayed pending the development and establishment of procedures to implement the requirements of this section. The executive branch judgment shall be completed in not more than sixty days from receipt of the application or request, unless the Secretary of State in his discretion specifically authorizes additional time for consideration of the application or request because it is in the national interest to allow such additional time. The Secretary shall notify the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives of any such authorization. In submitting any such judgment, the Secretary of State shall specifically address the extent to which the export criteria then in effect are met and the extent to which the cooperating party has adhered to the provisions of the applicable agreement for cooperation. In the event he considers it warranted, the Secretary may also address the following additional factors, among others:

(A) whether issuing the license or granting the exemption will materially advance the non-proliferation policy of the United States by encouraging the recipient nation to adhere to the Treaty, or to participate in the undertakings contemplated by section 2153b or 2153c(a) of this title;

(B) whether failure to issue the license or grant the exemption would otherwise be seriously prejudicial to the non-proliferation objectives of the United States; and

(C) whether the recipient nation or group of nations has agreed that conditions substantially identical to the export criteria set forth in section 2156 of this title will be applied by another nuclear supplier nation or group of nations to the proposed United States export, and whether in the Secretary's judgment those conditions will be implemented in a manner acceptable to the United States.

The Secretary of State shall provide appropriate data and recommendations, subject to requests for additional data and recommendations, as required by the Commission or the Secretary of Energy, as the case may be; and

(2) the Commission finds, based on a reasonable judgment of the assurances provided and other information available to the Federal Government, including the Commission, that the criteria in section 2156 of this title or their equivalent, and any other applicable statutory requirements, are met: *Provided*, That continued cooperation under an agreement for cooperation as authorized in accordance with section 2154 of this title shall not be prevented by failure to meet the provisions of paragraph (4) or (5) of section 2156 of this title for a period of thirty days after March 10, 1978, and for a period of twenty-three months thereafter if the Secretary of State notifies the Commission that the nation or group of nations bound by the relevant agreement has agreed to negotiations as called for in section 2153c(a) of this title; however, nothing in this subsection shall be deemed to relinquish any rights which the United States may have under agreements for cooperation in force on March 10, 1978: *Provided further*, That if, upon the expiration of such twenty-four month period, the President determines that failure to continue cooperation with any group of nations which has been exempted pursuant to the above proviso from the provisions of paragraph (4) or (5) of section 2156 of this title, but which has not yet agreed to comply with those provisions would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, he may, after notifying the Congress of his determination, extend by Executive order the duration of the above proviso for a period of twelve months, and may further extend the duration of such proviso by one year increments annually thereafter if he again makes such determination and so notifies the Congress. In the event that the Committee on Foreign Affairs of the House of Representatives or the Committee on Foreign Relations of the Senate reports a joint resolution to take any action with respect to any such extension, such joint resolution will be considered in the House or Senate, as the case may be, under procedures identical to those provided for the consideration of resolutions pursuant to section 2159 of this title: *And additionally provided*, That the Commission is authorized to (A) make a single finding under this subsection for more than a single application or request, where the applications or requests involve exports to the same country, in the same general time frame, of similar significance for nuclear explosive purposes and

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[1] So in original. Probably should be "can".

under reasonably similar circumstances and (B) make a finding under this subsection that there is no material changed circumstance associated with a new application or request from those existing at the time of the last application or request for an export to the same country, where the prior application or request was approved by the Commission using all applicable procedures of this section, and such finding of no material changed circumstance shall be deemed to satisfy the requirement of this paragraph for findings of the Commission. The decision not to make any such finding in lieu of the findings which would otherwise be required to be made under this paragraph shall not be subject to judicial review: *And provided further,* That nothing contained in this section is intended to require the Commission independently to conduct or prohibit the Commission from independently conducting country or site specific visitations in the Commission's consideration of the application of IAEA safeguards.

(b) Requests to be given timely consideration; Presidential review if Commission is unable to make required statutory determinations; Commission review

(1) Timely consideration shall be given by the Commission to requests for export licenses and exemptions and such requests shall be granted upon a determination that all applicable statutory requirements have been met.

(2) If, after receiving the executive branch judgment that the issuance of a proposed export license will not be inimical to the common defense and security, the Commission does not issue the proposed license on a timely basis because it is unable to make the statutory determinations required under this chapter, the Commission shall publicly issue its decision to that effect, and shall submit the license application to the President. The Commission's decision shall include an explanation of the basis for the decision and any dissenting or separate views. If, after receiving the proposed license application and reviewing the Commission's decision, the President determines that withholding the proposed export would be seriously prejudicial to the achievement of United States non-proliferation objectives, or would otherwise jeopardize the common defense and security, the proposed export may be authorized by Executive order: *Provided,* That prior to any such export, the President shall submit the Executive order, together with his explanation of why, in light of the Commission's decision, the export should nonetheless be made, to the Congress for a period of sixty days of continuous session (as defined in section 2159(g) of this title) and shall be referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such proposed export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the proposed export. Any such Executive order shall be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions: *And provided further,* That the procedures established pursuant to subsection (a) of section 2155a of this title shall provide that the Commission shall immediately initiate review of any application for a license under this section and to the maximum extent feasible shall expeditiously process the application concurrently with the executive branch review, while awaiting the final executive branch judgment. In initiating its review, the Commission may identify a set of concerns and requests for information associated with the projected issuance of such license and shall transmit such concerns and requests to the executive branch which shall address such concerns and requests in its written communications with the Commission. Such procedures shall also provide that if the Commission has not completed action on the application within sixty days after the receipt of an executive branch judgment that the proposed export or exemption is not inimical to the common defense and security or that any export in the category to which the proposed export belongs would not be inimical to the common defense and security because it lacks significance for nuclear explosive purposes, the Commission shall inform the applicant in writing of the reason for delay and provide follow-up reports as appropriate. If the Commission has not completed action by the end of an additional sixty days (a total of one hundred and twenty days from receipt of the executive branch judgment), the President may authorize the proposed export by Executive order, upon a finding that further delay would be excessive and upon making the findings required for such Presidential authorizations under this subsection, and subject to the Congressional review procedures set forth herein. However, if the Commission has commenced procedures for public participation regarding the proposed export under regulations promulgated pursuant to subsection (a) of section 2155a of this title, or—within sixty days after receipt of the executive branch judgment on the proposed export—the Commission has identified and transmitted to the executive branch a set of additional concerns or requests for information, the President may not authorize the proposed export until sixty days after public proceedings are completed or sixty days after a full executive branch response to the Commission's additional concerns or requests has been made consistent with subsection (a)(1) of this section: *Provided further,* That nothing in this section shall affect the right of the Commission to obtain data and recommendations from the Secretary of State at any time as provided in subsection (a)(1) of this section.

(c) Additional export criteria

In the event that the House of Representatives or the Senate passes a joint resolution which would adopt one or more additional export criteria, or would modify any existing export criteria under this chapter, any such joint resolution shall be referred in the other House to the Committee on Foreign Relations of the Senate or the Committee on Foreign Affairs of the House of Representatives, as the case may be, and shall be considered by the other House under applicable procedures provided for the consideration of resolutions pursuant to section 2159 of this title.

(Aug. 1, 1946, ch. 724, § 126, as added Mar. 10, 1978, Pub. L. 95-242, title III, § 304(a), 92 Stat. 131, and amended H. Res. 89, Feb. 5, 1980.)

Change of Name

The name of the Committee on International Relations of the House of Representatives was changed to Committee on Foreign Affairs on Feb. 5, 1979, by House Resolution 89, 96th Congress.

Effective Date

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

Delegation of Functions

The Secretary of State to be responsible for the preparation of timely information and recommendations related to the functions vested in the President by this section, see section 2(d) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

Performance of Functions Pending Development of Procedures

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

Ex. Ord. No. 12055. Export of Special Nuclear Material to India

Ex. Ord. No. 12055, Apr. 27, 1978, 43 F.R. 18157, provided:

By virtue of the authority vested in me as President by the Constitution of the United States of America and by Section 126b(2) of the Atomic Energy Act of 1954 (42 U.S.C. 2155), as amended by Section 304(a) of the Nuclear Non-Proliferation Act of 1978 (Public Law 95-242, 92 Stat. 131) [subsec. (b)(2) of this section], and having determined that withholding the export proposed pursuant to Nuclear Regulatory Commission export license application XSNM-1060 would be seriously prejudicial to the achievement of the United States non-proliferation objectives, that export to India is authorized; however, such export shall not occur for a period of 60 days as defined by Section 130g of the Atomic Energy Act of 1954, as amended [section 2159(g) of this title].

Jimmy Carter.

Section Referred to in Other Sections

This section is referred to in sections 2077, 2139, 2153, 2157, 2159, 2160 of this title.

§ 2155a. Regulations establishing Commission procedures covering grant, suspension, revocation, or amendment of nuclear export licenses or exemptions

(a) Within one hundred and twenty days of March 10, 1978, the Commission shall, after consultations with the Secretary of State, promulgate regulations establishing procedures (1) for the granting, suspending, revoking, or amending of any nuclear export license or exemption pursuant to its statutory authority; (2) for public participation in nuclear export licensing proceedings when the Commission finds that such participation will be in the public interest and will assist the Commission in making the statutory determinations required by this chapter, including such public hearings and access to information as the Commission deems appropriate: *Provided*, That judicial review as to any such finding shall be limited to the determination of whether such finding was arbitrary and capricious; (3) for a public written Commission opinion accompanied by the dissenting or separate views of any Commissioner, in those proceedings where one or more Commissioners have dissenting or separate views on the issuance of an export license; and (4) for public notice of Commission proceedings and decisions, and for recording of minutes and votes of the Commission: *Provided further*, That until the regulations required by this subsection have been promulgated, the Commission shall implement the provisions of this Act under temporary procedures established by the Commission.

(b) The procedures to be established pursuant to subsection (a) of this section shall constitute the exclusive basis for hearings in nuclear export licensing proceedings before the Commission and, notwithstanding section 2239(a) of this title, shall not require the Commission to grant any person an on-the-record hearing in such a proceeding.

(Pub. L. 95-242, title III, § 304(b), (c), Mar. 10, 1978, 92 Stat. 135.)

References in Text

This Act, referred to in subsec. (a), means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

Codification

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

As originally enacted, this section consisted of subsecs. (b) and (c) of section 304 of Pub. L. 95-242 which, for purposes of codification, were designated as subsecs. (a) and (b) of this section.

Effective Date

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

Performance of Functions Pending Development of Procedures

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2155 of this title.

§ 2156. Criteria governing United States nuclear exports

The United States adopts the following criteria which, in addition to other requirements of law, will govern exports for peaceful nuclear uses from the United States of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology:

(1) IAEA safeguards as required by Article III(2) of the Treaty will be applied with respect to any such material or facilities proposed to be exported, to any such material or facilities previously exported and subject to the applicable agreement for cooperation, and to any special nuclear material used in or produced through the use thereof.

(2) No such material, facilities, or sensitive nuclear technology proposed to be exported or previously exported and subject to the applicable agreement for cooperation, and no special nuclear material produced through the use of such materials, facilities, or sensitive nuclear technology, will be used for any nuclear explosive device or for research on or development of any nuclear explosive device.

(3) Adequate physical security measures will be maintained with respect to such material or facilities proposed to be exported and to any special nuclear material used in or produced through the use thereof. Following the effective date of any regulations promulgated by the Commission pursuant to section 2156a of this title, physical security measures shall be deemed adequate if such measures provide a level of protection equivalent to that required by the applicable regulations.

(4) No such materials, facilities, or sensitive nuclear technology proposed to be exported, and no special nuclear material produced through the use of such material, will be retransferred to the jurisdiction of any other nation or group of nations unless the prior approval of the United States is obtained for such retransfer. In addition to other requirements of law, the United States may approve such retransfer only if the nation or group of nations designated to receive such retransfer agrees that it shall be subject to the conditions required by this section.

(5) No such material proposed to be exported and no special nuclear material produced through the use of such material will be reprocessed, and no irradiated fuel elements containing such material removed from a reactor shall be altered in form or content, unless the prior approval of the United States is obtained for such reprocessing or alteration.

(6) No such sensitive nuclear technology shall be exported unless the foregoing conditions shall be applied to any nuclear material or equipment which is produced or constructed under the jurisdiction of the recipient nation or group of nations by or through the use of any such exported sensitive nuclear technology.

(Aug. 1, 1946, ch. 724, § 127, as added Mar. 10, 1978, Pub. L. 95-242, title III, § 305, 92 Stat. 136.)

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2141, 2153c, 2155, 2156a of this title.

§ 2156a. Regulations establishing levels of physical security to protect facilities and material

Within sixty days of March 10, 1978, the Commission shall, in consultation with the Secretary of State, the Secretary of Energy, the Secretary of Defense, and the Director, promulgate (and may from time to time amend) regulations establishing the levels of physical security which in its judgement are no less strict than those established by any international guidelines to which the United States subscribes and which in its judgment will provide adequate protection for facilities and material referred to in paragraph (3) of section 2156 of this title taking into consideration variations in risks to security as appropriate.

(Pub. L. 95-242, title III, § 304(d), Mar. 10, 1978, 92 Stat. 135.)

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2156 of this title.

§ 2157. Additional export criterion and procedures

(a)(1) As a condition of continued United States export of source material, special nuclear material, production or utilization facilities, and any sensitive nuclear technology to non-nuclear-weapon states, no such export shall be made unless IAEA safeguards are maintained with respect to all peaceful nuclear activities in, under the jurisdiction of, or carried out under the control of such state at the time of the export.

(2) The President shall seek to achieve adherence to the foregoing criterion by recipient non-nuclear-weapon states.

(b) The criterion set forth in subsection (a) of this section shall be applied as an export criterion with respect to any application for the export of materials, facilities, or technology specified in subsection (a) of this section which is filed after eighteen months from March 10, 1978, or for any such application under which the first export would occur at least twenty-four months after March 10, 1978, except as provided in the following paragraphs:

(1) If the Commission or the Department of Energy, as the case may be, is notified that the President has determined that failure to approve an export to which this subsection applies because such criterion has not yet been met would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security, the license or authorization may be issued subject to other applicable requirements of the law: *Provided*, That no such export of any production or utilization facility or of any source or special nuclear material (intended for use as fuel in any production or utilization facility) which has been licensed or authorized pursuant to this subsection shall be made to any non-nuclear-weapon state which has failed to meet such criterion until the first such license or authorization with respect to such state is submitted to the Congress (together with a detailed assessment of the reasons underlying the President's determination, the judgment of the executive branch required under section 2155 of this title, and any Commission opinion and views) for a period of sixty days of continuous session (as defined in section 2159(g) of this title) and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but such export shall not occur if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that the Congress does not favor the proposed export. Any such license or authorization shall be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions.

(2) If the Congress adopts a resolution of disapproval pursuant to paragraph (1), no further export of materials, facilities, or technology specified in subsection (a) of this section shall be permitted for the remainder of that Congress, unless such state meets the criterion or the President notifies the Congress that he has determined that significant progress has been made in achieving adherence to such criterion by such state or that United States foreign policy interests dictate reconsideration and the Congress, pursuant to the procedure of paragraph (1), does not adopt a concurrent resolution stating in substance that it disagrees with the President's determination.

(3) If the Congress does not adopt a resolution of disapproval with respect to a license or authorization submitted pursuant to paragraph (1), the criterion set forth in subsection (a) of this section shall not be applied as an export criterion with respect to exports of materials, facilities and technology specified in subsection (a) of this section to that state: *Provided*, That the first license or authorization with respect to that state which is issued pursuant to this paragraph after twelve months from the elapse of the sixty-day period specified in paragraph (1), and the first such license or authorization which is issued after each twelve-month period thereafter, shall be submitted to the Congress for review pursuant to the procedures specified in paragraph (1): *Provided further*, That if the Congress adopts a resolution of disapproval during any review period provided for by this paragraph, the provisions of paragraph (2) shall apply with respect to further exports to such state.

(Aug. 1, 1946, ch. 724, § 128, as added Mar. 10, 1978, Pub. L. 95-242, title III, § 306, 92 Stat. 137, and amended H. Res. 89, Feb. 5, 1979.)

CHANGE OF NAME

The name of the Committee on International Relations of the House of Representatives was changed to Committee on Foreign Affairs on Feb. 5, 1979, by House Resolution 89, 96th Congress.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

The Secretary of State to be responsible for performing the function vested in the President under subsec. (a)(2) of this section and to be responsible for the preparation of timely information and recommendations related to the functions vested in the President under subsec. (b) of this section, see section 2(b) and (d) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2141, 2153, 2159 of this title.

§ 2158. Conduct resulting in termination of nuclear exports

No nuclear materials and equipment or sensitive nuclear technology shall be exported to—

(1) any non-nuclear-weapon state that is found by the President to have, at any time after March 10, 1978,

(A) detonated a nuclear explosive device; or

(B) terminated or abrogated IAEA safeguards; or

(C) materially violated an IAEA safeguards agreement; or

(D) engaged in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such activities; or

(2) any nation or group of nations that is found by the President to have, at any time after March 10, 1978,

(A) materially violated an agreement for cooperation with the United States, or, with respect to material or equipment not supplied under an agreement for cooperation, materially violated the terms under which such material or equipment was supplied or the terms of any commitments obtained with respect thereto pursuant to section 2153a(a) of this title;

(B) assisted, encouraged, or induced any non-nuclear-weapon state to engage in activities involving source or special nuclear material and having direct significance for the manufacture or acquisition of nuclear explosive devices, and has failed to take steps which, in the President's judgment, represent sufficient progress toward terminating such assistance, encouragement, or inducement; or

(C) entered into an agreement after March 10, 1978, for the transfer of reprocessing equipment, materials, or technology to the sovereign control of a non-nuclear-weapon state except in connection with an international fuel cycle evaluation in which the United States is a participant or pursuant to a subsequent international agreement or understanding to which the United States subscribes;

unless the President determines that cessation of such exports would be seriously prejudicial to the achievement of United States non-proliferation objectives or otherwise jeopardize the common defense and security: *Provided*, That prior to the effective date of any such determination, the President's determination, together with a report containing the reasons for his determination, shall be submitted to the Congress and referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate for a period of sixty days of continuous session (as defined in section 2159(g) of this title), but any such determination shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the determination. Any such determination shall be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions.

(Aug. 1, 1946, ch. 724, § 129, as added Mar. 10, 1978, Pub. L. 95-242, title III, § 307, 92 Stat. 138, and amended H. Res. 89, Feb. 5, 1979.)

CHANGE OF NAME

The name of the Committee on International Relations of the House of Representatives was changed to Committee on Foreign Affairs on Feb. 5, 1979, by House Resolution 89, 96th Congress.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

The Secretary of State to be responsible for the preparation of timely information and recommendations related to the functions vested in the President by this section, see section 2(d) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2159 of this title.

§ 2159. Congressional review procedures

(a) Committee consideration of Presidential submissions; reports

Not later than forty-five days of continuous session of Congress after the date of transmittal to the Congress of any submission of the President required by section 2153(d), 2155(a)(2), 2155(b)(2), 2157(b), 2158, 2160(a)(3), or 2160(f)(1)(A) of this title, the Committee on Foreign Relations of the Senate and the Committee on Foreign Affairs of the House of Representatives, and in addition, in the case of a proposed agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, the Committee on Armed Services of the House of Representatives and the Committee on Armed Services of the Senate, shall each submit a report to its respective House on its views and recommendations respecting such Presidential submission together with a resolution, as defined in subsection (f) of this section, stating in substance that the Congress approves or disapproves such submission, as the case may be: *Provided*, That if any such committee has not reported such a resolution at the end of such forty-five day period, such committee shall be deemed to be discharged from further consideration of such submission and if, in the case of a proposed agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title, the other relevant committee of that House has reported such a resolution, such committee shall be deemed discharged from further consideration of that resolution. If no such resolution has been reported at the end of such period, the first resolution, as defined in subsection (f) of this section, which is introduced within five days thereafter within such House shall be placed on the appropriate calendar of such House.

(b) Consideration of resolution by respective Houses of Congress

When the relevant committee or committees have reported such a resolution (or have been discharged from further consideration of such a resolution pursuant to subsection (a) of this section) or when a resolution has been introduced and placed on the appropriate calendar pursuant to subsection (a) of this section, as the case may be, it is at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) for any Member of the respective House to move to proceed to the consideration of the resolution. The motion is highly privileged and is not debatable. The motion shall not be subject to amendment, or to a motion to postpone, or to a motion to proceed to the consideration of other business. A motion to reconsider the vote by which the motion is agreed to or disagreed to shall not be in order. If a motion to proceed to the consideration of the resolution is agreed to, the resolution shall remain the unfinished business of the respective House until disposed of.

(c) Debate

Debate on the resolution, and on all debatable motions and appeals in connection therewith, shall be limited to not more than ten hours, which shall be divided equally between individuals favoring and individuals opposing the resolution. A motion further to limit debate is in order and not debatable. An amendment to a motion to postpone, or a motion to recommit the resolution, or a motion to proceed to the consideration of other business is not in order. A motion to reconsider the vote by which the resolution is agreed to or disagreed to shall not be in order. No amendment to any concurrent resolution pursuant to the procedures of this section is in order except as provided in subsection (d) of this section.

(d) Vote on final approval

Immediately following (1) the conclusion of the debate on such concurrent resolution, (2) a single quorum call at the conclusion of debate if requested in accordance with the rules of the appropriate House, and (3) the consideration of an amendment introduced by the Majority Leader or his designee to insert the phrase, "does not" in lieu of the word "does" if the resolution under consideration is a concurrent resolution of approval, the vote on final approval of the resolution shall occur.

(e) Appeals from decisions of the Chair

Appeals from the decisions of the Chair relating to the application of the rules of the Senate or the House of Representatives, as the case may be, to the procedure relating to such a resolution shall be decided without debate.

(f) Resolution

For the purposes of subsections (a) through (e) of this section, the term "resolution" means a concurrent resolution of the Congress, the matter after the resolving clause of which is as follows: "That the Congress (does or does not) favor the   transmitted to the Congress by the President on   ,   ", the blank spaces therein to be appropriately filled, and the affirmative or negative phrase within the parenthetical to be appropriately selected.

(g) Continuity of Congressional sessions; computation of time

For the purposes of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in the computation of any period of time in which Congress is in continuous session.

(h) Supersedure or change in rules

This section is enacted by Congress—

(1) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such they are deemed a part of the rules of each House, respectively, but applicable only with respect to the procedure to be followed in that House in the case of resolutions described by subsection (f) of this section; and they supersede other rules only to the extent that they are inconsistent therewith; and

(2) with full recognition of the constitutional right of either House to change the rules (so far as relating to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(Aug. 1, 1946, ch. 724, § 130, as added Mar. 10, 1978, Pub. L. 95-242, title III, § 308, 92 Stat. 139, and amended H. Res. 89, Feb. 5, 1979.)

CHANGE OF NAME

The name of the Committee on International Relations of the House of Representatives was changed to Committee on Foreign Affairs on Feb. 5, 1979, by House Resolution 89, 96th Congress.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2153, 2153c, 2155, 2157, 2158, 2160 of this title.

§ 2160. Subsequent arrangements

(a) Consultation and concurrence; negotiations of a policy nature; notice of proposed subsequent arrangements; Nuclear Proliferation Assessment Statement; reprocessing of material

(1) Prior to entering into any proposed subsequent arrangement under an agreement for cooperation (other than an agreement for cooperation arranged pursuant to section 2121(c), 2164(b), or 2164(c) of this title), the Secretary of Energy shall obtain the concurrence of the Secretary of State and shall consult with the Director, the Commission, and the Secretary of Defense: *Provided*, That the Secretary of State shall have the leading role in any negotiations of a policy nature pertaining to any proposed subsequent arrangement regarding arrangements for the storage or disposition of irradiated fuel elements or approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of source or special nuclear material, production or utilization facilities, or nuclear technology. Notice of any proposed subsequent arrangement shall be published in the Federal Register, together with the written determination of the Secretary of Energy that such arrangement will not be inimical to the common defense and security, and such proposed subsequent arrangement shall not take effect before fifteen days after publication. Whenever the Director declares that he intends to prepare a Nuclear Proliferation Assessment Statement pursuant to paragraph (2) of this subsection, notice of the proposed subsequent arrangement which is the subject of the Director's declaration shall not be published until after the receipt by the Secretary of Energy of such Statement or the expiration of the time authorized by subsection (c) of this section for the preparation of such Statement, whichever occurs first.

(2) If in the Director's view a proposed subsequent arrangement might significantly contribute to proliferation, he may prepare an unclassified Nuclear Proliferation Assessment Statement with regard to such proposed subsequent arrangement regarding the adequacy of the safeguards and other control mechanisms and the application of the peaceful use assurances of the relevant agreement to ensure that assistance to be furnished pursuant to the subsequent arrangement will not be used to further any military or nuclear explosive purpose. For the purposes of this section, the term "subsequent arrangements" means arrangements entered into by any agency or department of the United States Government with respect to cooperation with any nation or group of nations (but not purely private or domestic arrangements) involving—

(A) contracts for the furnishing of nuclear materials and equipment;

(B) approvals for the transfer, for which prior approval is required under an agreement for cooperation, by a recipient of any source or special nuclear material, production or utilization facility, or nuclear technology;

(C) authorization for the distribution of nuclear materials and equipment pursuant to this chapter which is not subject to the procedures set forth in section 2141(b), section 2155, or section 2139(b) of this title;

(D) arrangements for physical security;

(E) arrangements for the storage or disposition of irradiated fuel elements;

(F) arrangements for the application of safeguards with respect to nuclear materials and equipment; or

(G) any other arrangement which the President finds to be important from the standpoint of preventing proliferation.

(3) The United States will give timely consideration to all requests for prior approval, when required by this chapter, for the reprocessing of material proposed to be exported, previously exported and subject to the applicable agreement for cooperation, or special nuclear material produced through the use of such material or a production or utilization facility transferred pursuant to such agreement for cooperation, or to the altering of irradiated fuel elements containing such material, and additionally, to the maximum extent feasible, will attempt to expedite such consideration when the terms and conditions for such actions are set forth in such agreement for cooperation or in some other international agreement executed by the United States and subject to congressional review procedures comparable to those set forth in section 2153 of this title.

(4) All other statutory requirements under other sections of this chapter for the approval or conduct of any arrangement subject to this subsection shall continue to apply and any other such requirements for prior approval or conditions for entering such arrangements shall also be satisfied before the arrangement takes effect pursuant to paragraph (1).

(b) Reports to Congressional committees; increase in risk of proliferation

With regard to any special nuclear material exported by the United States or produced through the use of any nuclear materials and equipment or sensitive nuclear technology exported by the United States—

(1) The Secretary of Energy may not enter into any subsequent arrangement for the retransfer of any such material to a third country for reprocessing, for the reprocessing of any such material, or for the subsequent retransfer of any plutonium in quantities greater than 500 grams resulting from the reprocessing of any such material, until he has provided the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate with a report containing his reasons for entering into such arrangement and a period of 15 days of continuous session (as defined in section 2159(g) of this title) has elapsed: *Provided, however,* That if in the view of the President an emergency exists due to unforeseen circumstances requiring immediate entry into a subsequent arrangement, such period shall consist of fifteen calendar days;

(2) the Secretary of Energy may not enter into any subsequent arrangement for the reprocessing of any such material in a facility which has not processed power reactor fuel assemblies or been the subject of a subse-

quent arrangement therefor prior to March 10, 1978, or for subsequent retransfer to a non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, unless in his judgment, and that of the Secretary of State, such reprocessing or retransfer will not result in a significant increase of the risk of proliferation beyond that which exists at the time that approval is requested. Among all the factors in making this judgment, foremost consideration will be given to whether or not the reprocessing or retransfer will take place under conditions that will ensure timely warning to the United States of any diversion well in advance of the time at which the non-nuclear-weapon state could transform the diverted material into a nuclear explosive device; and

(3) the Secretary of Energy shall attempt to ensure, in entering into any subsequent arrangement for the reprocessing of any such material in any facility that has processed power reactor fuel assemblies or been the subject of a subsequent arrangement therefor prior to March 10, 1978, or for the subsequent retransfer to any non-nuclear-weapon state of any plutonium in quantities greater than 500 grams resulting from such reprocessing, that such reprocessing or retransfer shall take place under conditions comparable to those which in his view, and that of the Secretary of State, satisfy the standards set forth in paragraph (2).

(c) Procedures for consideration of requests for subsequent arrangements

The Secretary of Energy shall, within ninety days after March 10, 1978, establish orderly and expeditious procedures, including provision for necessary administrative actions and inter-agency memoranda of understanding, which are mutually agreeable to the Secretaries of State, Defense, and Commerce, the Director of the Arms Control and Disarmament Agency, and the Nuclear Regulatory Commission for the consideration of requests for subsequent arrangements under this section. Such procedures shall include, at a minimum, explicit direction on the handling of such requests, express deadlines for the solicitation and collection of the views of the consulted agencies (with identified officials responsible for meeting such deadlines), an inter-agency coordinating authority to monitor the processing of such requests, predetermined procedures for the expeditious handling of intra-agency and inter-agency disagreements and appeals to higher authorities, frequent meetings of inter-agency administrative coordinators to review the status of all pending requests, and similar administrative mechanisms. To the extent practicable, an applicant should be advised of all the information required of the applicant for the entire process for every agency's needs at the beginning of the process. Potentially controversial requests should be identified as quickly as possible so that any required policy decisions or diplomatic consultations can be initiated in a timely manner. An immediate effort should be undertaken to establish quickly any necessary standards and criteria, including the nature of any required assurance or evidentiary showings, for the decisions required under this section. Further, such procedures shall specify that if he intends to prepare a Nuclear Proliferation Assessment Statement, the Director shall so declare in his response to the Department of Energy. If the Director declares that he intends to prepare such a Statement, he shall do so within sixty days of his receipt of a copy of the proposed subsequent arrangement (during which time the Secretary of Energy may not enter into the subsequent arrangement), unless pursuant to the Director's request, the President waives the sixty-day requirement and notifies the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate of such waiver and the justification therefor. The processing of any subsequent arrangement proposed and filed as of March 10, 1978, shall not be delayed pending the development and establishment of procedures to implement the requirements of this section.

(d) Activities not prohibited, precluded, or limited

Nothing in this section is intended to prohibit, permanently or unconditionally, the reprocessing of spent fuel owned by a foreign nation which fuel has been supplied by the United States, to preclude the United States from full participation in the International Nuclear Fuel Cycle Evaluation provided for in section 3224 of title 22; to in any way limit the presentation or consideration in that evaluation of any nuclear fuel cycle by the United States or any other participation; nor to prejudice open and objective consideration of the results of the evaluation.

(e) Jurisdiction of Secretary of Energy

Notwithstanding section 7172(d) of this title, the Secretary of Energy, and not the Federal Energy Regulatory Commission, shall have sole jurisdiction within the Department of Energy over any matter arising from any function of the Secretary of Energy in this section.

(f) Subsequent arrangements involving direct or indirect commitment of United States for storage or other disposition of foreign spent nuclear fuel in United States

(1) With regard to any subsequent arrangement under subsection (a)(2)(E) of this section (for the storage or disposition of irradiated fuel elements), where such arrangement involves a direct or indirect commitment of the United States for the storage or other disposition, interim or permanent, of any foreign spent nuclear fuel in the United States, the Secretary of Energy may not enter into any such subsequent arrangement, unless:

(A)(i) Such commitment of the United States has been submitted to the Congress for a period of sixty days of continuous session (as defined in section 2159(g) of this title) and has been referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate, but any such commitment shall not become effective if during such sixty-day period the Congress adopts a concurrent resolution stating in substance that it does not favor the commitment, any such commitment to be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions; or (ii) if the President has submitted a detailed generic plan for such disposition or storage in the United States to the Congress for a period of sixty days of continuous session (as defined in section 2159(g) of this title), which plan has been referred to the Committee on Foreign Affairs of the House of Representatives and the Committee on Foreign Relations of the Senate and has not been disapproved during such sixty-day period by the adoption of a concurrent resolution stating in substance that Congress does not favor the plan; and the commitment is subject to the terms of an effective plan. Any such plan shall be considered pursuant to the procedures set forth in section 2159 of this title for the consideration of Presidential submissions;

(B) The Secretary of Energy has complied with subsection (a) of this section; and

(C) The Secretary of Energy has complied, or in the arrangement will comply with all other statutory requirements of this chapter, under sections 2074 and 2075 of this title and any other applicable sections, and any other requirements of law.

(2) Paragraph (1) shall not apply to the storage or other disposition in the United States of limited quantities of foreign spent nuclear fuel if the President determines that (A) a commitment under section 2074 or 2075 of this title of the United States for storage or other disposition of such limited quantities in the United States is required by an emergency situation, (B) it is in the national interest to take such immediate action, and (C) he notifies the Committees on Foreign Affairs and Science and Technology of the House of Representatives and the Committees on Foreign Relations and Energy and Natural Resources of the Senate of the determination and action, with a detailed explanation and justification thereof, as soon as possible.

(3) Any plan submitted by the President under paragraph (1) shall include a detailed discussion, with detailed information, and any supporting documentation thereof, relating to policy objectives, technical description, geographic information, cost data and justifications, legal and regulatory considerations, environmental impact information and any related international agreements, arrangements or understandings.

(4) For the purposes of this subsection, the term "foreign spent nuclear fuel" shall include any nuclear fuel irradiated in any nuclear power reactor located outside of the United States and operated by any foreign legal entity, government or nongovernment, regardless of the legal ownership or other control of the fuel or reactor, but not including fuel irradiated in a research reactor.

(Aug. 1, 1946, ch. 724, § 131, as added Mar. 10, 1978, Pub. L. 95-242, title III, § 303(a), 92 Stat. 127, and amended H. Res. 89, Feb. 5, 1979.)

CHANGE OF NAME

The name of the Committee on International Relations of the House of Representatives was changed to Committee on Foreign Affairs on Feb. 5, 1979, by House Resolution 89, 96th Congress.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

DELEGATION OF FUNCTIONS

Delegation or assignment to the Secretary of Energy of the functions vested in the President under subsecs. (a)(2)(G), (b)(1), and (f)(2) of this section, and of the function vested in the President under subsec. (f)(1)(A)(ii) of this section to the extent that such function relates to the preparation of a detailed generic plan, see section 1(b) and (c) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

The Secretary of State to be responsible for performing the function vested in the President under subsec. (c) of this section, except that the Secretary of State may not waive the 60-day requirement for the preparation of a Nuclear Non-Proliferation Assessment Statement for more than 60 days without the approval of the President, see section 2(e) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22.

PERFORMANCE OF FUNCTIONS PENDING DEVELOPMENT OF PROCEDURES

The performance of functions under this chapter, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, not to be delayed pending development of procedures even though as many as 120 days [after Mar. 10, 1978] are allowed for establishing those procedures, see section 5(b) of Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out under section 3201 of Title 22, Foreign Relations and Intercourse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2074, 2075, 2077, 2153a, 2159 of this title.

§ 2160a. Review of Nuclear Proliferation Assessment Statements

No court or regulatory body shall have any jurisdiction under any law to compel the performance of or to review the adequacy of the performance of any Nuclear Proliferation Assessment Statement called for in this Act or in this chapter.

(Pub. L. 95-242, title IV, § 406, Mar. 10, 1978, 92 Stat. 148.)

REFERENCES IN TEXT

This Act, referred to in text, means the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, which is classified principally to chapter 47 (§ 3201 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 3201 of Title 22 and Tables.

CODIFICATION

Section was enacted as part of the Nuclear Non-Proliferation Act of 1978, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

EFFECTIVE DATE

Section effective Mar. 10, 1978, except as otherwise provided and regardless of any requirements for the promulgation of implementing regulations, see section 603(c) of Pub. L. 95-242, set out as an Effective Date note under section 3201 of Title 22, Foreign Relations and Intercourse.

SUBCHAPTER XI—CONTROL OF INFORMATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 5817 of this title; title 22 section 3203.

§ 2161. Policy of Commission

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred jointly to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration, except for functions under subsec. (a) of this section, which were transferred to and vested exclusively in the Administrator, by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2162. Classification and declassification of Restricted Data

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

MODIFICATION OF EXECUTIVE ORDER NO. 11057

Ex. Ord. No. 11057, Oct. 18, 1962, 27 F.R. 10289, set out as a note under this section in the main edition, when referring to functions of the Atomic Energy Commission is modified to provide that all such functions shall be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, see section 4(a)(1) of Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under section 7151 of this title.

MODIFICATION OF EXECUTIVE ORDER NO. 10899

Ex. Ord. No. 10899, Dec. 9, 1960, 25 F.R. 12729, set out as a note under this section in the main edition, when referring to functions of the Atomic Energy Commission is modified to provide that all such functions shall be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, see section 4(a)(1) of Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under section 7151 of this title.

§ 2163. Access to Restricted Data

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2164. International cooperation

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under subsecs. (a) to (c) of this section were transferred to and vested exclusively in the Administrator of the Energy Research and Development Administration, and similar functions under subsec. (d) of this section were transferred jointly to the Administrator and the Nuclear Regulatory Commission, by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2014, 2153, 2153a, 2153f, 2154, 2159, 2160 of this title.

§ 2165. Security restrictions

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

The Atomic Energy Commission was abolished and all functions under this section were transferred to and vested jointly in the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, which provided that only the Administrator was to establish the basic standards and procedures for the safeguarding of the national defense and security. See sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2166. Applicability of other laws

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SUBCHAPTER XII—PATENTS AND INVENTIONS

§ 2181. Inventions relating to atomic weapons, and filing of reports

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under subsecs. (a) and (b) of this section were transferred to and vested exclusively in the Administrator of the Energy Research and Development Administration, and similar functions under subsecs. (c) to (e) of this section were transferred jointly to the

Administrator and the Nuclear Regulatory Commission, by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2182. Inventions conceived during Commission contracts; ownership; waiver; hearings

Transfer of Functions

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2183. Nonmilitary utilization

Transfer of Functions

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2186. Commission patent licenses

Transfer of Functions

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2187. Compensation, awards, and royalties

Transfer of Functions

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Administrator of the Energy Research and Development Administration, and the Patent Compensation Board, established by this section, was transferred to the Energy Research and Development Administration, by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Modification of Executive Order No. 11477

Ex. Ord. No. 11477, Aug. 7, 1969, 34 F.R. 12937, set out as a note under this section in the main edition, when referring to functions of the Atomic Energy Commission is modified to provide that all such functions shall be exercised by the Secretary of Energy and the Nuclear Regulatory Commission, see section 4(a)(1) of Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, set out as a note under section 7151 of this title.

§§ 2188, 2189

Transfer of Functions

The Atomic Energy Commission was abolished and all functions under these sections were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SUBCHAPTER XIII—GENERAL AUTHORITY OF COMMISSION

§ 2201. General duties of Commission

In the performance of its functions the Commission is authorized to—

[*See main edition for text of* (*a*) *to* (*w*)]

(x) Standards and instructions for bonding, surety, or other financial arrangements, including performance bonds

Establish by rule, regulation, or order, after public notice, and in accordance with the requirements of section 2231 of this title, such standards and instructions as the Commission may deem necessary or desirable to ensure—

(1) that an adequate bond, surety, or other financial arrangement (as determined by the Commission) will be provided, before termination of any license for byproduct material as defined in section 2014(e)(2) of this title, by a licensee to permit the completion of all requirements established by the Commission for the decontamination, decommissioning, and reclamation of sites, structures, and equipment used in conjunction with byproduct material as so defined, and

(2) that—

(A) in the case of any such license issued or renewed after November 8, 1978, the need for long-term maintenance and monitoring of such sites, structures and equipment after termination of such license will be minimized and, to the maximum extent practicable, eliminated; and

(B) in the case of each license for such material (whether in effect on November 8, 1978, or issued or renewed thereafter), if the Commission determines that any such long-term maintenance and monitoring is necessary, the licensee, before termination of any license for byproduct material as defined in section 2014(e)(2) of this title, will make available such bonding, surety, or other financial arrangements as may be necessary to assure such long-term maintenance and monitoring.

Such standards and instructions promulgated by the Commission pursuant to this subsection shall take into account, as determined by the Commission, so as to avoid unnecessary duplication and expense, performance bonds or other financial arrangements which are required by other Federal agencies or State agencies and/or other local governing bodies for such decommissioning, decontamination, and reclamation and long-term maintenance and monitoring except that nothing in this paragraph shall be construed to require that the Commission accept such bonds or arrangements if the Commission determines that such bonds or arrangements are not adequate to carry out subparagraphs (1) and (2) of this subsection.

(As amended Nov. 8, 1978, Pub. L. 95-604, title II, § 203, 92 Stat. 3036.)

CODIFICATION

In subsec. (x)(2)(B), "November 8, 1978" read in the original "the date of the enactment of this section" which has been translated as the date of the enactment of this subsection to reflect the probable intent of Congress.

AMENDMENTS

1978—Subsec. (x). Pub. L. 95-604 added subsec. (x).

TRANSFER OF FUNCTIONS

[*See main edition for text of first two pars.*]

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

ABOLITION OF THE JOINT COMMITTEE ON ATOMIC ENERGY

The Joint Committee on Atomic Energy, referred to in subsec. (v), was abolished by section 2258 of this title and references to the Joint Committee are deemed, on or after Sept. 20, 1977, to refer to the committees of the Senate or House of Representatives which, under the rules of the Senate or House, have jurisdiction over the subject matter with records and files of the Joint Committee being transferred to the respective committees of the House or Senate.

ORGANIZATIONAL CONFLICTS OF INTEREST

Pub. L. 95-209, § 7, Dec. 13, 1977, 91 Stat. 1483, provided that: "The Commission shall by December 31, 1977, promulgate guidelines to be applied by the Commission in determining whether an organization proposing to enter into a contractual arrangement with the Commission has a conflict of interest which might impair the contractor's judgment or otherwise give the contractor an unfair competitive advantage."

APPLICABILITY TO FUNCTIONS TRANSFERRED BY DEPARTMENT OF ENERGY ORGANIZATION ACT

Pub. L. 95-91, title VII, § 709(c)(2), Aug. 4, 1977, 91 Stat. 608, provided that: "Section 161(d) of the Atomic Energy Act of 1954 [subsec. (d) of this section] shall not apply to functions transferred by this Act [See Short Title note set out under section 7101 of this title]."

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Nuclear Regulatory Commission and the Secretary of Energy see Parts 1, 14, 14A, and 30 of Ex. Ord. No. 11490, eff. Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2251 of Title 50, Appendix, War and National Defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2021, 2093, 2203, 2273, 2281, 2294, 2325, 5812, 5816, 5849 of this title; title 5 section 7533; title 22 section 3221.

§ 2202. Contracts

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2203. Advisory committees

REFERENCES IN TEXT

Section 2036 of this title, referred to in text, was repealed by Pub. L. 95-91, title VII, § 709(c)(1), Aug. 4, 1977, 91 Stat. 608.

TRANSFER OF FUNCTIONS

All the powers, duties, and functions of the General Advisory Committee, referred to in text, which was established to advise the Atomic Energy Commission on scientific and technical matters relating to materials, production, and research and development, were transferred to the Energy Research and Development Administration by section 5814(d) of this title, prior to the abolition of the General Advisory Committee by Pub. L. 95-91, title VII, § 709(c)(1), Aug. 4, 1977, 91 Stat. 608.

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2204. Electric utility contracts; authority to enter into; cancellation; submission to Joint Committee

ABOLITION OF THE JOINT COMMITTEE ON ATOMIC ENERGY

The Joint Committee on Atomic Energy, referred to in text, was abolished by section 2258 of this title and references to the Joint Committee are deemed, on or after Sept. 20, 1977, to refer to the committees of the Senate or House of Representatives which, under the rules of the Senate or House, have jurisdiction over the subject matter with records and files of the Joint Committee being transferred to the respective committees of the House or Senate.

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2204a. Fission product contracts

ABOLITION OF THE JOINT COMMITTEE ON ATOMIC ENERGY

The Joint Committee on Atomic Energy, referred to in subsec. (c), was abolished by section 2258 of this title and references to the Joint Committee are deemed, on or after Sept. 20, 1977, to refer to the committees of the Senate or House of Representatives which, under the rules of the Senate or House, have jurisdiction over the subject matter with records and files of the Joint Committee being transferred to the respective committees of the House or Senate.

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2205. Contract practices

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2205a. Report to Congress on use of contractors, consultants, and National Laboratories

The Commission shall report to the Congress on January 1, 1979, and annually thereafter on the use of contractors, consultants, and the National Laboratories by the Commission. Such report shall include, for each contract issued, in progress or completed during fiscal year 1978, information on the bidding procedure, nature of the work, amount and duration of the contract, progress of work, relation to previous contracts, and the relation between the amount of the contract and the amount actually spent.

(Pub. L. 95-601, § 11, Nov. 6, 1978, 92 Stat. 2953.)

CODIFICATION

Section was enacted as part of an act authorizing appropriations to the Nuclear Regulatory Commission for fiscal year 1979, and not as part of the Atomic Energy Act of 1954 which comprises this chapter.

§ 2206. Comptroller General audit

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5876 of this title; title 15 section 2708.

§ 2207. Claim settlements; reports to Congress

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§§ 2208, 2209

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under these sections were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2210. Indemnification and limitation of liability

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

ABOLITION OF THE JOINT COMMITTEE ON ATOMIC ENERGY

The Joint Committee on Atomic Energy, referred to in subsecs. (l) and (*o*)(4), was abolished by section 2258 of this title and references to the Joint Committee are deemed, on or after Sept. 20, 1977, to refer to the committees of the Senate or House of Representatives which, under the rules of the Senate or House, have jurisdiction over the subject matter with records and files of the Joint Committee being transferred to the respective committees of the House or Senate.

§ 2210a. Conflicts of interest relating to contracts and other arrangements

(a) Disclosure requirements

The Commission shall, by rule, require any person proposing to enter into a contract, agreement, or other arrangement, whether by competitive bid or negotiation, under this chapter or any other law administered by it for the conduct of research, development, evaluation activities, or for technical and management support services, to provide the Commission, prior to entering into any such contract, agreement, or arrangement, with all relevant information, as determined by the Commission, bearing on whether that person has a possible conflict of interest with respect to—

(1) being able to render impartial, technically sound, or objective assistance or advice in light of other activities or relationships with other persons, or

(2) being given an unfair competitive advantage. Such person shall insure, in accordance with regulations prescribed by the Commission, compliance with this section by any subcontractor (other than a supply subcontractor) of such person in the case of any subcontract for more than $10,000.

(b) Preliminary contract findings

The Commission shall not enter into any such contract agreement or arrangement unless it finds, after evaluating all information provided under subsection (a) of this section and any other information otherwise available to the Commission that—

(1) it is unlikely that a conflict of interest would exist, or

(2) such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or arrangement; except that if the Commission determines that such conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions therein, the Commission may enter into such contract, agreement, or arrangement, if the Commission determines that it is in the best interests of the United States to do so and includes appropriate conditions in such contract, agreement, or arrangement to mitigate such conflict.

(c) Promulgation and publication of rules

The Commission shall publish rules for the implementation of this section, in accordance with section 553 of title 5 (without regard to subsection (a)(2) thereof) as soon as practicable after November 6, 1978, but in no event later than 120 days after such date.

(Aug. 1, 1946, ch. 724, § 170A, as added Nov. 6, 1978, Pub. L. 95-601, § 8(a), 92 Stat. 2950.)

SUBCHAPTER XIV—COMPENSATION FOR PRIVATE PROPERTY ACQUIRED

§ 2221. Just compensation for requisitioned property

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2223. Patent application disclosures

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SUBCHAPTER XV—JUDICIAL REVIEW AND ADMINISTRATIVE PROCEDURE

§ 2231. Applicability of administrative procedure provisions; definitions

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2113, 2201 of this title.

§ 2235. Construction permits

EX. ORD. NO. 12129. CRITICAL ENERGY FACILITY PROGRAM

Ex. Ord. No. 12129, Apr. 5, 1979, 44 F.R. 21001, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, and in order to provide for timely coordinated Federal decisions on critical energy facility permit applications, it is hereby ordered as follows:

1-101. The Director of the Office of Management and Budget shall establish a Critical Energy Facility Program.

1-102. The Director of the Office of Management and Budget, after consulting with the Executive agencies listed in Section 1-103, shall make recommendations to the President as to which non-nuclear facilities should be included in the Program. The President shall identify non-nuclear energy facilities which he deems to be of critical national importance and which need Federal permits for siting, construction, or operation. Those facilities shall be included in the Program. The Director of the Office of Management and Budget shall establish a system through which deadlines will be established for final administrative decision-making by Executive agencies, consistent with statutory requirements.

1-103. The following Executive agencies shall participate in the Program and the Director of the Office of Management and Budget may invite others to participate where appropriate:

(a) Department of the Interior.
(b) Department of Agriculture.
(c) Department of Commerce.
(d) Department of Transportation.
(e) Department of Energy.
(f) Environmental Protection Agency.
(g) Council on Environmental Quality.
(h) Department of the Army.

1-104. Each Executive agency in the Program shall submit such data and information as the Director of the Office of Management and Budget may require with respect to a critical energy facility, including:

(a) Date a completed application is expected to be received from the sponsors of a critical energy facility project.

(b) Targeted final decision date for each significant permit or statutory review.

(c) Compilation of the actions required of other Executive agencies before a participating Executive agency may make a final decision.

(d) Compilation of the actions required of non-Federal authorities before a participating Executive agency may make a final decision.

(e) Compilation of significant actions required of the applicant before a final decision may be made.

(f) Progress reports, including reasons for any changes in any targeted final decision dates.

1-105. On the basis of information received pursuant to Section 1-104, the Director of the Office of Management and Budget will provide to the President, to the participating Executive agencies, to the Governor of any affected State, and to the applicant a schedule of deadlines for Federal actions concerning each critical energy facility.

1-106. The Director of the Office of Management and Budget shall provide for appropriate interagency mechanisms for the conduct of multiple agency reviews; but, only where such reviews are consistent with the statutory obligations of the agencies, and only when such reviews will assist in the expeditious processing of facility permits.

1-107. The Director of the Office of Management and Budget shall assist participating Executive agencies with the establishment of joint Federal and State and local agency reviews. Such assistance shall be limited to those circumstances which are consistent with the legal obligations of the reviewing Federal and State and local agencies, and which will result in the expeditious processing of facility permits.

1-108. The Director of the Office of Management and Budget shall keep the President informed on agency performance in meeting scheduled decision deadlines.

1-109. The Director of the Office of Management and Budget shall, where appropriate, coordinate the procedures established herein with those procedures adopted by the Council on Environmental Quality pursuant to Executive Order No. 11991 (40 CFR Parts 1500-1508) [set out as a note under section 4321 of this title].

1-110. Nothing in this Order is intended to modify in any way (a) the review and decision-making responsibilities imposed by Federal or State statutes, or (b) the opportunity for timely State and local government and public participation in agency decision-making.

JIMMY CARTER.

§ 2236. Revocation of licenses

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under subsecs. (a) and (b) of this section were transferred to and vested exclusively in the Nuclear Regulatory Commission by Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233. Similar functions under subsec. (c) were transferred to and vested jointly in the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration, provided that the Administrator was to establish the basic standards and procedures with regard to national defense and security. See sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2238. Continued operation of facilities

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to and vested jointly in the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, which provided that the findings and judgments respecting the production program under this section were to be the responsibility of the Administrator. See sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2239. Hearings and judicial review

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

REVIEW OF NUCLEAR PROLIFERATION ASSESSMENT STATEMENTS

No court or regulatory body to have jurisdiction to compel performance of or to review adequacy of performance of any Nuclear Proliferation Assessment Statement called for by the Atomic Energy Act of 1954 [this chapter] or by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95-242, Mar. 10, 1978, 92 Stat. 120, see section 2160a of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2155a, 2242 of this title; title 28 section 2342.

SUBCHAPTER XVI—JOINT COMMITTEE ON ATOMIC ENERGY

§§ 2251 to 2257. Repealed. Aug. 1, 1946, ch. 724, § 302(a), as added Aug. 30, 1954, ch. 1073, § 1, as added Sept. 20, 1977, Pub. L. 95-110, § 1, 91 Stat. 884

Section 2251, act Aug. 1, 1946, ch. 724, § 201, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 956, provided for the establishment of the Joint Committee on Atomic Energy.

Section 2252, act Aug. 1, 1946, ch. 724, § 202, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 956, and amended Sept. 6, 1961, Pub. L. 87-206, § 17, 75 Stat. 479; Mar. 26, 1964, Pub. L. 88-294, 78 Stat. 172; Dec. 6, 1974, Pub. L. 93-514, 88 Stat. 1611, set out the authority and duties of the Joint Committee.

Section 2253, act Aug. 1, 1946, ch. 724, § 203, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 956, provided for a Chairman and a Vice Chairman of the Committee.

Section 2254, act Aug. 1, 1946, ch. 724, § 204, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 957, and amended Dec. 27, 1974, Pub. L. 93-554, title I, § 101(2), 88 Stat. 1776, related to the powers of the Committee.

Section 2255, act Aug. 1, 1946, ch. 724, § 205, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 957, related to staff and assistance for the Committee.

Section 2256, act Aug. 1, 1946, ch. 724, § 206, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 957, related to the classification of information originating in the Committee.

Section 2257, act Aug. 1, 1946, ch. 724, § 207, as added Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 957, required that the Committee keep records of all Committee actions.

EFFECTIVE DATE OF REPEAL

Section 302(a) of act Aug. 1, 1946, ch. 724, as added Aug. 30, 1954, ch. 1073, § 1, as added Sept. 20, 1977, Pub. L. 95-110, § 1, 91 Stat. 884, provided in part that the repeal of sections 2251 to 2257 is effective on Sept. 20, 1977.

§ 2258. Joint Committee on Atomic Energy abolished

(a) The Joint Committee on Atomic Energy is abolished.

(b) Any reference in any rule, resolution, or order of the Senate or the House of Representatives or in any law, regulation, or Executive order to the Joint Committee on Atomic Energy shall, on and after September 20, 1977, be considered as referring to the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matter of such reference.

(c) All records, data, charts, and files of the Joint Committee on Atomic Energy are transferred to the committees of the Senate and House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the subject matters to which such records, data, charts, and files relate. In the event that any record, data, chart, or file shall be within the jurisdiction of more than one committee, duplicate copies shall be provided upon request.

(Aug. 1, 1946, ch. 724, § 301, as added Aug. 30, 1954, ch. 1073, § 1, as added Sept. 20, 1977, Pub. L. 95-110, § 1, 91 Stat. 884.)

§ 2259. Information and assistance to Congressional Committees

(a) Secretary of Energy and Nuclear Regulatory Commission

The Secretary of Energy and the Nuclear Regulatory Commission shall keep the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the functions of the Secretary or the Commission, fully and currently informed with respect to the activities of the Secretary and the Commission.

(b) Department of Defense and Department of State

The Department of Defense and Department of State shall keep the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over national security considerations of nuclear energy, fully and currently informed with respect to such matters within the Department of Defense and Department of State relating to national security considerations of nuclear technology which are within the jurisdiction of such committees.

(c) Governmental agencies

Any Government agency shall furnish any information requested by the committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, with respect to the activities or responsibilities of such agency in the field of nuclear energy which are within the jurisdiction of such committees.

(d) Utilization of services, facilities, and personnel of governmental agencies; reimbursement; prior written consent

The committees of the Senate and the House of Representatives which, under the rules of the Senate and the House, have jurisdiction over the development, utilization, or application of nuclear energy, are authorized to utilize the services, information, facilities, and personnel of any Government agency which has activities or responsibilities in the field of nuclear energy which are within the jurisdiction of such committees: *Provided, however,* That any utilization of personnel by such committees shall be on a reimbursable basis and shall require, with respect to committees of the Senate, the prior written consent of the Committee on Rules and Administration, and with respect to committees of the House of Representatives, the prior written consent of the Committee on House Administration.

(Aug. 1, 1946, ch. 724, § 303, as added Aug. 30, 1954, ch. 1073, § 1, as added Sept. 20, 1977, Pub. L. 95-110, § 1, 91 Stat. 884.)

SUBCHAPTER XVII—ENFORCEMENT OF CHAPTER

§ 2271. General provisions

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2277. Disclosure of Restricted data

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§§ 2278a, 2278b

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under these sections were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2280. Injunction proceedings

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2282. Civil penalties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2114 of this title.

SUBCHAPTER XVIII—EURATOM COOPERATION

§§ 2291, 2292

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2294. Authorization for sale or lease of uranium and plutonium; amounts; lien for nonpayment; uranium enrichment services

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

CHAPTER 24—DISPOSAL OF ATOMIC ENERGY COMMUNITIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5821 of this title; title 12 section 1715n.

SUBCHAPTER I—GENERAL PROVISIONS

§ 2301. Congressional declaration of policy

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions under this section were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2315. Repealed. Aug. 1, 1946, ch. 724, § 302(b), as added Aug. 30, 1954, ch. 1073, § 1, as added Sept. 20, 1977, Pub. L. 95-110, § 1, 91 Stat. 884

Section, act Aug. 4, 1955, ch. 543, ch. 10, § 103, 69 Stat. 483, provided that sections 2251 to 2257 of this title be applicable to all matters coming under this chapter.

SUBCHAPTER IV—SALES OF PROPERTY FOR PRIVATE USE

§ 2349. Hanford project; disposal of property

ABOLITION OF THE JOINT COMMITTEE ON ATOMIC ENERGY

The Joint Committee on Atomic Energy, referred to in text was abolished by section 2258 of this title and references to the Joint Committee are deemed, on or after Sept. 20, 1977, to refer to the committees of the Senate or House of Representatives which, under the rules of the Senate or House, have jurisdiction over the subject matter with records and files of the Joint Committee being transferred to the respective committees of the House or Senate.

SUBCHAPTER VIII—LOCAL ASSISTANCE

§ 2391. Assistance to governmental entities

(a) Annual assistance payments; extensions; determination of amount and recipient

From the date of transfer of any municipal installations to a governmental or other entity at or for the community, the Administrator is authorized, for a period of ten years, to make annual assistance payments of just and reasonable sums to the State, county, or local entity having jurisdiction to collect property taxes or to the entity receiving the installation transferred hereunder: *Provided, however,* That with respect to the cities of Oak Ridge, Tennessee, and Richland, Washington, the Richland School District, the Los Alamos School Board, and the county of Los Alamos, New Mexico, the Administrator is authorized to continue to make assistance payments of just and reasonable sums after expiration of such ten-year period: *Provided further,* That the Administrator is also authorized to make payments of just and reasonable sums to Anderson County and Roane County, Tennessee. In determining the amount and recipient of such payments the Administrator shall consider—

(1) the approximate real property taxes and assessments for local improvements which would be paid to the governmental entity upon property within the community if such property were not exempt from taxation by reason of Federal ownership;

(2) the maintaining of municipal services at a level which will not impede the recruitment or retention of personnel essential to the Energy Research and Development Administration programs;

(3) the fiscal problems peculiar to the governmental entity by reason of the construction at the community as a single-purpose national defense installation under emergency conditions;

(4) the municipal services and other burdens imposed on the governmental or other entities at the community by the United States in its operations in the project area; and

(5) the tax revenues and sources available to the governmental entity, its efforts and diligence in collection of taxes, assessment of property, and the efficiency of its operations.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Recommendation for further assistance payments

With respect to any entity not less than six months prior to the expiration of the ten-year period referred to in subsection (a) of this section (or not less than six months prior to June 30, 1979, in the case of the cities of Oak Ridge, Tennessee, and Richland, Washington, and the Richland School District; or not less than six months prior to June 30, 1986, in the case of Anderson County and Roane County, Tennessee, and the Los Alamos School Board; and not less than six months prior to June 30, 1987, in the case of the county of Los Alamos, New Mexico), the Administrator shall present to the appropriate committees of the House of Representatives and the Senate recommendations as to the need for any further assistance payments to such entity.

[*See main edition for text of* (*e*)]

(As amended Feb. 25, 1978, Pub. L. 95-238, title II, § 205(a), 92 Stat. 60.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-238, § 205(a)(1), added provisions for applicability to the Los Alamos School Board and the county of Los Alamos, New Mexico, and substituted provisions authorizing the Administrator to make payments for provisions requiring the Administrator to make payments.

Subsec. (d). Pub. L. 95-238, § 205(a)(2), added provisions for applicability to the Los Alamos School Board and the county of Los Alamos, New Mexico, and substituted provision requiring presentation to the appropriate committees of the House and the Senate for provision requiring presentation to the Joint Committee on Atomic Energy.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95-238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95-238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95-238, Feb. 25, 1978, 92 Stat. 76, set out as a note under section 5821 of this title.

§§ 2392, 2393

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2394. Contract to make payments

The Administrator is authorized, without regard to section 665 of title 31, to enter into a contract with any governmental or other entity to which payments are authorized to be made pursuant to section 2391 of this title, obligating the Administrator to make to such entity the payments directed or authorized to be made by section 2391 of this title: *Provided, however,* That the term of such contracts, in the case of the cities of Oak Ridge, Tennessee, and Richland, Washington, and the Richland School District, shall not extend beyond June 30, 1979; and in the case of the Los Alamos School Board shall not extend beyond June 30, 1986; and in the case of the county of Los Alamos, New Mexico, shall not extend beyond June 30, 1987.

(As amended Feb. 25, 1978, Pub. L. 95-238, title II, § 205(b), 92 Stat. 61.)

AMENDMENTS

1978—Pub. L. 95-238 added provisions for applicability to the Los Alamos School Board and the county of Los Alamos, New Mexico, substituted "payments are authorized" for "payments are required or authorized", and struck out applicability of provisions to Anderson and Roane Counties, Tennessee, for contracts not beyond June 30, 1986.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95-238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95-238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95-238, Feb. 25, 1978, 92 Stat. 76, set out as a note under section 5821 of this title.

CHAPTER 25—FEDERAL FLOOD INSURANCE

§ 2414. Issuance of notes by Secretary of Housing and Urban Development; terms and conditions

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to this section were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

CHAPTER 26—NATIONAL SPACE PROGRAM

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
2458b. Insurance and indemnification [New].
  (a) Authorization.
  (b) Indemnification.
  (c) Terms of indemnification agreement; notice; United States control of or assistance in defense.
  (d) Certification of just and reasonable amount.
  (e) Payments.
  (f) Definitions.

SUBCHAPTER I—GENERAL PROVISIONS

§ 2451. Congressional declaration of policy and purpose

[*See main edition for text of* (a) *to* (d)]

(e) Development of advanced automobile propulsion systems

The Congress declares that the general welfare of the United States requires that the unique competence in scientific and engineering systems of the National Aeronautics and Space Administration also be directed toward the development of advanced automobile propulsion systems. Such development shall be conducted so as to contribute to the achievement of the purposes set forth in section 2701(b) of title 15.

(f) Bioengineering research, development, and demonstration programs

The Congress declares that the general welfare of the United States requires that the unique competence of the National Aeronautics and Space Administration in science and engineering systems be directed to assisting in bioengineering research, development, and demonstration programs designed to alleviate and minimize the effects of disability.

(g) Purpose of chapter

It is the purpose of this chapter to carry out and effectuate the policies declared in subsections (a), (b), (c), (d), (e), and (f) of this section.

(As amended Pub. L. 95-238, title III, § 311, Feb. 25, 1978, 92 Stat. 83; Pub. L. 95-401, § 7, Sept. 30, 1978, 92 Stat. 860.)

Amendments

1978—Subsec. (e). Pub. L. 95-238, § 311(a), added subsec. (e). Former subsec. (e) was redesignated as (f).

Subsec. (f). Pub. L. 95-401, § 7(a), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 95-238, § 311(a), (b), redesignated former subsec. (e) as (f) and, as so redesignated, added reference to subsec. (e).

Subsec. (g). Pub. L. 95-401, § 7, redesignated former subsec. (f) as (g) and, in subsec. (g) as so redesignated, substituted "(e), and (f)" for "and (e)".

§ 2455. Security requirements

Transfer of Functions

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 2458a. Malpractice and negligence suits against the United States

[*See main edition for text of section*]

(Pub. L. 85-568, title III, § 307, as added Pub. L. 94-464, § 3, Oct. 8, 1976, 90 Stat. 1988.)

Codification

Section credits are set out in this supplement to correct error appearing in the main edition.

This section was enacted as part of the National Aeronautics and Space Act of 1958, which is classified principally to this chapter.

Prior Provisions

A former section 307 of Pub. L. 85-568 was renumbered 309 and is classified to section 2459 of this title.

§ 2458b. Insurance and indemnification

(a) Authorization

The Administration is authorized on such terms and to the extent it may deem appropriate to provide liability insurance for any user of a space vehicle to compensate all or a portion of claims by third parties for death, bodily injury, or loss of or damage to property resulting from activities carried on in connection with the launch, operations or recovery of the space vehicle. Appropriations available to the Administration may be used to acquire such insurance, but such appropriations shall be reimbursed to the maximum extent practicable by the users under reimbursement policies established pursuant to section 2473(c) of this title.

(b) Indemnification

Under such regulations in conformity with this section as the Administrator shall prescribe taking into account the availability, cost and terms of liability insurance, any agreement between the Administration and a user of a space vehicle may provide that the United States will indemnify the user against claims (including reasonable expenses of litigation or settlement) by third parties for death, bodily injury, or loss of or damage to property resulting from activities carried on in connection with the launch, operations or recovery of the space vehicle, but only to the extent that such claims are not compensated by liability insurance of the user: *Provided,* That such indemnification may be limited to claims resulting from other than the actual negligence or willful misconduct of the user.

(c) Terms of indemnification agreement; notice; United States control of or assistance in defense

An agreement made under subsection (b) of this section that provides indemnification must also provide for—

(1) notice to the United States of any claim or suit against the user for the death, bodily injury, or loss of or damage to the property; and

(2) control of or assistance in the defense by the United States, at its election, of that suit or claim.

(d) Certification of just and reasonable amount

No payment may be made under subsection (b) of this section unless the Administrator or his designee certifies that the amount is just and reasonable.

(e) Payments

Upon the approval by the Administrator, payments under subsection (b) of this section may be made, at the Administrator's election, either from funds available for research and development not otherwise obligated or from funds appropriated for such payments.

(f) Definitions

As used in this section—

(1) the term "space vehicle" means an object intended for launch, launched or assembled in outer space, including the Space Shuttle and other components of a space transportation system, together with related equipment, devices, components and parts;

(2) the term "user" includes anyone who enters into an agreement with the Administration for use of all or a portion of a space vehicle, who owns or provides property to be flown on a space vehicle, or who employs a person to be flown on a space vehicle; and

(3) the term "third party" means any person who may institute a claim against a user for death, bodily injury or loss of or damage to property.

(Pub. L. 85-568, title III, § 308, as added Pub. L. 96-48, § 6(b)(2), Aug. 8, 1979, 93 Stat. 348.)

Prior Provisions

A prior section 308 of Pub. L. 85-568 was renumbered 309 and is classified to section 2459 of this title.

Effective Date

Section 6(c) of Pub. L. 96-48 provided that: "This section [enacting this section and amending section 2473 of this title] shall be effective October 1, 1979."

§ 2459. Appropriations

[*See main edition for text of section*]

(Pub. L. 85-568, title III, § 309, formerly § 307, July 29, 1958, 72 Stat. 438; Pub. L. 88-113, § 6, Sept. 6, 1963, 77 Stat. 144; renumbered § 308, Pub. L. 94-464, § 3, Oct. 8, 1976, 90 Stat. 1988; renumbered § 309, Pub. L. 96-48, § 6(b)(1), Aug. 8, 1979, 93 Stat. 348.)

GEOGRAPHICAL DISTRIBUTION OF RESEARCH FUNDS

Pub. L. 96-48, § 5, Aug. 8, 1979, 93 Stat. 348, provided that: "It is the sense of the Congress that it is in the national interest that consideration be given to geographical distribution of Federal research funds whenever feasible, and that the National Aeronautics and Space Administration should explore ways and means of distributing its research and development funds whenever feasible."

Similar provisions were contained in the following prior Appropriation Acts:

Pub. L. 95-401, § 5, Sept. 30, 1978, 92 Stat. 860.

Pub. L. 95-76, § 5, July 30, 1977, 91 Stat. 315.

§ 2462. Reporting requirements

REPORT BY ADMINISTRATOR OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION ON ADMINISTRATION POLICY REGARDING CONFLICTS OF INTEREST, STANDARDS OF CONDUCT, AND FINANCIAL DISCLOSURE

Pub. L. 95-401, § 8, Sept. 30, 1978, 92 Stat. 860, provided that: "The Administrator of the National Aeronautics and Space Administration will report to the House Committee on Science and Technology and the Senate Committee on Commerce, Science, and Transportation no later than December 31, 1978, on the Administration policy regarding conflicts of interest, standards of conduct and financial disclosure and the implementation of that policy."

§ 2463. Tracking and data relay satellite services; report to Congressional Committees; authorization to contract

The National Aeronautics and Space Administration is authorized, when so provided in an appropriation Act, to enter into and to maintain a contract for tracking and data relay satellite services. Such services shall be furnished to the National Aeronautics and Space Administration in accordance with applicable authorization and appropriations Acts. The Government shall incur no costs under such contract prior to the furnishing of such services except that the contract may provide for the payment for contingent liability of the Government which may accrue in the event the Government should decide for its convenience to terminate the contract before the end of the period of the contract. Facilities which may be required in the performance of the contract may be constructed on Government-owned lands if there is included in the contract a provision under which the Government may acquire title to the facilities, under terms and conditions agreed upon in the contract, upon termination of the contract.

The Administrator shall in January of each year report to the Committee on Science and Technology and the Committee on Appropriations of the House of Representatives and the Committee on Commerce, Science, and Transportation and the Committee on Appropriations of the Senate the projected aggregate contingent liability of the Government under termination provisions of any contract authorized in this section through the next fiscal year. The authority of the National Aeronautics and Space Administration to enter into and to maintain the contract authorized hereunder shall remain in effect unless repealed by legislation enacted by the Congress after July 30, 1977.

(Pub. L. 95-76, § 6, July 30, 1977, 91 Stat. 315.)

CODIFICATION

Section was enacted as part of Pub. L. 95-76, known as the National Aeronautics and Space Administration Authorization Act, 1978, and not as part of Pub. L. 85-568, July 29, 1958, 72 Stat. 426, known as the National Aeronautics and Space Act of 1958, which is classified principally to this chapter.

SIMILAR PROVISIONS

Similar provisions were contained in the following prior Authorization Act:

Pub. L. 94-307, § 6, June 4, 1976, 90 Stat. 680.

SUBCHAPTER II—COORDINATION OF AERONAUTICAL AND SPACE ACTIVITIES

§ 2472. National Aeronautics and Space Administration

EMERGENCY PREPAREDNESS FUNCTIONS

For assignment of certain emergency preparedness functions to the Administrator of the National Aeronautics and Space Administration, see Parts 1, 22, and 30 of Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, as amended, set out as a note under section 2251 of Title 50, Appendix, War and National Defense.

§ 2473. Functions of Administration

[*See main edition for text of* (*a*)]

(b) Research, development, etc., in ground propulsion technologies and solar heating and cooling technologies

(1) The Administration shall, to the extent of appropriated funds, initiate, support, and carry out such research, development, demonstration, and other related activities in ground propulsion technologies as are provided for in sections 2503 through 2509 of title 15.

(2) The Administration shall initiate, support, and carry out such research, development, demonstrations, and other related activities in solar heating and cooling technologies (to the extent that funds are appropriated therefor) as are provided for in sections 5503, 5504, and 5507 of this title.

(c) Powers of Administration in performance of its functions

In the performance of its functions the Administration is authorized—

[*See main edition for text of* (*1*) *to* (*12*)]

(13)(A) to consider, ascertain, adjust, determine, settle, and pay, on behalf of the United States, in full satisfaction thereof, any claim for $25,000 or less against the United States for bodily injury, death, or damage to or loss of real or personal property resulting from the conduct of the Administration's functions as specified in subsection (a) of this section, where such claim is presented to the Administration in writing within two years after the accident or incident out of which the claim arises; and

(B) if the Administration considers that a claim in excess of $25,000 is meritorious and would otherwise be covered by this paragraph, to report the facts and circumstances thereof to the Congress for its consideration.

(As amended Pub. L. 95-401, § 6, Sept. 30, 1978, 92 Stat. 860; Pub. L. 96-48, § 6(a), Aug. 8, 1979, 93 Stat. 348.)

AMENDMENTS

1979—Subsec. (c)(13). Pub. L. 96-48 substituted "$25,000" for "$5,000".

1978—Subsec. (b). Pub. L. 95-401 designated existing provisions as par. (1) and redesignated provisions set out in text as the second subsec. (c), relating to research, development, etc., in solar heating and cooling technologies, as par. (2).

Subsec. (c). Pub. L. 95-401 redesignated subsec. (c), relating to research, development, etc., in solar heating and cooling technologies, as subsec. (b)(2).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-48 effective Oct. 1, 1979, see section 6(c) of Pub. L. 96-48, set out as an Effective Date note under section 2458b of this title.

OFFICE OF INSPECTOR GENERAL

All the functions, powers, and duties of the Management Audit Office and Office of Inspections and Security in the National Aeronautics and Space Administration were transferred to the Office of Inspector General in the National Aeronautics and Space Administration by section 9(a)(1)(J) of the Inspector General Act of 1978, Pub. L. 95-452, set out in the Appendix to Title 5, Government Organization and Employees, section 2 of which established such Office of Inspector General.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2453, 2458b, 2471, 2473a of this title; title 31 section 724a.

SUBCHAPTER III—UPPER ATMOSPHERE RESEARCH

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 7454 of this title.

CHAPTER 27—LOAN SERVICE OF CAPTIONED FILMS AND EDUCATIONAL MEDIA FOR HANDICAPPED

§ 2495. National Advisory Committee on Education of the Deaf

TRANSFER OF FUNCTIONS

For transfer of functions and offices (relating to education) of the Secretary and Department of Health, Education, and Welfare to the Secretary and Department of Education, and termination of certain offices and positions, see sections 3441 and 3503 of Title 20, Education.

CHAPTER 33—COMMUNITY MENTAL HEALTH CENTERS

SUBCHAPTER III—COMMUNITY MENTAL HEALTH CENTERS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 217a-1, 225a, 229b, 289k-1, 300a-7, 300*l*-2, 300m, 300m-3, 1320a-1, 3195, 3509 of this title.

PART A—PLANNING AND OPERATIONS ASSISTANCE

§ 2689. General requirements for centers

[*See main edition for text of* (*a*)]

(b) Comprehensive mental health services; provision and coordination of activities

(1) The comprehensive mental health services which shall be provided through a community mental health center are as follows:

(A) Beginning on the date the community mental health center is established for purposes of this subchapter, the services provided through the center shall include—

(i) inpatient services, emergency services, and outpatient services;

(ii) assistance to courts and other public agencies in screening residents of the center's catchment area who are being considered for referral to a State mental health facility for inpatient treatment to determine if they should be so referred and provision, where appropriate, of treatment for such persons through the center as an alternative to inpatient treatment at such a facility;

(iii) provision of followup care for residents of its catchment area who have been discharged from inpatient treatment at a mental health facility;

(iv) consultation and education services which—

(I) are for a wide range of individuals and entities involved with mental health services, including health professionals, schools, courts, State and local law enforcement and correctional agencies, members of the clergy, public welfare agencies, health services delivery agencies, and other appropriate entities; and

(II) include a wide range of activities (other than the provision of direct clinical services) designed to develop effective mental health programs in the center's catchment area, promote the coordination of the provision of mental health services among various entities serving the center's catchment area, increase the awareness of the residents of the center's catchment area of the nature of mental health problems and the types of mental health services available, and promote the prevention and control of rape and the proper treatment of the victims of rape; and

(v) the services described in subparagraph (B) or, in lieu of such services, providing a plan approved by the Secretary under which the center will, during the three-year period beginning on such establishment date, assume in increments the provision of the services described in subparagraph (B) and will upon the expiration of such three-year period provide all the services described in subparagraph (B).

(B) After the expiration of such three-year period, a community mental health center shall provide, in addition to the services required by subparagraph (A), services which include—

(i) day care and other partial hospitalization services;

(ii) a program of specialized services for the mental health of children, including a full range of diagnostic, treatment, liaison, and followup services (as prescribed by the Secretary);

(iii) a program of specialized services for the mental health of the elderly, including a full range of diagnostic, treatment, liaison, and followup services (as prescribed by the Secretary);

(iv) a program of transitional half-way house services for mentally ill individuals who are residents of its catchment area and who have been discharged from inpatient treatment in a mental health facility or would without such services require inpatient treatment in such a facility; and

(v) provision of each of the following service programs (other than a service program for which there is not sufficient need (as determined by the Secretary) in the center's catchment area, or the need for which in the center's catchment area the Secretary determines is currently being met):

(I) A program for the prevention and treatment of alcoholism and alcohol abuse and for the rehabilitation of alcohol abusers and alcoholics.

(II) A program for the prevention and treatment of drug addiction and abuse and for the rehabilitation of drug addicts, drug abusers, and other persons with drug dependency problems.

(2) The provision of comprehensive mental health services through a center shall be coordinated with the provision of services by other health and social service agencies (including State mental health facilities) in or serving residents of the center's catchment area to insure that persons receiving services through the center have access to all such health and social services as they may require. The center's services (A) may be provided at the center or satellite centers through the staff of the center or through appropriate arrangements with health professionals and others in the center's catchment area, or, with the approval of the Secretary, in the case of inpatient services, emergency services, and transitional half-way house services, through appropriate arrangements with health professionals and others serving the residents of the catchment area, (B) shall be available and accessible to the residents of the area promptly, as appropriate, and in a manner which preserves human dignity and assures continuity and high quality care and which overcomes geographic, cultural, linguistic, and economic barriers to the receipt of services, and (C) when medically necessary, shall be available and accessible twenty-four hours a day and seven days a week.

(c) Governing body; membership requirements; definition

(1)(A) Except as provided in subparagraph (B), the governing board of a community mental health center shall (i) be composed, where practicable, of individuals who reside in the center's catchment area and who, as a group, represent the residents of that area taking into consideration their employment, age, sex, and place of residence, and other demographic characteristics of the area, and (ii) meet at least once a month, establish general policies for the center (including a schedule of hours during which services will be provided), approve the center's annual budget, and approve the selection of a director for the center. At least one-half of the members of such body shall be individuals who are not providers of health care.

(B) In the case of a community mental health center which is operated by a governmental agency or a hospital, such center may, in lieu of meeting the requirements of subparagraph (A), appoint a committee which advises it with respect to the operations of the center and which is composed of individuals who reside in the center's catchment area, who are representative of the residents of the area as to employment, age, sex, place of residence, and other demographic characteristics, and at least one-half of whom are not providers of health care.

[*See main edition for text of* (2); (*d*)]

(As amended Pub. L. 95–622, title I, § 104(a)(1), (b), (c)(1), Nov. 9, 1978, 92 Stat. 3414, 3415.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95–622, § 104(a)(1), among other changes, added provisions which divided the required comprehensive mental health services into services which shall be provided beginning on the date the community mental health center is established for purposes of this subchapter and services which shall be provided after the expiration of a three-year period.

Subsec. (b)(2). Pub. L. 95–622, § 104(b), inserted ", or, with the approval of the Secretary, in the case of inpatient services, emergency services, and transitional half-way house services, through appropriate arrangements with health professionals and others serving the residents of the catchment area" following "in the center's catchment area".

Subsec. (c)(1)(A). Pub. L. 95–622, § 104(c)(1)(A), substituted "Except as provided in subparagraph (B), the governing board of a community mental health center" for "The governing board of a community mental health center (other than a center described in subparagraph (B))".

Subsec. (c)(1)(B). Pub. L. 95–622, § 104(c)(1)(B), substituted "which is operated by a governmental agency or hospital, such center may, in lieu of meeting the requirements of subparagraph (A)," for "which before July 29, 1975, was operated by a governmental agency and received a grant under section 2688 of this title (as in effect before such date), the requirements of subparagraph (A) shall not apply with respect to such center, but the governmental agency operating the center shall".

EFFECTIVE DATE OF 1978 AMENDMENT

Section 111 of Pub. L. 95–622, as amended Pub. L. 96–32, § 8(a)(3), July 10, 1979, 93 Stat. 85, provided that: "The amendments made by this title (other than by sections 103, 110(b)(1), and 110(c)) to the Community Mental Health Centers Act [amending sections 2689 to 2689h, 2689q, and 2689u of this title and enacting provisions set out as notes under this section] shall apply with respect to grants made under the Community Mental Health Centers Act from appropriations for fiscal years ending after September 30, 1978."

SHORT TITLE OF 1978 AMENDMENT

Section 101(a) of title I of Pub. L. 95–622 provided that: "This title [amending sections 246, 2689 to

2689h, 2689m, 2689q, 2689u, and 4588 of this title, and enacting provisions set out as notes under sections 2689 and 2689m of this title] may be cited as the 'Community Mental Health Centers Extension Act of 1978'."

REPORTS BY SECRETARY TO CONGRESSIONAL COMMITTEES ON PLAN FOR EXTENSION OF COMPREHENSIVE MENTAL HEALTH SERVICES AND STUDY OF NATIONAL STANDARDS OF CARE AND CRITERIA FOR EVALUATION OF CENTERS

Section 304 of Pub. L. 94-63 provided that the Secretary of Health, Education, and Welfare, not later than one year after July 29, 1975, report to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Labor and Public Welfare [now Labor and Human Resources] setting forth a plan, to be carried out in a five year period, for the extension of comprehensive mental health services through community mental health centers to persons in all areas in which there is a demonstrated need for these services, which plan was to indicate on a phased basis the number of persons to be served by these services and an estimate of the cost and personnel requirements needed to provide these services and that the Secretary of Health, Education, and Welfare, not later than eighteen months after July 29, 1975, submit a report to the same two Congressional committees, setting forth the national standards for care provided by community mental health centers, and criteria for evaluation of community mental health centers and the quality of the services provided by these centers.

§ 2689a. Grants for planning center programs

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Authorization of appropriations

There are authorized to be appropriated for payments under grants under subsection (a) of this section $3,750,000 for the fiscal year 1976, $3,750,000 for the fiscal year ending September 30, 1977, $1,930,000 for the fiscal year ending on September 30, 1978, $1,500,000 for the fiscal year ending September 30, 1979, and $1,000,000 for the fiscal year ending September 30, 1980.

(As amended Pub. L. 95-83, title III, § 308(a), Aug. 1, 1977, 91 Stat. 395; Pub. L. 95-622, title I, § 102(a), Nov. 9, 1978, 92 Stat. 3412.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-622 added provisions authorizing appropriations of $1,500,000 for the fiscal year ending Sept. 30, 1979, and $1,000,000 for the fiscal year ending Sept. 30, 1980.

1977—Subsec. (d). Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $1,930,000 for fiscal year ending on Sept. 30, 1978.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-622 applicable with respect to grants made under this subchapter from appropriations for fiscal years ending after Sept. 30, 1978, see section 111 of Pub. L. 95-622, set out as an Effective Date of 1978 Amendment note under section 2689 of this title.

§ 2689b. Grants for initial operation of centers and related public or nonprofit private entity

[*See main edition for text of* (*a*)]

(b) Duration and number of grants

(1) Each grant under subsection (a) of this section to a community mental health center or other entity shall be made for the costs of its operation for the one-year period beginning on the first day of the month in which such grant is made, except that if at the end of such period a center or entity has not obligated all the funds received by it under a grant, the center or entity may use the unobligated funds under the grant in the succeeding year for the same purposes for which such grant was made but only if the center or entity is eligible to receive a grant under subsection (a) of this section for such succeeding year.

[*See main edition for text of* (*2*)]

(c) Computation of amount of grants

The amount of a grant for any year made under subsection (a) of this section shall be the lesser of the amounts computed under paragraph (1) or (2) as follows:

[*See main edition for text of* (*1*) *and* (*2*)]

In any year in which a grantee receives a grant under section 2689c of this title for consultation and education services, the costs of the grantee's operation for that year attributable to the provision of such services and its collections in that year for such services shall be disregarded in making a computation under paragraph (1) or (2) respecting a grant under subsection (a) of this section for that year. The amount of a grant prescribed by paragraph (1) or (2) for a community mental health center for any year shall be reduced by the amount of unobligated funds from the preceding year which the center is authorized, under subsection (b)(1) of this section, to use in that year. If in a fiscal year the sum of (i) the total of State, local, and other funds, and of the fees, premiums, and third-party reimbursements collected in that year, and (ii) the amount of the grant received under this section, by a center or entity exceeds its costs of operation for that year because such total collected was greater than expected, and if the center or entity is eligible to receive a grant under subsection (a) of this section in the succeeding year, an adjustment in the amount of that grant shall be made in such a manner that the center or entity may retain such an amount (not to exceed 5 per centum of the amount by which such sum exceeded such costs) as the center or entity can demonstrate to the satisfaction of the Secretary will be used to enable the center or entity (I) to expand and improve its services, (II) to increase the number of persons (eligible to receive services from such a center or entity) it is able to serve, (III) to modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish a financial reserve for the purpose of offsetting the decrease in the percentage of Federal participation in program operations in future years.

(d) Authorization of appropriations

(1) There are authorized to be appropriated for payments under initial grants under subsection (a) of this section $50,000,000 for fiscal year 1976, $55,000,000 for the fiscal year ending September 30, 1977, $38,890,000 for the fiscal year ending September 30, 1978, $34,500,000 for

the fiscal year ending September 30, 1979, and $35,000,000 for the fiscal year ending September 30, 1980.

(2) For fiscal year 1980, and for each of the succeeding seven fiscal years, there are authorized to be appropriated such sums as may be necessary to make payments under continuation grants under subsection (a) of this section to community mental health centers and other entities which first received an initial grant under this section for fiscal year 1976, or the next four fiscal years and which are eligible for a grant under this section in a fiscal year for which sums are authorized to be appropriated under this paragraph.

(e) Continuation of grants for prior grant recipients; determination of duration, amount, number, etc., of continuation grants; authorization of appropriations

(1) Any entity which has not received a grant under subsection (a) of this section, which received a grant under section 2688, 2688g, 2688h, 2688k, 2688n-1, 2688r, or 2688u of this title (as in effect before July 29, 1975) from appropriations under this subchapter for a fiscal year ending before July 1, 1975, and which would be eligible for another grant under such section from an appropriation for a succeeding fiscal year if such section were not repealed by the Community Mental Health Centers Amendments of 1975 may, in lieu of receiving a grant under subsection (a) of this section, continue to receive a grant under each such repealed section under which it would be so eligible for another grant—

(A) for the number of years and in the amount prescribed for the grant under each such repealed section, except that—

(i) the entity may not receive under this subsection more than three grants under any such repealed section (other than section 2688u of this title) unless it provides at least the comprehensive mental health services described in clauses (i) through (iv) of section 2689(b)(1)(A) of this title,

(ii) the amount prescribed for a grant under the applicable repealed section for an entity for any year shall be reduced by the amount of unobligated funds from the preceding fiscal year which the entity is authorized, under subparagraph (B) of this paragraph, to use in that year, and

(iii) the total amount received for any year (as determined under regulations of the Secretary) under the total of the grants made to the entity under this subsection may not exceed the amount by which the entity's projected costs of operation for that year exceed the total collections of State, local, and other funds and of the fees, premiums, and third-party reimbursements which the entity may reasonably be expected to make in that year; and

(B) in accordance with any other terms and conditions applicable to such grant, except that if at the end of any period for which such a grant is made an entity has not obligated all of the funds received by it under the grant, the entity may use the unobligated funds under such grant in the succeeding grant period for the same purposes for which such grant was made but only if the entity is eligible to receive such a grant for such grant period.

In any year in which a grantee under this subsection receives a grant under section 2689c of this title for consultation and education services, the staffing costs of the grantee for that year which are attributable to the provision of such services and the grantee's collections in that year for such services shall be disregarded in applying subparagraph (A) and the provisions of the repealed section applicable to determining the amount of the grant the grantee may receive under this subsection for that year. If in a fiscal year the sum of (I) the total of State, local, and other funds, and of the fees, premiums, and third-party reimbursements collected in that year, and (II) the amount of the grant received under the applicable repealed section, by an entity exceeds its costs of operation for that year because such total collected was greater than expected, and if the entity is eligible to receive a grant under such an applicable repealed section in the succeeding year, an adjustment in the amount of that grant shall be made in such a manner that the entity may retain such an amount (not to exceed 5 per centum of the amount by which such sum exceeded such costs) as the entity can demonstrate to the satisfaction of the Secretary will be used to enable the entity (I) to expand and improve its services, (II) to increase the number of persons (eligible to receive services from such an entity) it is able to serve, (III) to modernize its facilities, (IV) to improve the administration of its service programs, and (V) to establish a financial reserve for the purpose of offsetting the decrease in the percentage of Federal participation in program operations in future years.

[*See main edition for text of (2) and (3); (f)*]

(As amended Pub. L. 95-83, title III, § 308(b), Aug. 1, 1977, 91 Stat. 396; Pub. L. 95-622, title I, §§ 102(b), 103(a), (b), formerly § 103, § 110(b)(1), formerly § 110(b), Nov. 9, 1978, 92 Stat. 3412, 3413, 3420, renumbered Pub. L. 96-32, § 8(a)(1), (2), July 10, 1979, 93 Stat. 85.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-622, § 103(a)(1), inserted "except that if at the end of such period a center or entity has not obligated all the funds received by it under a grant, the center or entity may use the unobligated funds under the grant in the succeeding year for the same purposes for which such grant was made but only if the center or entity is eligible to receive a grant under subsection (a) of this section for such succeeding year" following "such grant is made".

Subsec. (c). Pub. L. 95-622, § 103(a)(2), in material following par. (2) added provisions relating to the retention of unobligated funds by a center or entity to expand and improve services, increase the number of persons it is able to serve, modernize facilities, improve administration, and establish a financial reserve.

Subsec. (d)(1). Pub. L. 95-622, § 102(b)(1), added provisions authorizing appropriations of $34,500,000 for the fiscal year ending Sept. 30, 1979, and $35,000,000 for the fiscal year ending Sept. 30, 1980.

Subsec. (d)(2). Pub. L. 95-622, § 102(b)(2), substituted "1980" for "1978" and "four fiscal years" for "two fiscal years".

Subsec. (e)(1). Pub. L. 95-622, §§ 103(b), 110(b), substituted in subpar. (A)(i) "(other than section 2688u of this title) unless it provides at least the comprehensive mental health services described in clauses (i) through (iv) of section 2689(b)(1)(A) of this title" for "unless it meets the requirements of 2689 of this title", redesignated former subpar. (A)(ii) as (A)(iii), added subpar. (A)(ii), inserted in subpar. (B) "except that if at the end of any period for which a grant is made an entity has not obligated all of the funds received by it under the grant, the entity may use the unobligated funds under such grant in the succeeding grant period for the same purposes for which such grant was made but only if the entity is eligible to receive such a grant for such grant period" following "to such grant", and added material following subpar. (B) provisions relating to the retention of unobligated funds by an entity to expand and improve services, increase the number of persons it is able to serve, modernize facilities, improve administration, and establish a financial reserve.

1977—Subsec. (d)(1). Pub. L. 95-83, § 308(b)(1), substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $38,890,000 for fiscal year ending Sept. 30, 1978.

Subsec. (d)(2). Pub. L. 95-83, § 308(b)(2), substituted "1978" for "1977" and "or the next two fiscal years" for "or the next fiscal year".

Subsec. (e)(1)(A)(i). Pub. L. 95-83, § 308(h), increased to three from two the number of grants authorized to be received under any repealed section.

Effective Date of 1978 Amendment

Section 103(c) of Pub. L. 95-622, as added Pub. L. 96-32, § 8(a)(1), July 10, 1979, 93 Stat. 85, provided that: "The amendments made by this section [amending subsecs. (b)(1), (c), and (e)(1) of this section] shall take effect with respect to grants made under section 203 of the Community Mental Health Centers Act [this section] from appropriations made for fiscal years ending after September 30, 1977."

Section 110(b)(2) of Pub. L. 95-622, as added Pub. L. 96-32, § 8(a)(2), July 10, 1979, 93 Stat. 85, provided that: "The amendments made by paragraph (1) [amending subsec. (e)(1)(A)(i) of this section] shall take effect with respect to grants made under section 203(e) of the Community Health Centers Act [subsec. (e) of this section] from appropriations made for fiscal years ending after September 30, 1977."

Amendment by Pub. L. 95-622 applicable with respect to grants made under this subchapter from appropriations for fiscal years ending after Sept. 30, 1978, see section 111 of Pub. L. 95-622, set out as an Effective Date of 1978 Amendment note under section 2689 of this title.

§ 2689c. Annual grants for consultation and education services of centers and related public or nonprofit private entity

(a) Prerequisites

(1) The Secretary may make annual grants to any community mental health center for the costs of providing the consultation and education services described in section 2689(b)(1)(A)(iv) of this title if the center—

[*See main edition for text of* (*A*)]

(B) has received or is receiving a grant under section 2689b of this title and the number of years in which the center has been in operation (as determined in accordance with section 2689b(a)(2) of this title) is not less than four (or is not less than two if the Secretary determines that the center will be unable to adequately provide the consultation and education services described in section 2689(b)(1)(A)(iv) of this title during the third or fourth years of its operation without a grant under this subsection).

(2) The Secretary may also make annual grants to a public or non-profit private entity—

(A) which has not received any grant under this subchapter (other than a grant under this section as amended by the Community Mental Health Centers Amendments of 1975),

(B) which meets the requirements of section 2689 of this title except, in the case of an entity which has not received a grant under this section, the requirement for the provision of consultation and education services described in section 2689(b)(1)(A)(iv) of this title, and

(C) the catchment area of which is not within (in whole or in part) the catchment area of a community mental health center,

for the costs of providing such consultation and education services.

[*See main edition for text of* (*b*)]

(c) Authorization of appropriations

There are authorized to be appropriated for payments under grants under this section $10,000,000 for fiscal year 1976, $15,000,000 for the fiscal year ending September 30, 1977, $15,000,000 for the fiscal year ending September 30, 1978, $20,000,000 for the fiscal year ending September 30, 1979, and $3,000,000 for the fiscal year ending September 30, 1980.

(As amended Pub. L. 95-83, title III, § 308(c), Aug. 1, 1977, 91 Stat. 396; Pub. L. 95-622, title I, §§ 102(c), 104(a)(2), Nov. 9, 1978, 92 Stat. 3412, 3415.)

Amendments

1978—Subsec. (a). Pub. L. 95-622, § 104(a)(2), substituted "section 2689(b)(1)(A)(iv)" for "section 2689(b)(1)(D)" wherever appearing.

Subsec. (c). Pub. L. 95-622, § 102(c), added provisions authorizing appropriations of $20,000,000 for the fiscal year ending Sept. 30, 1979, and $3,000,000 for the fiscal year ending Sept. 30, 1980.

1977—Subsec. (c). Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $15,000,000 for fiscal year ending Sept. 30, 1978.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-622 applicable with respect to grants made under this subchapter from appropriations for fiscal years ending after Sept. 30, 1978, see section 111 of Pub. L. 95-622, set out as an Effective Date of 1978 Amendment note under section 2689 of this title.

§ 2689d. Conversion grants for related public or nonprofit entity

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Authorization of appropriations

There are authorized to be appropriated for payments under grants under subsection (a) of this section $20,000,000 for fiscal year ending September 30, 1977, $23,000,000 for the fiscal year ending September 30, 1978, $30,000,000 for the fiscal year ending September 30, 1979, and

$25,000,000 for the fiscal year ending September 30, 1980.

(As amended Pub. L. 95-83, title III, § 308(d), Aug. 1, 1977, 91 Stat. 396; Pub. L. 95-622, title I, § 102(d), Nov. 9, 1978, 92 Stat. 3412.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-622 added provisions authorizing appropriations of $30,000,000 for the fiscal year ending Sept. 30, 1979, and $25,000,000 for the fiscal year ending Sept. 30, 1980.

1977—Subsec. (c). Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $23,000,000 for fiscal year ending Sept. 30, 1978.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-622 applicable with respect to grants made under this subchapter from appropriations for fiscal years ending after Sept. 30, 1978, see section 111 of Pub. L. 95-622, set out as an Effective Date of 1978 Amendment note under section 2689 of this title.

§ 2689e. General requirements for grants

[*See main edition for text of (a) and (b)*]

(c) Form, manner, contents, and required assurances of application; prerequisites for approval of application; evaluation and review program of activities; promulgation of regulations determining required costs; determination and review of adequacy of applicant's methods to obtain payments and reimbursements

[*See main edition for text of (1)*]

(2) The Secretary may approve an application for a grant under section 2689b, 2689c, or 2689d of this title only if the application meets the requirements of paragraph (1) and, except as provided in paragraph (3)—

(A) the Secretary determines that the facilities and equipment of the applicant under the application meet such requirements as the Secretary may prescribe;

(B) the Secretary determines that—

[*See main edition for text of (i) and (ii)*]

(iii) in the case of an applicant which received a grant from appropriations for the preceding fiscal year, during the year for which the grant was made the applicant met, in accordance with the section under which such grant was made, the requirements of section 2689 of this title and complied with the assurances which were contained in or supported the applicant's application for such grant; and

(iv) in the case of an application for a grant the amount of which is or may be determined under section 2689b(c)(2)(B) of this title or 2689c(b)(3)(B) of this title or under a provision of a repealed section of this subchapter referred to in section 2689b(e) of this title which authorizes an increase in the ceiling on the amount of a grant to support services to persons in areas designated by the Secretary as urban or rural poverty areas, the application contains or is supported by assurances satisfactory to the Secretary that the services of the applicant will, to the extent feasible, be used by a significant number of persons residing in an area designated by the Secretary as an urban or rural poverty area and requiring such services;

(C) in the case of an application for the first grant under section 2689b, 2689c, or 2689d of this title, or an application for a grant under such section which requests a grant in an amount greater than the amount specified by the applicant in its plan and budget submitted in accordance with paragraph (1)(A)(i), the application is recommended for approval by the National Advisory Mental Health Council; and

(D) in the case of an application of a community mental health center which does not meet the governing board requirements of section 2689(c)(1)(A) of this title, the committee appointed pursuant to section 2689(c)(1)(B) of this title has approved the application or, if such committee has not approved the application, the Secretary determines that the committee's failure to approve the application was unreasonable.

[*See main edition for text of (3) to (6)*]

(d) Review of and comments on application by State mental health authority; disposition of application; time limitations

An application for a grant under this part which is submitted to the Secretary shall at the same time be submitted to the State mental health authority for the State in which the project or community mental health center for which the application is submitted is located. A State mental health authority which receives such an application under this subsection may review it and submit its comments to the Secretary within the forty-five-day period beginning on the date the application was received by it. The Secretary shall take action to require an applicant to revise his application or to approve or disapprove an application within the period beginning on the date the State mental health authority submits its comments or on the expiration of such forty-five-day period, whichever occurs first, and ending on the one hundred and twentieth day following the date the application was submitted to him.

(e) Maximum amount of appropriations usable for technical assistance and training, grants, and contracts

(1) No more than 2 per centum of the total amount appropriated under sections 2689b, 2689c, and 2689d of this title for any fiscal year shall be used by the Secretary to provide directly through the Department technical assistance for program management and for training in program management to community mental health centers which received grants under such sections or to entities which received grants under section 2688 of this title in a fiscal year beginning before July 29, 1975.

(2)(A) Except as provided in subparagraph (B), not more than 5 per centum of the total amount appropriated under sections 2689b, 2689c, and 2689d of this title for any fiscal year shall be used by the Secretary to provide grants under those sections to community mental health centers which do not meet the governing board requirements of section 2689(c)(1)(A) of this title.

(B) Subparagraph (A) shall not apply, during the fiscal year ending September 30, 1979, and during the fiscal year ending September 30, 1980, to any community mental health center which received a grant under this subchapter in a fiscal year beginning before July 29, 1975.

(3) Not more than 1 per centum of the total amount appropriated under section 2689b, 2689c, and 2689d of this title for any fiscal year shall be used by the Secretary to enter into contracts with State mental health authorities under which the authorities (A) would monitor activities of community mental health centers (other than centers operated by such authorities) receiving grants under this subchapter to determine if the requirements of this subchapter applicable to the receipt of such grants are being met, and (B) would be provided funds to meet the expenses of conducting such monitoring. The authority of the Secretary to enter into contracts under this paragraph shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance in appropriation Acts.

[*See main edition for text of* (*f*)]

(As amended Pub. L. 95-83, title III, § 308(i), Aug. 1, 1977, 91 Stat. 396; Pub. L. 95-622, title I, §§ 104(c)(2), 105, 106, Nov. 9, 1978, 92 Stat. 3416; Pub. L. 96-32, § 8(b), July 10, 1979, 93 Stat. 85.)

AMENDMENTS

1979—Subsec. (c)(2)(B)(iii). Pub. L. 96-32 added "and" following "application for such grant;".

1978—Subsec. (c)(2). Pub. L. 95-622, § 106, in provisions preceding subpar. (A) struck out "the application is recommended for approval by the National Advisory Mental Health Council," following "only if", in subpars. (A) and (B) inserted "the Secretary" preceding "determines", and added subpars. (C) and (D).

Subsec. (e). Pub. L. 95-622, §§ 104(c)(2), 105, designated existing provisions as par. (1) and added pars. (2) and (3).

1977—Subsec. (d). Pub. L. 95-83 extended time limitation for the end date to be a date ending on the one hundred and twentieth day following date of submission of application for the prior date ending on the ninetieth day following such submission.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-622 applicable with respect to grants made under this subchapter from appropriations for fiscal years ending after Sept. 30, 1978, see section 111 of Pub. L. 95-622, set out as an Effective Date of 1978 Amendment note under section 2689 of this title.

PART B—FINANCIAL DISTRESS GRANTS

§ 2689f. Grants for operation of centers; eligible centers

The Secretary may make grants for the operation of any community mental health center which—

(1)(A) received a grant under section 2688 of this title (as in effect before July 29, 1975) for compensation of personnel for its initial operation and, because of limitations in such section 2688 of this title respecting the period for which the center may receive grants under such section 2688 of this title, is not eligible for further grants under that section for such compensation of personnel for a fiscal year beginning after June 30, 1975; or

[*See main edition for text of* (*B*), (*2*)]

(As amended Pub. L. 95-622, title I, § 110(a), Nov. 9, 1978, 92 Stat. 3420.)

AMENDMENTS

1978—Par. (1)(A). Pub. L. 95-622 inserted "for compensation of personnel for its initial operation" following "July 29, 1975)" and "for such compensation of personnel" following "under that section".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-622 applicable with respect to grants made under this subchapter from appropriations for fiscal years ending after Sept. 30, 1978, see section 111 of Pub. L. 95-622, set out as an Effective Date of 1978 Amendment note under section 2689 of this title.

§ 2689g. General requirements for grants

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Duration and number of grants

Each grant under this section to a grantee shall be made for the projected costs of operation (except the costs of providing the consultation and education services described in section 2689(b)(1)(D) of this title) of such grantee for the one-year period beginning on the first day of the first month in which such grant is made. No community mental health center may receive more than five grants under section 2689f of this title.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 95-622, title I, § 102(e), Nov. 9, 1978, 92 Stat. 3412.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-622 substituted "five grants" for "three grants".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-622 applicable with respect to grants made under this subchapter from appropriations for fiscal years ending after Sept. 30, 1978, see section 111 of Pub. L. 95-622, set out as an Effective Date of 1978 Amendment note under section 2689 of this title.

§ 2689h. Authorization of appropriations

There are authorized to be appropriated $15,000,000 for fiscal year 1976, $15,000,000 for the fiscal year ending September 30, 1977, $13,500,000 for the fiscal year ending September 30, 1978, and $25,000,000 for the fiscal year ending September 30, 1979, for payments under grants under section 2689f of this title.

(As amended Pub. L. 95-83, title III, § 308(e), Aug. 1, 1977, 91 Stat. 396; Pub. L. 95-622, title I, § 102(f), Nov. 9, 1978, 92 Stat. 3412.)

AMENDMENTS

1978—Pub. L. 95-622 added provisions authorizing appropriations of $25,000,000 for the fiscal year ending Sept. 30, 1979.

1977—Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $13,500,000 for fiscal year ending Sept. 30, 1978.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-622 applicable with respect to grants made under this subchapter from appropriations for fiscal years ending after Sept. 30, 1978, see section 111 of Pub. L. 95-622, set out as an Effective Date of 1978 Amendment note under section 2689 of this title.

Part C—Facilities Assistance

§ 2689m. Recovery of payments by United States; prerequisites; amount of recovery; procedure; nature of right

If any facility of a community mental health center acquired, remodeled, constructed, or expanded with funds provided under this subchapter is, at any time within twenty years after the completion of such remodeling, construction, or expansion or after the date of its acquisition with such funds—

[*See main edition for text of* (*1*) *and* (*2*)]

the United States shall be entitled to recover from either the transferor or the transferee in the case of a sale or transfer or from the owner in the case of termination of use an amount bearing the same ratio to the then value (as determined by the agreement of the parties or by action brought in the United States district court for the district in which the center is situated) of so much of such facility or center as constituted an approved project or projects, as the amount of the Federal participation bore to the acquisition, remodeling, construction, or expansion cost of such project or projects. Such right of recovery shall not constitute a lien upon such facility or center prior to judgment.

(As amended Pub. L. 95-622, title I, § 110(c), Nov. 9, 1978, 92 Stat. 3420.)

Amendments

1978—Pub. L. 95-622 substituted "this subchapter" for "this part".

Effective Date of 1978 Amendment

Section 110(c) of Pub. L. 95-622 provided in part that the amendment by Pub. L. 95-622 is effective July 29, 1975.

§ 2689p. Authorization of appropriations

There are authorized to be appropriated $5,000,000 for fiscal year 1976, $5,000,000 for fiscal year 1977, and $2,500,000 for the fiscal year ending September 30, 1978, for allotments under section 2689*o* of this title.

(As amended Pub. L. 95-83, title III, § 308(f), Aug. 1, 1977, 91 Stat. 396.)

Amendments

1977—Pub. L. 95-83 authorized appropriation of $2,500,000 for fiscal year ending Sept. 30, 1978.

Part D—Rape Prevention and Control

§ 2689q. National Center for the Prevention and Control of Rape

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Advisory committee; appointment; functions; membership; compensation; per diem and travel expenses

The Secretary shall appoint an advisory committee to advise, consult with, and make recommendations to him on the implementation of subsection (b) of this section. The recommendations of the committee shall be submitted directly to the Secretary without review or revision by any person without the consent of the committee. The Secretary shall appoint to such committee persons who are particularly qualified to assist in carrying out the functions of the committee. A majority of the members of the committee shall be women. Members of the advisory committee shall receive compensation at rates, not to exceed the daily equivalent of the annual rate in effect for grade GS-18 of the General Schedule, for each day (including traveltime) they are engaged in the performance of their duties as members of the advisory committee and, while so serving away from their homes or regular places of business, each member shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as authorized by section 5703 of title 5 for persons in Government service employed intermittently.

(d) Authorization of appropriations

For the purpose of carrying out subsection (b) of this section, there are authorized to be appropriated $7,000,000 for fiscal year 1976, $10,000,000 for the fiscal year ending September 30, 1977, $7,880,000 for the fiscal year ending September 30, 1978, $8,000,000 for the fiscal year ending September 30, 1979, and $9,000,000 for the fiscal year ending September 30, 1980.

(As amended Pub. L. 95-83, title III, § 308(g), Aug. 1, 1977, 91 Stat. 396; Pub. L. 95-622, title I, §§ 102(g), 108, Nov. 9, 1978, 92 Stat. 3412, 3417.)

Amendments

1978—Subsec. (c). Pub. L. 95-622, § 108, added provision that the recommendation of the committee be submitted directly to the Secretary without review or revision by any person without the consent of the committee.

Subsec. (d). Pub. L. 95-622, § 102(g), added provisions authorizing appropriations of $8,000,000 for the fiscal year ending Sept. 30, 1979, and $9,000,000 for the fiscal year ending Sept. 30, 1980.

1977—Subsec. (d). Pub. L. 95-83 substituted provision for an appropriation authorization for fiscal year ending Sept. 30, 1977, for prior such authorization for fiscal year 1977, and authorized appropriation of $7,880,000 for fiscal year ending Sept. 30, 1978.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-622 applicable with respect to grants made under this subchapter from appropriations for fiscal years ending after Sept. 30, 1978, see section 111 of Pub. L. 95-622, set out as an Effective Date of 1978 Amendment note under section 2689 of this title.

Part E—General Provisions

§ 2689r. Definitions

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 2689t. State plans

(a) Required administrative, and services and facilities provisions

A State plan for the provision of comprehensive mental health services within a State shall be consistent with the State health plan in effect for such State under section 300m-3(c) of this title and shall be comprised of the following two parts:

[*See main edition for text of (1) and (2); (b) to (d)*]

(As amended Pub. L. 96-79, title I, § 115(k)(1), Oct. 4, 1979, 93 Stat. 610.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-79 inserted in provision preceding par. (1), "shall be consistent with the State health plan in effect for such State under section 300m-3(c) of this title and" following "within a State".

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-79 effective Oct. 4, 1980, see section 129(a) of Pub. L. 96-79, set out as an Effective Date of 1979 Amendment note under section 300*l* of this title.

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 246, 2689e, 2689g, 2689j, 2689k, 2689*l*, 2689*o*, 2689s of this title.

§ 2689u. Catchment areas of centers; periodic review by designated State health planning and development agency and State mental health authority; purposes of review

Each State health planning and development agency designated for a State under section 300m of this title shall, in consultation with that State's mental health authority, periodically review the catchment areas of the community mental health centers located in that State to (1) insure that the sizes of such areas are such that the services to be provided through the centers (including their satellites) serving the areas are available and accessible to the residents of the areas promptly, as appropriate, (2) insure that the boundaries of such areas conform, to the extent practicable, with relevant boundaries of political subdivisions, health service areas, school districts, and Federal and State health and social service programs, and (3) insure that the boundaries of such areas eliminate, to the extent possible, barriers to access to the services of the centers serving the areas, including barriers resulting from an area's physical characteristics, its residential patterns, its economic and social groupings, and available transportation.

(As amended Pub. L. 95-622, title I, § 107, Nov. 9, 1978, 92 Stat. 3417.)

AMENDMENTS

1978—Pub. L. 95-622 in cl. (2) inserted "health service areas," following "political subdivisions,".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-622 applicable with respect to grants made under this subchapter from appropriations for fiscal years ending after Sept. 30, 1978, see section 111 of Pub. L. 95-622, set out as an Effective Date of 1978 Amendment note under section 2689 of this title.

CHAPTER 34—ECONOMIC OPPORTUNITY PROGRAM

SUBCHAPTER I—RESEARCH AND DEMONSTRATIONS

PART A—RESEARCH, DEMONSTRATION, AND PILOT PROJECTS

Sec.
2716. Authorization of appropriations [New].

SUBCHAPTER II—URBAN AND RURAL COMMUNITY ACTION PROGRAMS

PART C—SUPPLEMENTAL PROGRAMS AND ACTIVITIES

2829. Repealed.

PART D—GENERAL AND TECHNICAL PROVISIONS

2832. Repealed.

SUBCHAPTER III—SPECIAL PROGRAMS TO COMBAT POVERTY IN RURAL AREAS

2856. Authorization of appropriations [New].
2861. Repealed.
2862. Repealed.
2863. Repealed.
2864. Repealed.
2865. Repealed.
2871. Repealed.

SUBCHAPTER IV—ASSISTANCE FOR MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKERS AND THEIR FAMILIES

2901. Statement of purpose.
2902. Financial assistance.
2903. Limitations on assistance.
2904. Technical assistance, training and evaluation.
2905. Special responsibilities.
2906. Authorization of appropriations.

SUBCHAPTER V—HEADSTART AND FOLLOW THROUGH

PART A—HEADSTART PROGRAMS

2928b. Distribution of funds.
    (a) Allotments and reservations.
    (b) Reservation priorities.
    (c) Limitations on assistance.
    (d) Comparable service previously provided without Federal assistance.
    (e) Handicapped children.
    (f) Equitable distribution of benefits between rural and urban areas.

PART B—FOLLOW THROUGH PROGRAMS

2929b. Research, demonstration, and pilot projects.
2929b-1. Announcement of research, demonstration, and pilot project contracts [New].
2929b-2. Evaluation [New].
2929b-3. Technical assistance and training [New].

SUBCHAPTER VI—ADMINISTRATION AND COORDINATION

PART A—ADMINISTRATION

2971. Repealed.

PART B—COORDINATION

Sec.
2979a. Regional offices [New].

SUBCHAPTER VII—COMMUNITY ECONOMIC DEVELOPMENT

2981c. Advisory community investment boards [New].
(a) Establishment, etc., of National Advisory Community Investment Board.
(b) Functions of National Advisory Community Investment Board.
(c) Functions of Community Development Corporation with respect to advisory community investment boards.

PART D—SUPPORTIVE PROGRAMS AND ACTIVITIES

2985c-1. Repealed.
2985e. Evaluation, research, and demonstration.

SUBCHAPTER IX—EVALUATION

2995c. Authorization of appropriations [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter referred to in sections 3020d, 3056a, 3062, 3131, 3141, 4201, 4953, 6861 of this title; title 2 section 452; title 12 section 1766; title 38 section 2013.

§ 2701. Congressional findings and declaration of purpose

Although the economic well-being and prosperity, of the United States have progressed to a level surpassing any achieved in world history, and although these benefits are widely shared throughout the Nation, poverty continues to be the lot of a substantial number of our people. The United States can achieve its full economic and social potential as a nation only if every individual has the opportunity to contribute to the full extent of the capabilities of such individual and to participate in the workings of our society. It is, therefore, the policy of the United States to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity for education and training, the opportunity to work, and the opportunity to live in decency and dignity. It is the purpose of this chapter to strengthen, supplement, and coordinate efforts in furtherance of that policy.

It is the sense of the Congress that it is highly desirable to employ the resources of the private sector of the economy of the United States in all such efforts to further the policy of this chapter.

(As amended Pub. L. 95-568, § 17(a)(1), Nov. 2, 1978, 92 Stat. 2439.)

AMENDMENTS

1978—Pub. L. 95-568 substituted "the capabilities of such individual" for "his capabilities".

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95-568 provided: "That this Act [enacting sections 2716, 2856, 2929b to 2929b-3, 2979a, 2981b, 2981c, and 2995c of this title, amending sections 2701, 2712, 2713, 2790, 2791, 2796, 2808, 2809, 2812, 2814, 2823 to 2825, 2828, 2830, 2833 to 2837, 2841, 2855, 2901 to 2906, 2928a to 2928h, 2928*l* to 2928n, 2929, 2929a, 2932, 2933, 2941 to 2943, 2945, 2946, 2948, 2950, 2951, 2961, 2965, 2970, 2971g, 2973, 2974, 2977, 2982a to 2982c, 2983a, 2984, 2984a, 2985a, 2985e, 2991b, 2991f, 2992b, 2992d, 2995, and 2995a of this title, repealing sections 2829, 2832, 2861 to 2865, 2871, 2929b, 2971, and 2985c-1 of this title, and enacting provisions set out as notes under this section] may be cited as the 'Economic Opportunity Amendments of 1978'."

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-222, § 1, Dec. 28, 1977, 91 Stat. 1619, provided that: "This Act [amending sections 2996, 2996c, and 2996e to 2996j of this title, and enacting provisions set out as notes under sections 2996, 2996f and 2996i of this title] may be cited as the 'Legal Services Corporation Act Amendments of 1977'."

STATEMENT OF PURPOSE OF 1978 AMENDMENT

Section 2 of Pub. L. 95-568 provided that: "It is the purpose of this Act [see Short Title of 1978 Amendment note above] to extend and revise programs under title I through title IX [subchapter I to IX of this chapter] of the Economic Opportunity Act of 1964 (hereinafter in this Act referred to as the 'Act')."

EXECUTIVE ORDER NO. 11470

Ex. Ord. No. 11470, eff. May 26, 1969, 34 F.R. 8227, formerly set out as a note under this section, which made arrangements for the structure and conduct of a National Voluntary Action Program, was superseded by Ex. Ord. No. 11603, eff. June 30, 1971, 36 F.R. 12675, set out as a note under section 2501 of Title 22, Foreign Relations and Intercourse. Section 401 of Ex. Ord. No. 11603 which transferred the National Voluntary Action Program to ACTION as created by Reorg. Plan No. 1 of 1971 was superseded by section 1-706 of Ex. Ord. No. 12137, May 16, 1979, 44 F.R. 29023, eff. May 16, 1979, set out as a note under section 2501 of Title 22. For continuation of the National Voluntary Action Program in ACTION Agency, see section 1-501 of Ex. Ord. No. 12137.

§ 2706. Definitions

REFERENCES IN TEXT

Part B of subchapter III of this chapter, referred to in par. (3), was repealed by Pub. L. 95-568, § 8(a)(2), Nov. 2, 1978, 92 Stat. 2428.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER I—RESEARCH AND DEMONSTRATIONS

EX. ORD. NO. 11330. COORDINATION OF YOUTH OPPORTUNITY PROGRAMS

Ex. Ord. No. 11330, Mar. 5, 1967, 32 F.R. 3871 as amended by Ex. Ord. No. 11547, July 10, 1970, 35 F.R. 11221, Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

The promise and the future strength of the United States is in our youth.

We must meet the needs of youth so that the formative years will equip them for a productive role in society and prepare them for the responsibilities of citizenship.

Many youths, particularly those who live in impoverished areas, need special help in improving their lives and finding a place in the mainstream of our society.

Existing public services for youth need to be strengthened and improved and joined with private resources.

Programs and resources of Federal departments and agencies require coordination in order to provide continuity in planning and carrying out services to meet the needs of youth.

The summer months provide an exceptional opportunity to enhance the sound growth and guidance of youth through education, employment, recreation, and health services.

Now, Therefore, by virtue of the authority vested in me as President of the United States, it is ordered as follows:

Part I—President's Council on Youth Opportunity

Section 101. *"Membership and chairmanship,"* (a) There is hereby established the President's Council on Youth Opportunity (hereinafter referred to as the "Council"). The Council shall be composed of the Vice President, who shall serve as Chairman, the Secretary of State, the Secretary of Defense, the Attorney General, the Postmaster General, the Secretary of the Interior, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Health, Education, and Welfare, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Director of the Office of Economic Opportunity; the Director of the Office of Personnel Management, and such other Federal officials as the President may designate. Each of the foregoing may appoint a delegate to represent him in Council affairs.

(b) When matters which affect the interests of Federal agencies not represented on the Council are to be considered by the Council the Chairman shall invite the heads of such agencies to participate in the business of the Council.

Sec. 102. *Functions of the Council.* (a) The Council shall be responsible for (1) assuring effective program planning for summer and other youth programs of the Federal Government, (2) strengthening the coordination of youth programs and activities of Federal departments and agencies, (3) evaluating the over-all effectiveness of Federal youth opportunity programs, (4) encouraging State, local, nonprofit and other private organizations to participate fully in efforts to enhance opportunities for youth, and (5) reporting progress to the President.

(b) The scope of subsection (a) of this section extends to, but is not limited to, (1) programs to maximize meaningful employment for youth in cooperation with employers and agencies of Federal, State, and local governments, and with emphasis on types of employment leading to the acquisition of skills which will increase the employability of participants as members of the labor force; (2) programs to strengthen the educational achievements of youth through such means as preparatory courses conducted through school systems which will encourage youth to continue or resume their education, remedial and tutorial programs conducted in the communities by schools and colleges, and the use of summer and part-time employment as incentives; (3) programs to encourage and stimulate youth to become involved in improving their home neighborhoods; (4) programs designed to identify, diagnose, and treat the illnesses and handicapping conditions of youth who participate in these summer programs; (5) programs arranged through communities and private organizations to stimulate opportunities for youth to participate in cultural, recreational, and athletic activities or competitions; (6) programs utilizing the existing camping and recreational resources in Federal, State, and local parks, forests, and recreation areas, with a view to securing the support and participation of public authorities and private organizations concerned with youth in developing constructive outdoor or work-related opportunities which will benefit disadvantaged urban and rural youth by utilizing such facilities during the summer months; and (7) programs designed to increase opportunities for children of urban slums to spend part of their summers in the wholesome environment of families in other areas through the hospitality of such families and with the support and cooperation of private, nonprofit organizations.

Sec. 103. *Assistance and cooperation.* (a) Upon request of the Chairman, each Federal agency shall, to the extent permitted by law and within available funds, furnish information, data, and reports needed by the Council to accomplish the purposes of this order.

(b) All Federal officials, in carrying out their statutory responsibilities and programs, shall be mindful of the objectives of this order, and shall take into account any advice given by the Council pursuant to this order, and shall take such measures, consistent with their authorities and available funds, as will assist in accomplishing the purposes of this order.

(c) The staff of the Council shall include an Executive Director, who shall be appointed by the Chairman of the Council, and such other employees as may be necessary, who shall be assigned by the various members of the Council.

Part II—Citizens Advisory Board on Youth Opportunity

Sec. 201. *Establishment of Board.* (a) There is hereby established the Citizens Advisory Board on Youth Opportunity (hereinafter referred to as the "Board").

(b) The Board shall be composed of a Chairman and not more than fourteen other members, all of whom shall be appointed by the President. The Chairman shall serve as such until his successor is appointed by the President. Appointments of the other members of the Board shall be governed by the following: (1) The terms of those first appointed hereunder shall expire on July 1, 1969. (2) The immediate successors of the members so appointed shall be appointed, in as nearly equal numbers as may be, for terms of one year, two years, and three years. (3) Thereafter appointments shall be made for terms of three years.

Sec. 202. *Duties and responsibilities.* (a) The Board shall advise both the President and the Council on matters relating to (1) ways and means of enhancing the opportunities of disadvantaged youth to achieve preparation for adult responsibility, (2) the coordination of programs and activities of Federal agencies which pertain to the needs of youth, and (3) local, State, and private action to extend and improve youth opportunity.

(b) The Board shall advise and assist the Council in the evaluation of the progress made in carrying out the functions of the Council and recommend to the Council, as necessary, action to accelerate progress.

Part III—General Provisions

Sec. 301. *Financing.* The Federal agencies headed by the officers composing the Council shall, as may be necessary, furnish assistance to the Council or the Board in accordance with the provisions of section 214 of the Act of May 3, 1945 (59 Stat. 134; 31 U.S.C. 691).

Sec. 302. *Expenses of Board members.* Members of the Board shall receive no compensation from the United States by reason of their service under this order but they may be allowed transportation expenses and per diem in lieu of subsistence or reimbursement for actual and necessary expenses (5 U.S.C. 5703(c)(d)).

Authorization of Appropriations for President's Council on Youth Opportunity

Pub. L. 91-176, Dec. 30, 1969, 83 Stat. 826, provided: "That there is hereby authorized to be appropriated such sums as may be necessary for the expenses of the President's Council on Youth Opportunity, established by Executive Order Numbered 11330 of March 5, 1967.".

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 2706, 2707, 2941 of this title; title 20 section 3286; title 29 section 795a.

PART A—RESEARCH, DEMONSTRATION, AND PILOT PROJECTS

§ 2712. Research, demonstration, and pilot projects

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Conditions for commencement of project

No project shall be commenced under this section unless a plan setting forth such proposed project has been submitted to the chief executive officer of the State in which the project is to be located and such plan has not been disapproved by such chief executive officer within thirty days of such submission, or, if so disapproved, has been reconsidered by the Director and found by the Director to be fully consistent with the provisions and in furtherance of the purposes of this subchapter.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 95-568, § 17(a)(2), Nov. 2, 1978, 92 Stat. 2439.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-568 substituted "by such chief executive officer" for "by him" and "found by the Director" for "found by him".

§ 2713. Consultation

In carrying out projects under this subchapter, the Director shall arrange to obtain the opinions of program participants about the strengths and weaknesses of programs.

(As amended Pub. L. 95-568, § 3(a), Nov. 2, 1978, 92 Stat. 2425.)

AMENDMENTS

1978—Pub. L. 95-568 substituted "shall arrange" for "shall, whenever feasible, arrange".

§ 2716. Authorization of appropriations

There is authorized to be appropriated for the purpose of carrying out the provisions of this subchapter $5,000,000 for fiscal year 1979, $6,000,000 for fiscal year 1980, and $8,000,000 for fiscal year 1981.

(Pub. L. 88-452, title I, § 106, as added Pub. L. 95-568, § 3(b), Nov. 2, 1978, 92 Stat. 2425.)

PRIOR PROVISIONS

A prior section 2716, Pub. L. 88-452, title I, § 106, Aug. 20, 1964, 78 Stat. 510; Pub. L. 89-554, § 8(a), Sept. 6, 1966, 80 Stat. 662; Pub. L. 90-83, § 10(b), Sept. 11, 1967, 81 Stat. 223; Pub. L. 90-222, Title I, § 101, Dec. 23, 1967, 81 Stat. 674, which related to enrollment and assignment of Job Corps enrollees, was repealed by Pub. L. 93-203, title VI, § 614, Dec. 28, 1973, 87 Stat. 883. See section 916 of Title 29, Labor.

PART C—WORK-STUDY PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 20 sections 1055, 1070b-1, 1070d-1, 1070e, 1070e-1, 1078, 1087-3a, 1088, 1088a, 1088b, 1088b-1, 1088b-3, 1088c, 1088d, 1088f, 1088f-1, 1088g, 1105, 1145c.

SUBCHAPTER II—URBAN AND RURAL COMMUNITY ACTION PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2706, 2707, 2941, 2944, 2984, 3103, 5012, 6863, 6865 of this title; title 20 sections 3286, 3382; title 29 section 795a.

PART A—COMMUNITY ACTION AGENCIES AND PROGRAMS

§ 2790. Designation of community action agencies

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Organizational base, commonality of interests, and population income

For the purpose of this subchapter, a community may be a city, county, multicity, or multicounty unit, an Indian reservation, or a neighborhood or other area (irrespective of boundaries or political subdivisions) which provides a suitable organizational base and possesses the commonality of interest needed for a community action program. The Director, in determining whether a county or multicounty unit is eligible to be served by a community action agency under this subchapter, shall not apply, as the sole criterion for eligibility, any requirement or restriction relating to the number of individuals residing in the county or multicounty unit if at least 20 per centum of the families and unrelated individuals residing in such unit have incomes below the poverty line as determined by the Bureau of Census from the most recent census or survey. No new community action agency may be designated under subsection (a) of this section within a county or multicounty unit if—

(1) such county or multicounty unit has a population of less than 50,000;

(2) such county or multicounty unit was served by an existing community action agency on June 1, 1978; and

(3) the new community action agency would serve a smaller geographical area than that served by an existing community action agency on June 1, 1978.

The Director shall consult with the heads of other Federal agencies responsible for programs relating to work and training programs, physical and economic development, housing, education, health, and other community services to encourage the establishment of coterminous or complementary boundaries for planning purposes among those programs and community action programs assisted under this subchapter.

(d) Designation of substitute community action agency

The Director may designate and provide financial assistance to a public or private nonprofit agency as a community action agency in lieu of a community action agency designated under subsection (a) of this section for activities of the kind described in this subchapter where the Director determines, in accordance with regulations promulgated by the Director (1) that the community action agency serving the community has failed, after having a reasonable opportunity to do so, to submit a satisfactory plan for a community action program which meets the criteria for approval set forth in this subchapter, or to carry out such plan in a satisfactory manner, or (2) that neither the State nor any qualified political subdivision or combination of such subdivisions is willing to be designated as the community action agency for such community or to designate a public or private nonprofit agency or organization to be so designated by the Director.

[*See main edition for text of* (*e*)]

(f) Delegation of functions

The Director, in carrying out the responsibilities of the Director under this part, may delegate such functions (other than policymaking functions and the final approval of grants and contracts) to a State, in accordance with criteria and guidelines established by the Director, as the Director deems appropriate, except that no such delegation shall take place unless all the community action agencies within such State formally indicate their approval of such proposed delegation, except that whenever such delegated functions include the authority to approve programs within such State the Director shall make available to the State, in addition to an amount not less than the amount made available to such State for State agency assistance under section 2824 of this title in the previous fiscal year, an amount in each fiscal year equal to such State's share (as determined by the formula set forth in the third sentence of section 2828(a) of this title) of the aggregate amount made available during the fiscal year ending June 30, 1974, for the operation of regional offices of the Community Services Administration.

(As amended Pub. L. 95-568, §§ 4(a), (b), 17(a)(3), Nov. 2, 1978, 92 Stat. 2425, 2439.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-568, § 4(a), provided for population income as a criterion of eligibility for a community action agency to serve a county or multicounty unit and prescribed conditions for designation of a new community action agency.

Subsec. (d). Pub. L. 95-568, §§ 4(b), 17(a)(3)(A), inserted "in accordance with regulations promulgated by the Director" following "determines" and substituted "the Director" for "he" preceding "determines".

Subsec. (f). Pub. L. 95-568, § 17(a)(3)(B), substituted in first sentence "The Director, in carrying out the responsibilities of the Director under this part," for "In carrying out his responsibilities under this part the Director" and "established by the Director, as the Director" for "established by him, as he".

§ 2791. Community action agencies and boards

[*See main edition for text of* (*a*)]

(b) Composition of boards; membership; term of service

Each board to which this subsection applies shall consist of not more than fifty-one, and not less than fifteen, members and shall be so constituted that (1) one-third of the members of the board are elected public officials currently holding office, or their representatives, except that if the number of elected officials reasonably available and willing to serve is less than one-third of the membership of the board, membership on the board of appointive public officials may be counted in meeting such one-third requirement, (2) at least one-third of the members are persons chosen in accordance with democratic selection procedures adequate to assure that they are representative of the poor in the area served, and (3) the remainder of the members are officials or members of business, industry, labor, religious, welfare, education, or other major groups and interests in the community. Each member of the board selected to represent a specific geographic area within a community must reside in the area he represents. No person selected under clause (2) or (3) of this subsection as a member of a board shall serve on such board for more than five consecutive years, or more than a total of ten years.

[*See main edition for text of* (*c*)]

(d) Administrative standards and rules; quorum

(1) The Director shall promulgate such standards or rules relating to the scheduling and notice of meetings, quorums (which shall be not less than 50 per centum of the total membership), procedures, establishment of committees, and similar matters as the Director may deem necessary to assure that boards which are subject to subsection (b) of this section provide a continuing and effective mechanism for securing broad, community involvement in programs assisted under this subchapter and that all groups or elements represented on those boards have a full and fair opportunity to participate in decisions affecting those programs. Such standards or rules shall not preclude any such board from appointing an executive committee or similar group, which fairly reflects the composition of the board, to transact the board's business between its meetings. The quorum requirements for any such committee or group, which shall not be less than 50 percent of the membership, shall be established by the board.

[*See main edition for text of* (*2*); (*e*) *to* (*g*)]

(As amended Pub. L. 95-568, §§ 4(c), 17(a)(4), Nov. 2, 1978, 92 Stat. 2425, 2439.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-568, § 4(c), required a community action board to have a minimum of fifteen members and that the one-third board membership of elected public officials be officials "currently holding office".

Subsec. (d)(1). Pub. L. 95-568, § 17(a)(4), substituted "the Director may deem" for "he may deem".

§ 2796. Administrative standards; rules and regulations; review and consultative requirements

[*See main edition for text of* (*a*)]

(b) The Director shall prescribe rules or regulations to supplement subsection (a) of this section, which shall be binding on all agencies carrying on community action program activities with financial assistance under this subchapter. The Director may, where appropriate, establish special or simplified requirements for smaller agencies or agencies operating in rural areas. These special requirements shall not, however, affect the applicability of rules governing conflicts of interest, use of position or authority for partisan or nonpartisan political purposes or participation in direct action, regardless of customary practices or rules among agencies in the community. The Director shall consult with the heads of other Federal agencies responsible for programs providing assistance to activities which may be included in community action programs for the purpose of securing maximum consistency between rules or regulations prescribed or followed by those agencies and those prescribed under this section.

(c) The Director shall annually review, and consult with State economic opportunity offices authorized under section 2824(a) of this title, for the purposes of updating and simplifying, all relevant regulations and guidelines applicable to programs funded under this chapter, except with respect to programs funded under subchapter V and or subchapter X of this chapter.

(As amended Pub. L. 95-568, §§ 4(d), 17(a)(5), Nov. 2, 1978, 92 Stat. 2426, 2439.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-568, § 17(a)(5), substituted "The Director" for "He".

Subsec. (c). Pub. L. 95-568, § 4(d), added subsec. (c).

PART B—FINANCIAL ASSISTANCE TO COMMUNITY ACTIONS PROGRAMS AND RELATED ACTIVITIES

§ 2808. General provisions for financial assistance

(a) Component activities

The Director may provide financial assistance to community action agencies for the planning, conduct, administration and evaluation of community action programs and components. Those components may involve, without limitation, other activities and supporting facilities designed to assist participants including the elderly poor—

[*See main edition for text of* (*1*) *to* (*10*)]

The Director may also provide financial assistance to other public or private nonprofit agencies to aid them in planning for the establishment of a community action agency.

(b) Use of agencies outside designated community action agencies

If the Director determines that a limited purpose project or program involving activities otherwise eligible under this section is needed to serve needs of low-income families and individuals in a community and no community action agency has been designated for that community pursuant to section 2790 of this title, or where a community action agency gives its approval for such a program to be funded directly through a public or private nonprofit agency or organization, the Director may extend financial assistance for that project or program to a public or private non-profit agency which the Director finds is capable of carrying out the project in an efficient and effective manner consistent with the purpose of this subchapter.

[*See main edition for text of* (c)]

(d) Systematic planning and implementation processes

After July 1, 1968, the Director shall require, as a condition of assistance, that each community action agency has adopted a systematic approach to the achievement of the purposes of this subchapter and to the utilization of funds provided under this part. Such systematic approach shall encompass a planning and implementation process which seeks to identify the problems and causes of poverty in the community, seeks to mobilize and coordinate relevant public and private resources, establishes program priorities, links program components with one another and with other relevant programs, and provides for evaluation. The Director may, however, extend the time for such requirement to take into account the length of time a program has been in operation. The Director shall also take necessary steps to assure the participation of other Federal agencies in support of the development and implementation of plans under this subsection.

(e) Establishment of binding national priorities prohibited

In order to promote local responsibility and initiative, the Director shall not establish binding national priorities on funds authorized by this section, but the Director shall review each application for financial assistance on its merits. Before extending financial assistance to a new community action agency under this section, and in determining the amount of and conditions on which such assistance shall be extended, the Director shall consider the extent and nature of poverty in the community and the probable capacity of the agency to carry out an effective program. In reviewing or supplementing financial assistance to a previously existing community action agency, the Director shall consider the progress made in carrying on programs by such agency.

(As amended Pub. L. 95-568, § 17(a)(6), Nov. 2, 1978, 92 Stat. 2439.)

AMENDMENTS

1978—Pub. L. 95-568 substituted "The Director" for "He" in last sentence of subsecs. (a) and (d); "the Director" for "he" in subsec. (b) where set out the second and third time; and "the Director" for "he" in subsec. (e) where set out the second time in first sentence and in last sentence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2707, 2712, 2809, 2812, 2824, 2905 of this title.

§ 2809. Special programs and assistance

(a) Authority of Director; conditions and criteria

In order to stimulate actions to meet or deal with particularly critical needs or problems of the poor which are common to a number of communities, the Director may develop and carry on special programs under this section. This authority shall be used only where the Director determines that the objectives sought could not be effectively achieved through the use of authorities under section 2808 of this title, including assistance to components or projects based on models developed and promulgated by the Director. It shall also be used only with respect to programs which (A) involve activities which can be incorporated into or be closely coordinated with community action programs, (B) involve significant new combinations of resources of new and innovative approaches, or (C) are structured in a way that will, within the limits of the type of assistance or activities contemplated, most fully and effectively promote the purposes of this subchapter. Subject to such conditions as may be appropriate to assure effective and efficient administration, the Director may provide financial assistance to public or private nonprofit agencies to carry on local projects initiated under such special programs; but the Director shall do so in a manner that will encourage, wherever feasible, the inclusion of the assisted projects in community action programs, with a view to minimizing possible duplication and promoting efficiencies in the use of common facilities and services, better assisting persons or families having a variety of needs, and otherwise securing from the funds committed the greatest possible impact in promoting family and individual self-sufficiency. In no event shall the Director provide financial assistance under this subchapter to a public or private nonprofit agency other than a community action agency in an area in which a community action agency exists without prior notification of such financial assistance to the board of such community action agency and to any State economic opportunity office in the State in which financial assistance is provided. Programs under this section shall include those described in the following paragraphs:

(1) Community Food and Nutrition

A program to be known as "Community Food and Nutrition" designed to provide on an emergency basis, directly or by delegation of authority pursuant to the provisions of subchapter VI of this chapter, financial assistance for the provisions of such supplies and services, nutritional foodstuffs, and related services, as may be necessary to counteract conditions of starvation or malnutrition among the poor. Such assistance may be provided by way of supplement to such other assistance as may be extended under the provisions of other Federal programs, and may be used to extend and broaden such programs to serve economically disadvantaged individuals and families where such services are not now provided and without regard to the requirements of such laws for local or State administration or financial participation. In extending such assistance, the Director may make grants to community action agencies or local public or private nonprofit organizations or agencies to carry out the purposes of this paragraph. The director is authorized to carry out the functions under this paragraph through the Secretary of Agriculture and the Secretary of Health, Education, and Welfare in a manner that will insure the availability of such supplies and services, nutritional foodstuffs, and related services through a community action agency where feasible, or other agencies or organizations if no such agency exists or is able to administer programs to provide such foodstuffs, services, and supplies to needy individuals and families, or through a local public or private nonprofit organization or agency providing services to migrant or seasonal farmworkers or Native Americans.

(2) Senior Opportunities and Services

A program to be known as "Senior Opportunities and Services" designed to identify and meet the needs of older, poor persons above the age of 60 in one or more of the following areas: development and provision of new employment and volunteer services; effective referral to existing health, welfare, employment, housing, legal, consumer, transportation, education, and recreational and other services; stimulation and creation of additional services and programs to remedy gaps and deficiencies in presently existing services and programs; modification of existing procedures, eligibility requirements and program structures to facilitate the greater use of, and participation in, public services by the older poor; development of all-season recreation and service centers controlled by older persons themselves; and such other activities and services as the Director may determine are necessary or specially appropriate to meet the needs of the older poor and to assure them greater self-sufficiency. In administering this program the Director shall utilize to the maximum extent feasible the services of the Administration of Aging in accordance with agreements with the Secretary of Health, Education, and Welfare, and other Federal agencies providing services to the elderly poor. The Director shall seek, to the maximum extent feasible, the utilization of agencies funded under section 2808 of this title for the provision of such services available under titles III [42 U.S.C. 3021 et seq.], V [42 U.S.C. 3056 et seq.], and VII of the Older Americans Act of 1965, or such other Federal programs serving the elderly poor.

(3) Environmental Action

An "Environmental Action" program through which low-income persons will be paid for work (which would not otherwise be performed) on projects designed to combat pollution or to improve the environment. Projects may include, without limitation: cleanup and sanitation activities, including solid waste removal; reclamation and rehabilitation of eroded or ecologically damaged areas, including areas affected by strip mining; conservation and beautification activities, including tree planting and recreation area development; the restoration and maintenance of the environment; and the improvement of the quality of life in urban and rural areas.

(4) Rural Housing Development and Rehabilitation

A program to be known as "Rural Housing Development and Rehabilitation" designed to assist low-income families in rural areas to construct and acquire ownership of adequate housing, to rehabilitate or repair existing substandard units in such areas, and to otherwise assist families in obtaining standard housing. Financial assistance under this paragraph shall be provided to non-profit rural housing development corporations and cooperative or to local public or private nonprofit organizations or agencies providing services to migrant or seasonal farmworkers or Native Americans which serve areas which are defined by the Farmers Home Administration as rural areas, and shall be used for, but not limited to, such purposes as administrative expenses; revolving development funds; nonrevolving land, land development and construction writedowns; rehabilitation or repair of substandard housing; and loans to low-income families. In the construction, rehabilitation, and repair of housing for low-income families under this paragraph, the services of persons enrolled in Mainstream programs and programs under the Comprehensive Employment and Training Act of 1973 [29 U.S.C. 801 et seq.] may be utilized. Loans under this paragraph may be used for, but not limited to, such purposes as the purchase of new housing units, the repair, rehabilitation and purchase of existing units, and to supplement existing Federal loan programs in order that low-income families may benefit from them. The repayment period of such loans shall not exceed thirty-three years. No loans under this paragraph shall bear an interest rate of less than 1 per centum per annum, but if the Director, after having examined the family income of the applicant, the projected housing costs of the applicant, and such other factors as the Director deems appropriate, determines that the applicant would otherwise be unable to participate in this program, the Director may waive the interest in whole or in part and for such periods of time as the Director may establish except that (1) no such waiver may be granted to an applicant whose adjusted family income (as defined by the Farmers Home Administration) is in excess of $3,700 per annum and (2) any applicant for whom such a waiver is provided shall be required to commit at least 20 per centum of the adjusted family income of such applicant toward the mortgage debt service and other housing costs. Family incomes shall be recertified annually, and monthly payments for all loans under this paragraph adjusted accordingly.

(5) Emergency Energy Conservation Services

A program to be known as "Emergency Energy Conservation Services" designed to enable low-income individuals and families, including the elderly and the near poor, to participate in energy conservation programs designed to lessen the impact of the high cost of energy on such individuals and families and to reduce individual and family energy consumption. The Director is authorized to provide financial and other assistance for programs and activities, including, but not limited to, an energy conservation and education program; winterization of old or substandard dwellings, improved space conditioning, and insulation; emergency loans, grants, and revolving funds to install energy conservation technologies and to deal with increased housing expenses relating to the energy crisis; alternative fuel supplies, special fuel voucher or stamp programs; alternative transportation activities designed to save fuel and assure continued access to training, education, and employment; appropriate outreach efforts; furnishing personnel to act as coordinators, providing legal or technical assistance, or otherwise representing the interests of the poor in efforts relating to the energy crisis; nutrition, health, and other supportive services in emergency cases; and evaluation of programs and activities under this paragraph. Such assistance may be provided as a supplement to any other assistance extended under the provisions of this chapter or under other provisions of Federal law. The Director, after consultation with the Administrator of the Federal Energy Office and appropriate Federal departments and agencies, shall establish procedures and take other appropriate action necessary to insure that the effects of the energy crisis on low-income persons, the elderly, and the near poor are taken into account in the formulation and administration of programs relating to the energy crisis. In carrying out programs to lessen the impact of the high cost of energy to migrants, other seasonally employed farmworkers, and Native Americans, the Director shall utilize local public or private nonprofit organizations or agencies where feasible. Eligibility for any of the programs authorized under this section shall not be based solely on delinquency in payment of fuel bills.

(6) Summer Youth Recreation

A program to be known as "Summer Youth Recreation" designed to provide recreational opportunities for low-income children during the summer months. Funds made available for this paragraph shall be allocated by the Director among community action agencies where feasible, or other public or private nonprofit agencies where no such community action agency exists or is able to administer a program, to provide recreational opportunities for low-income children during the summer months.

(7) Demonstration Employment and Training Opportunities

A program to be known as "Demonstration Employment and Training Opportunities" designed to establish experimental employment and training programs and projects for low-income persons who are unemployed or underemployed, with special emphasis on youth, the structurally unemployed (especially those dependent on public assistance), single heads of households with dependent children, older workers, and veterans. The Director may make grants to community action agencies, community economic development corporations (as designated under subchapter VII of this chapter), and public or private nonprofit organizations and agencies for experimental programs and activities including, but not limited to, providing innovative approaches to employment and training programs, which shall, if necessary, make available to participants comprehensive supportive services; developing programs and linkages for low-income persons to achieve satisfactory transition from either unemployment or federally subsidized jobs to employment that is not federally subsidized; and developing training programs, with special consideration for community development corporations, designed to place disadvantaged youth in the private sector. The Director and the Secretary of Labor shall assure a full exchange of information concerning the employment and training programs subject to their respective jurisdictions in order to assure the most effective and responsive demonstration programs and activities. Any employment and training activities assisted in whole or part with funds made available under this paragraph shall be subject to the applicable conditions, labor standards, and benefits set forth in the Comprehensive Employment and Training Act of 1973 [29 U.S.C. 801 et seq.] and other related laws.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 95-568, §§ 5(a)-(f), 17(a)(7), Nov. 2, 1978, 92 Stat. 2426, 2427, 2439, 2440.)

References in Text

The Older Americans Act of 1965, referred to in subsec. (a)(2), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended. Title III of the Older Americans Act of 1965 is classified generally to subchapter III (§ 3021 et seq.) of chapter 35 of this title. Title V of such Act was formerly classified to subchapter V (§ 3041 et seq.) of chapter 35 of this title and is now classified generally to subchapter IX (§ 3056 et seq.) of chapter 35 of this title. Title VII of such Act which was classified to subchapter VII (§ 3045 et seq.) of chapter 35 of this title was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558. For complete classification of this Act to the Code, see Short Title note under section 3001 of this title and Tables.

The Comprehensive Employment and Training Act of 1973, referred to in subsec. (a)(4) and 7, is Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 839, as amended, now known as the Comprehensive Employment and Training Act, which is classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 29 and Tables.

Amendments

1978—Subsec. (a). Pub. L. 95-568, §§ 5(a)(1), 17(a)(7)(A), (B), in text preceding par. (1), substituted in second sentence "by the Director" for "by him" and in fourth sentence "the Director shall do" for "he shall do" and prohibited the Director from providing assistance to a public or private nonprofit agency other than a community action agency in an area in which a community action agency exists without prior notification of such assistance to the board of such community action agency and to any State economic opportunity office in the State in which assistance is provided.

Subsec. (a)(1). Pub. L. 95-568, § 5(a)(2)(A), (b)(1), redesignated former par. (5) as (1) and authorized the Director to carry out the functions under par. (1) through a local public or private nonprofit organization or agency providing services to migrant or seasonal farmworkers or Native Americans. See 1975 Amendment note for repeal of prior par. (1).

Subsec. (a)(2). Pub. L. 95-568, § 5(a)(2)(B), (b)(2), redesignated former par. (7) as (2) and required the Director to utilize the services of other Federal agencies providing services to the elderly poor and agencies funded under section 2808 of this title for services available under chapter 35, subchaps. III, V, and VII, of this title, or such other Federal programs serving the elderly poor. See 1975 Amendment note for repeal of prior par. (2).

Subsec. (a)(3). Pub. L. 95-568, § 5(a)(2)(C), redesignated former par. (10) as (3). See 1974 Amendment note for repeal of prior par. (3).

Subsec. (a)(4). Pub. L. 95-568, §§ 5(a)(2)(D), (c), 17(a)(7)(C), redesignated former par. (11) as (4), substituted in second sentence "or to local public or private nonprofit organizations or agencies providing services to migrant or seasonal farmworkers or Native Americans which serve areas" for "serving areas", authorized in third sentence use of services of persons enrolled in programs under the Comprehensive Employment and Training Act of 1973, and substituted "the Director deems appropriate", "the Director may waive", "the Director may establish" for "he deems appropriate", "he may waive", "he may establish", and in item (2) "the adjusted family income of such applicant" for "his adjusted family income". See 1976 Amendment note for repeal of prior par. (4).

Subsec. (a)(5). Pub. L. 95-568, § 5(a)(2)(E), (d), redesignated former par. (12) as (5), required the Director, in carrying out programs to lessen the impact of the high cost of energy to migrants, other seasonnally employed farmworkers, and Native Americans, to utilize local public or private nonprofit organizations or agencies where feasible and provided that eligibility for any of the authorized programs shall not be based solely on delinquency in payment of fuel bills. Former par. (5) redesignated (1).

Subsec. (a)(6). Pub. L. 95-568, § 5(a)(2)(F), (e), redesignated former par. (13) as (6), provided for allocation of funds for Summer Youth Recreation programs among community action agencies or other public or private nonprofit agencies where no community action agencies existed or were able to administer such programs, and eliminated provisions for allocations among prime sponsors and other agencies designated under the Comprehensive Employment and Training Act of 1973, after consultation by the Director with the Secretary of Labor, the basis of such allocations, and reallocation of funds not needed in any programs, and prescribing as a minimum amount for fiscal year ending June 30, 1975, and succeeding fiscal years, the higher of amounts made available for fiscal years ending June 30, 1973, and 1974. See 1975 Amendment note for repeal of prior par. (6).

Subsec. (a)(7). Pub. L. 95-568, § 5(f), added par. (7). Former par. (7) redesignated (2).

Subsec. (a)(8), (9). See 1975 Amendment notes for repeal of prior pars. (8) and (9).

Subsec. (a)(10) to (13). Pub. L. 95-568, § 5(a)(2)(C)-(F), redesignated former pars. (10) to (13) as (3) to (6).

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

Availability of Labor

For action to be taken by the Secretary of Labor to assure a sufficient number of volunteers, training participants, etc., with regard to subsec. (a)(5) of this section, see section 6873 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1474, 2812, 2824, 2944, 2982a, 2996f, 3013, 6851, 6862, 6863, 6865, 6873 of this title; title 20 section 1087ee; title 29 section 825.

§ 2812. Allotment of funds

(a) Limitation on assistance for development and implementation of community action programs

Of the sums which are appropriated or allocated for assistance in the development and implementation of community action programs pursuant to section 2808 of this title, and for special program projects referred to in section 2809(a) of this title, and which are not subject to any other provision governing allotment or distribution, the Director shall allot not more than 2 per centum among Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Virgin Islands, according to their respective needs. The Director shall also reserve not more than 20 per centum of those sums for allotment in accordance with such criteria and procedures as the Director may prescribe. The remainder shall be allotted among the States, in accordance with the latest available data, so that equal proportions are distributed on the basis of (1) the relative number of public assistance recipients in each State as compared to all States, (2) the relative number of unemployed persons in each State as compared to all States, and (3) the relative number of related children living with families with incomes below the poverty line in each State as compared to all States. For purposes of this subsection, the Director shall utilize the criteria of poverty used by the Bureau of the Census in compiling the 1970 decennial census. The Director shall insure that for the fiscal year ending June 30, 1975, and for each succeeding fiscal year, no State shall be allotted for programs under section 2808 and section 2809(a) of this title an amount which is less than the amount received for use within such State for programs described in such sections during the fiscal year ending June 30, 1974. That part of any State's allotment which the Director determines will not be needed may be reallotted, at such dates during the fiscal year as the Director may fix, in proportion to the original allotments, but with appropriate adjustments to assure that any amount so made available to any State in excess of its needs is similarly reallotted among the other States.

(b) Separate allotment of funds; criteria

The Director may provide for the separate allotment of funds for any special program referred to in section 2809(a) of this title. This allotment may be made in accordance with the criteria prescribed in subsection (a) of this section, or it may be made in accordance with other criteria which the Director determines will assure an equitable distribution of funds reflecting the relative incidence in each State of the needs or problems at which the program is directed, execpt that in no event may more than 12½ per centum of the funds for any one program be used in any one State.

(c) Limitation on assistance to community action agencies or section 2808 or 2809 agencies

Unless otherwise provided in this part, financial assistance extended to a community action agency or other agency pursuant to section 2808 of this title and section 2809(a) of this title shall not exceed 80 per centum of the approved cost of the assisted programs or activities. The Director may, however, approve assistance in excess of such percentages if the Director determines, in accordance with regulations establishing objective criteria, that such action is required in furtherance of the purposes of this subchapter. Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant equipment, or services. The Director shall not require non-Federal contributions in excess of the amount required to meet the approved cost of assisted programs or activities after calculating the per centum of Federal assistance for which such program is eligible under the first sentence of this subsection. In addition, the Director may approve assistance in excess of such per centum upon evidence that the aggregate of all non-Federal contributions by agencies within a State for financial assistance provided pursuant to sections 2808 and 2809(a) of this title as a per centum of the aggregate of all financial assistance provided to such agencies in such State pursuant to such sections meets the per centum requirements of this subsection.

(d) Conditions for approval; rules and regulations

No program shall be approved for assistance under sections 2808 and 2809(a) of this title unless the Director is satisfied (1) that the services to be provided under such program will be in addition to, and not in substitution for, services previously provided without Federal assistance, and (2) that funds or other resources devoted to programs designed to meet the needs of the poor within the community will not be diminished in order to provide any contributions required under subsection (c) of this section. The requirement imposed by the preceding sentence shall be subject to such regulations as the Director may adopt and promulgate establishing objective criteria for determinations covering situations where a strict application of that requirement would result in unnecessary hardship or otherwise be inconsistent with the purposes sought to be achieved.

(As amended Pub. L. 95-568, §§ 5(g), 17(a)(8), (b), Nov. 2, 1978, 92 Stat. 2427, 2440, 2443.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-568, § 17(a)(8)(A), substituted "The Director shall also reserve" for "He shall also reserve" and "the Director may prescribe" for "he may prescribe".

Subsec. (b). Pub. L. 95-568, § 17(a)(8)(B), substituted "the Director determines" for "he determines".

Subsec. (c). Pub. L. 95-568, §§ 5(g), 17(a)(8)(C), (b), substituted in first sentence "shall not exceed 80 per centum of the approved cost of the assisted programs or activities for", for the period ending June 30, 1967, shall not exceed 80 per centum of the approved cost of the assisted programs or activities with respect to fiscal year 1975, and 70 per centum of such costs with respect to fiscal year 1976, and shall not exceed 60 per centum of such costs with respect to fiscal year 1977, except that in the case of community action agencies receiving such financial assistance annually of $300,000 or less, such financial assistance shall not exceed 75 per centum of such costs with respect to fiscal year 1976, and shall not exceed 70 per centum of such costs with respect to fiscal year 1977"; "the Director determines" for "he determines"; and "subchapter. Non-Federal contributions" for "subchapter, non-Federal contributions".

Subsec. (d). Pub. L. 95-568, § 17(a)(8)(D), substituted "is satisfied" for "satisfies himself".

§ 2814. National youth sports programs

[*See main edition for text of* (a) *and* (b)]

(c) Administration of programs

Programs under this section shall be administered by the Director through grants or contracts with any qualified organization of colleges and universities or such other qualified nonprofit organizations active in the field with access to appropriate recreational facilities as the Director shall determine in accordance with regulations which the Director shall prescribe. Each such grant or contract and subcontract with participating institutions of higher education or other qualified organizations active in the field shall contain provisions to assure that the program to be assisted will provide a non-Federal contribution (in cash or in kind) of no less than 20 per centum of the direct costs necessary to carry out the program. Each such grant, contract, or subcontract shall include provisions for—

[*See main edition for text of* (*1*) *to* (*6*)]

(As amended Pub. L. 95-568, § 17(a)(9), Nov. 2, 1978, 92 Stat. 2440.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-568 substituted "the Director shall prescribe" for "he shall prescribe".

PART C—SUPPLEMENTAL PROGRAMS AND ACTIVITIES

§ 2823. Technical assistance and training

The Director shall provide, directly or through grants or other arrangements, (1) technical assistance to communities in developing, conducting, and administering programs under this subchapter, and (2) training for specialized or other personnel which is needed in connection with those programs or which otherwise pertains to the purposes of this subchapter. Upon request of an agency receiving financial assistance under this subchapter, the Director shall, to the extent feasible, make special assignments of personnel to the agency to assist and advise it in the performance of functions related to the assisted activity; but no such special assignment shall be for a period of more than two years in the case of any agency.

(As amended Pub. L. 95-568, § 6(a), Nov. 2, 1978, 92 Stat. 2427.)

AMENDMENTS

1978—Pub. L. 95-568 substituted "shall provide" for "may provide" and "shall, to the extent feasible, make" for "may make".

§ 2824. State agency assistance

(a) Purposes for which assistance may be provided

The Director may provide financial assistance to State agencies designated in accordance with State law, to enable those agencies—

(1) to provide technical assistance to communities and local agencies in developing and carrying out programs under this subchapter, with priority to programs funded under section 2808 of this title and section 2809 of this title;

(2) to assist in coordinating State activities related to this subchapter;

(3) to advise and assist the Director in developing procedures and programs to promote the participation of States and State agencies in programs under this subchapter;

(4) to advise and assist the Director, the Economic Opportunity Council established by section 2973 of this title, and the heads of other Federal agencies, in identifying problems posed by Federal statutory or administrative requirements that operate to impede State level coordination of programs related to this subchapter, and in developing methods of recommendations for overcoming those problems;

(5) to advise the Director and the chief elected official of the State on the status and impact of State and Federal programs and services affecting low-income individuals in the State; and

(6) to assist programs funded under section 2808 of this title and section 2809 of this title in coordinating and utilizing services available through other State agencies.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Allegations respecting noncompliance; investigations; termination of assistance

If any member of a board to which section 2791(b) of this title is applicable files an allegation with the Director that an agency receiving assistance under this section is not observing any requirement of this chapter, or any regulation, rule, or guideline promulgated by the Director under this chapter, the Director shall promptly investigate such allegation and shall consider it; and, if after such investigation and consideration the Director finds reasonable cause to believe that the allegations are true, the Director shall hold a hearing, upon the conclusion of which the Director shall notify all interested persons of the findings of the Director. If the Director finds that the allegations are true, and that, after being afforded a reasonable opportunity to do so, the agency has failed to make appropriate corrections, the Director shall forth with terminate further assistance under this subchapter to such agency until the Director has received assurances satisfactory to the Director that further violations will not occur.

(As amended Pub. L. 95-568, §§ 6(b), 17(a)(10), Nov. 2, 1978, 92 Stat. 2428, 2440.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-568, § 6(b), added "with priority to programs funded under section 2808 of this title and section 2809 of this title" in par. (1) and added pars. (5) and (6).

Subsec. (d). Pub. L. 95-568, § 17(a)(10), substituted "the Director" for "he" wherever appearing in clause "if after such investigation" and in last sentence; "the findings of the Director" for "his findings"; and "satisfactory to the Director" for "satisfactory to him".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2790, 2796, 2828, 2974 of this title.

§ 2825. Research and pilot programs

(a) Development of new approaches and methods

The Director may contract or provide financial assistance for pilot or demonstration projects conducted by public or private agencies which are designed to test or assist in the development of new approaches or methods that will aid in overcoming special problems or otherwise in furthering the purposes of this subchapter. The Director may also contract or provide financial assistance for research pertaining to the purposes of this subchapter.

(b) Development of overall plan

The Director shall establish an overall plan to govern the approval of pilot or demonstration projects and the use of all research authority under this subchapter. The plan shall set forth specific objectives to be achieved and priorities among such objectives. In formulating the plan, the Director shall consult with other Federal agencies for the purpose of preventing duplication among similar activities or projects and determining whether the findings resulting from any research or pilot projects may be incorporated into one or more programs for which those agencies are responsible. As part of the annual report required by section 2948 of this title, or in a separate annual report, the Director shall submit a description for each fiscal year of the current plan required by this section, of activities subject to the plan, and of the findings derived from those activities, together with a statement indicating the time and, to the extent feasible, the manner in which the benefits of those activities and findings are expected to be realized.

[*See main edition for text of* (c)]

(d) Approval of project by local government or community action agency

No pilot or demonstration project under this section shall be commenced in any city, county, or other major political subdivision, unless a plan setting forth such proposed pilot or demonstration project has been submitted to the appropriate community action agency, or, if there is no such agency, to the local governing officials of the political subdivision, and such plan has not been disapproved by the community action agency or governing body, as the case may be, within thirty days of such submission, or, if so disapproved, has been reconsidered by the Director and found by the Director to be fully consistent with the provisions and in furtherance of the purposes of this subchapter.

[*See main edition for text of* (e) *and* (f)]

(As amended Pub. L. 95-568, §§ 6(c), 17(a)(11), Nov. 2, 1978, 92 Stat. 2428, 2440.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-568, § 17(a)(11)(A), substituted in last sentence "The Director" for "He".

Subsec. (b). Pub. L. 95-568, § 6(c), substituted in third sentence "preventing" for "minimizing".

Subsec. (d). Pub. L. 95-568, § 17(a)(11)(B), substituted "found by the Director" for "found by him".

§ 2828. Demonstration community partnership agreements

[*See main edition for text of* (a)]

(b) Matching local and State funds; requirements for approval of program

Matching local and State funds supplied under this section shall be in cash and shall represent State and local initiatives newly obligated within the previous year to the purposes of the grant-supported activity; and no program shall be approved for assistance under this section unless the Director is satisfied (1) that the activities to be carried out under such program will be in addition to, and not in substitution for, activities previously carried on without Federal assistance, (2) that funds or other resources devoted to programs designed to meet the needs of the poor within the community, area, or State will not be diminished in order to provide the contributions required under this section. The requirement imposed by the preceding sentence shall be subject to such regulations as the Director may adopt and promulgate establishing objective criteria for determinations covering situations where a strict application of that requirement would result in unnecessary hardship or otherwise be inconsistent with the purposes sought to be achieved.

[*See main edition for text of* (c)]

(As amended Pub. L. 95-568, § 17(a)(12), Nov. 2, 1978, 92 Stat. 2440.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-568 substituted "is satisfied" for "satisfies himself".

§ 2829. Repealed. Pub. L. 95-568, § 6(d), Nov. 2, 1978, 92 Stat. 2428

Section, Pub. L. 88-452, title II, § 236, as added Pub. L. 93-644, § 5(f), Jan. 4, 1975, 88 Stat. 2297, and amended Pub. L. 94-341, § 2(a)(14) July 6, 1976, 90 Stat. 804, set forth provisions relating to the establishment, etc., of the Intergovernmental Advisory Council on Community Services.

§ 2830. Authorization of appropriations

There is also authorized to be appropriated not to exceed $50,000,000 to carry out section 2828 of this title during the fiscal year 1975, and such sums as may be necessary during each of the six succeeding fiscal years, except that in no event may more than 12½ per centum of such additional amounts be used in any one State.

(Pub. L. 88-452, title II, § 236, formerly § 237, as added Pub. L. 93-644, § 5(f), Jan. 4, 1975, 88 Stat. 2297, and renumbered and amended Pub. L. 95-568, § 6(d), (e), Nov. 2, 1978, 92 Stat. 2428.)

PRIOR PROVISIONS

A prior section 236, Pub. L. 88-452, title II, as added Pub. L. 93-644, § 5(f), Jan. 4, 1975, 88 Stat. 2297, and amended Pub. L. 94-341, § 2(a)(14), July 6, 1976, 90 Stat. 804, which related to the establishment of the Intergovernmental Advisory Council on Community Services and which was classified to section 2829 of this title, was repealed by Pub. L. 95-568, § 6(d), Nov. 2, 1978, 92 Stat. 2428.

AMENDMENTS

1978—Pub. L. 95-568 substituted "six" for "two" succeeding fiscal years.

PART D—GENERAL AND TECHNICAL PROVISIONS

§ 2832. Repealed. Pub. L. 95-568, § 7(a), Nov. 2, 1978, 92 Stat. 2428

Section, Pub. L. 88-452, title II, § 240, as added Pub. L. 90-222, title I, § 104, Dec. 23, 1967, 81 Stat. 705, set forth provisions relating to Assistant Directors for Community Action.

§ 2833. Rural areas

[*See main edition for text of* (*a*)]

(b) Criteria for equitable distribution of assistance between urban and rural areas

The Director shall establish criteria designed to achieve an equitable distribution of assistance under this subchapter within the States between urban and rural areas. In developing such criteria, the Director shall consider the relative number in the States or areas therein of: (1) low-income families, particularly those with children; (2) unemployed persons; (3) persons receiving cash or other assistance on a needs basis from public agencies or private organizations; (4) school dropouts; (5) adults with less than an eighth-grade education; (6) persons rejected for military service; and (7) poor persons living in urban places compared to the number living in rural places as determined by the latest reports of the Bureau of the Census.

(c) Assistance to public and private nonprofit agencies

Notwithstanding any other provision of this subchapter, the Director is authorized to provide financial assistance in rural areas to public or private nonprofit agencies for any project for which assistance to community action agencies is authorized, if the Director determines that it is not feasible to establish a community action agency within a reasonable period of time. The assistance so granted shall be subject to such conditions as the Director deems appropriate to promote adherence to the purposes of this subchapter and the early establishment of a community action agency in the area.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 95-568, § 17(a)(13), Nov. 2, 1978, 92 Stat. 2440.)

AMENDMENTS

1978—Pub. L. 95-568 substituted "the Director" in subsec. (b), second sentence, and subsec. (c), first sentence, following "if".

§ 2834. Submission of plans to governors

In carrying out the provisions of this subchapter, no contract, agreement, grant, loan, or other assistance shall be made with, or provided to, any State or local public agency or any private institution or organization for the purpose of carrying out any program, project, or other activity within a State unless a plan setting forth such proposed contract, agreement, grant, loan, or other assistance has been submitted to the Governor of the State, and such plan has not been disapproved by the Governor within thirty days of such submission, or, if so disapproved, has been reconsidered by the Director and found by the Director to be fully consistent with the provisions and in furtherance of the purposes of this subchapter. Funds to cover the costs of the proposed contract, agreement, grant, loan, or other assistance shall be obligated from the appropriation which is current at the time the plan is submitted to the Governor. This section shall not, however, apply to contracts, agreements, grants, loans, or other assistance to any institution of higher education in existence on August 20, 1964.

(As amended Pub. L. 95-568, § 17(a)(14), Nov. 2, 1978, 92 Stat. 2440.)

AMENDMENTS

1978—Pub. L. 95-568 substituted "found by the Director" for "found by him".

§ 2835. Fiscal responsibility and audit

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Annual audit

At least once annually the Director shall make or cause to be made an audit of each grant or contract of assistance under this subchapter. Promptly after the completion of such audit, the Director shall determine on the basis of resulting findings and conclusions whether any of the costs of expenditures incurred shall be disallowed. In the event of disallowance, the Director may seek recovery of the sums involved by appropriate means, including court action or a commensurate increase in the required non-Federal share of the costs of any grant or contract with the same agency or organization which is then in effect or which is entered into within twelve months after the date of disallowance.

(d) Other requirements and actions by Director

The Director shall establish such other requirements and take such actions as the Director may deem necessary and appropriate to carry out the provisions of this section and to insure fiscal responsibility and accountability, and the effective and efficient handling of funds in connection with programs assisted under this subchapter. These requirements and actions shall include (1) necessary action to assure that the rate of expenditure of any agency receiving financial assistance does not exceed the rate contemplated under its approved program; and (2) appropriate requirements to promote the continuity and coordination of all projects or components of programs receiving financial assistance under this subchapter, including provision for the periodic reprograming and supplementation of assistance previously provided.

(As amended Pub. L. 95-568, § 17(a)(15), Nov. 2, 1978, 92 Stat. 2440.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-568, § 17(a)(15)(A), substituted in second sentence "the Director" for "he".

Subsec. (d). Pub. L. 95-568, § 17(a)(15)(B), substituted "the Director may deem" for "he may deem".

§ 2836. Special limitations

The following special limitations shall apply, as indicated, to programs under this subchapter.

[*See main edition for text of (1)*]

(2) The Director shall issue necessary rules or regulations to assure that no employee engaged in carrying out community action program activities receiving financial assistance under this subchapter is compensated from funds so provided at a rate in excess of $18,000 per annum, and that any amount paid to such an employee at a rate in excess of $18,000 per annum shall not be considered in determining whether the non-Federal contributions requirements of section 2812(c) of this title have been complied with; the Director may, however, provide in those rules or regulations for exceptions covering cases where, because of the need for specialized or professional skills or prevailing local salary levels, application of the foregoing restriction would greatly impair program effectiveness or otherwise be inconsistent with the purposes sought to be achieved.

[*See main edition for text of (3)*]

(4) In granting financial assistance for projects or activities in the field of family planning, the Director shall assure that family planning services, including the dissemination of family planning information and medical assistance and supplies, are made available to all low-income individuals who meet the criteria for eligibility for assistance under this subchapter which have been established by the assisted agency and who desire such information, assistance, or supplies. The Director shall require, in connection with any such financial assistance, that—

(A) no individual will be provided with any information, medical supervision, or supplies which that individual indicates are inconsistent with the moral, philosophical, or religious beliefs of such individual; and

(B) no individual will be provided with any medical supervision or supplies unless such individual has voluntarily requested such medical supervision or supplies.

The use of family planning services assisted under this subchapter shall not be a prerequisite to the receipt of services from or participation in any other programs under this chapter.

[*See main edition for text of (5) and (6)*]

(7) No financial assistance shall be extended under this subchapter in any case in which the Director determines that the costs of developing and administering all of the programs assisted under this subchapter carried on by or under the supervision of any community action agency exceed 15 per centum of the total costs, including non-Federal contributions to such costs, of such programs. The Director, after consultation with the Director of the Office of Management and Budget, shall establish by regulation, criteria for determining (i) the costs of developing and administering such programs, and (ii) the total costs of such programs. In any case in which the Director determines that the cost of administering such programs does not exceed 15 per centum of such total costs but is, in the judgment of the Director, excessive, the Director shall forthwith require such community action agency to take such steps prescribed by the Director as will eliminate such excessive administrative cost, including the sharing by one or more such community action agencies of a common director and other administrative personnel. The Director may waive the limitation prescribed by this paragraph for specific periods of time not to exceed six months whenever the Director determines that such a waiver is necessary in order to carry out the purposes of this subchapter.

[*See main edition for text of (8)*]

(As amended Pub. L. 95-568, §§ 7(b), 17(a)(16), Nov. 2, 1978, 92 Stat. 2428, 2440.)

AMENDMENTS

1978—Par. (2). Pub. L. 95-568, § 7(b), increased compensation limitation to $18,000 from $15,000 and struck out "(particularly in large metropolitan areas" following "exceptions covering cases".

Par. (4). Pub. L. 95-568, § 17(a)(16)(A), substituted: in subpar. (A), "the moral" for "his or her moral" and "religious beliefs of such individual" for "religious beliefs", and in subpar. (B), "unless such individual" for "unless he or she".

Par. (7). Pub. L. 95-568, § 17(a)(16)(B), substituted "the judgment of the Director", "the Director shall forthwith", "prescribed by the Director", and "the Director determines" for "his judgment", "he shall forthwith", "prescribed by him", and "he determines".

§ 2837. Duration of program

The Director shall carry out the programs provided for in this subchapter during the fiscal year ending June 30, 1967, and the fourteen succeeding fiscal years. For each such fiscal year only such sums may be appropriated as the Congress may authorize by law.

(As amended Pub. L. 95-568, § 7(c), Nov. 2, 1978, 92 Stat. 2428.)

AMENDMENTS

1978—Pub. L. 95-568 substituted "fourteen" for "eleven" succeeding fiscal years.

SUBCHAPTER III—SPECIAL PROGRAMS TO COMBAT POVERTY IN RURAL AREAS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 20 section 3286; title 29 section 795a.

§ 2841. Congressional statement of purpose

It is the purpose of this subchapter to meet some of the special needs of low-income rural families by establishing a program of loans to assist in raising and maintaining their income and living standards.

(As amended Pub. L. 95-568, § 8(b)(1), Nov. 2, 1978, 92 Stat. 2428.)

AMENDMENTS

1978—Pub. L. 95-568 substituted "subchapter" for "part".

§ 2855. Revolving fund

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Receipts from lending and guaranty operations; availability of funds

Receipts from any lending and guaranty operations under this subchapter shall be credited to the fund. The fund shall be available for the payment of all expenditures of the Director for loans, participations, and guaranties authorized under this subchapter.

(As amended Pub. L. 95-568, § 8(b)(2), Nov. 2, 1978, 92 Stat. 2428.)

References in Text

Section 2871 of this title, referred to in subsec. (a), was repealed by Pub. L. 95-568, § 8(a)(2), Nov. 2, 1978, 92 Stat. 2428. See section 2906 of this title.

Amendments

1978—Subsec. (d). Pub. L. 95-568 substituted "subchapter" for "part" in two instances.

§ 2856. Authorization of appropriations

There is authorized to be appropriated for the purpose of carrying out the provisions of this subchapter $3,000,000 for fiscal year 1979, $5,000,000 for fiscal year 1980, and $7,000,000 for fiscal year 1981.

(Pub. L. 88-452, title III, § 307, as added Pub. L. 95-568, § 8(a)(3), Nov. 2, 1978, 92 Stat. 2428.)

§§ 2861 to 2865, 2871. Repealed. Pub. L. 95-568, § 8(a)(2), Nov. 2, 1978, 92 Stat. 2428

Section 2861, Pub. L. 88-452, title III, § 311, Aug. 20, 1964, 78 Stat. 525; Pub. L. 89-253, § 23, Oct. 9, 1965, 79 Stat. 977; Pub. L. 90-222, title I, § 105(e), Dec. 23, 1967, 81 Stat. 709, set forth Congressional statement of purpose for financial assistance programs for migrant and other seasonally employed farmworkers and their families. See section 2901 of this title.

Section 2862, Pub. L. 88-452, title III, § 312, as added Pub. L. 90-222, title I, § 105(e), Dec. 23, 1967, 81 Stat. 709, and amended Pub. L. 92-424, § 18, Sept. 19, 1972, 86 Stat. 696; Pub. L. 93-644, § 6(a), Jan. 4, 1975, 88 Stat. 2298, set forth requirements for financial assistance programs. See section 2902 of this title.

Section 2863, Pub. L. 88-452, title III, § 313, as added Pub. L. 90-222, title I, § 105(e), Dec. 23, 1967, 81 Stat. 710, set forth limitations on program assistance. See section 2903 of this title.

Section 2864, Pub. L. 88-452, title III, § 314, as added Pub. L. 90-222, title I, § 105(e), Dec. 23, 1967, 81 Stat. 710, and amended Pub. L. 92-424, § 27(b)(1), (3), Sept. 19, 1972, 86 Stat. 705, set forth authorization for technical assistance and training for programs. See section 2904 of this title.

Section 2865, Pub. L. 88-452, title III, § 315, as added Pub. L. 93-644, § 6(b), Jan. 4, 1975, 88 Stat. 2298, set forth requirements for coordination, monitoring, and review of programs. See section 2905 of this title.

Section, 2871, Pub. L. 88-452, title III, § 321, Aug. 20, 1964, 78 Stat. 525; Pub. L. 89-253, § 30(c), Oct. 9, 1965, 79 Stat. 979; Pub. L. 89-794, title III, § 302, Nov. 8, 1966, 80 Stat. 1465; Pub. L. 91-177, title I, § 101(b), Dec. 30, 1969, 83 Stat. 827; Pub. L. 92-424, § 2(a), Sept. 19, 1972, 86 Stat. 688; Pub. L. 93-644, § 14(a), Jan. 4, 1975, 88 Stat. 2329, set forth provisions relating to duration of and authorization for appropriations for program. See section 2906 of this title.

SUBCHAPTER IV—ASSISTANCE FOR MIGRANT AND OTHER SEASONALLY EMPLOYED FARMWORKERS AND THEIR FAMILIES

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 2706, 2707 of this title; title 20 section 3286; title 29 section 795a.

§ 2901. Statement of purpose

The purpose of this subchapter is to assist migrant and seasonal farmworkers and their families to improve their living conditions and develop skills necessary for a productive and self-sufficient life in an increasingly complex and technological society.

(Pub. L. 88-452, title IV, § 401, as added Pub. L. 95-568, § 9, Nov. 2, 1978, 92 Stat. 2429.)

Prior Provisions

A prior section 2901, Pub. L. 88-452, title IV, § 401, as added Pub. L. 93-644, § 7, Jan. 4, 1975, 88 Stat. 2298, and amended Pub. L. 94-341, § 2(a)(16), July 6, 1976, 90 Stat. 804, relating to the establishment of the Comprehensive Health Services Program, was omitted in the general revision of this subchapter by Pub. L. 95-568.

Another prior section 2901, Pub. L. 88-452, title IV, § 401, Aug. 20, 1964, 78 Stat. 526; Pub. L. 90-222, title I, § 106(a), Dec. 23, 1967, 81 Stat. 710, setting forth the Congressional statement of purpose of this subchapter as the establishment, preservation, and strengthening of small business concerns and the improvement of managerial skills employed in such enterprises, was repealed by Pub. L. 93-386, § 2(b), Aug. 23, 1974, 88 Stat. 745. See section 636 of Title 15, Commerce and Trade.

§ 2902. Financial assistance

(a) The Director may provide financial assistance to assist State and local agencies, private nonprofit institutions, and cooperatives in developing and carrying out programs to fulfill the purpose of this subchapter.

(b) Programs assisted under this subchapter may include projects or activities—

(1) to meet the immediate needs of migrant and seasonal farmworkers and their families, such as day care for children, education, health services, improved housing and sanitation (including the provision and maintenance of emergency and temporary housing and sanitation facilities), legal advice and representation, and consumer training and counseling;

(2) to promote increased community acceptance of migrant and seasonal farmworkers and their families; and

(3) to equip unskilled migrant and seasonal farmworkers and members of their families, as appropriate, through education and developmental programs to meet the changing demands in agricultural employment brought about by technological advancement and to take advantage of opportunities available to improve their well-being and self-sufficiency by gaining regular or permanent employment or by participating in available federally assisted employment or training programs.

(Pub. L. 88-452, title IV, § 402, as added Pub. L. 95-568, § 9, Nov. 2, 1978, 92 Stat. 2429.)

Prior Provisions

A prior section 2902, Pub. L. 88-452, title IV, § 402, as added Pub. L. 93-644, § 7, Jan. 4, 1975, 88 Stat. 2299, and amended Pub. L. 94-341, § 2(a)(17), July 6, 1976, 90 Stat. 804, relating to the establishment of the Alcoholic Counseling and Recovery Program and the Drug Rehabilitation Program, was omitted in the general reorganization of this subchapter by Pub. L. 95-568.

Another prior section 2902, Pub. L. 88-452, title IV, § 402, Aug. 20, 1964, 78 Stat. 526; Pub. L. 89-794, title IV, §§ 401, 402, 405, Nov. 8, 1966, 80 Stat. 1465; Pub. L. 90-104, title I, § 108, Oct. 11, 1967, 81 Stat. 269; Pub. L. 90-222, title I, § 106(b), (c), Dec. 23, 1967, 81 Stat. 710; Pub. L. 92-320, § 2, June 27, 1972, 86 Stat. 382, relating to the powers of the Administrator of the Small Business Administration with respect to loans, and guarantees to small businesses, was repealed by Pub. L. 93-386, § 2(b), Aug. 23, 1974, 88 Stat. 745.

§ 2903. Limitations on assistance

(a) Assistance may not be extended under this subchapter unless the Director determines that the applicant will maintain its prior level of effort in similar activities.

(b) The Director shall establish necessary procedures or requirements to assure that programs under this subchapter are carried out in coordination with other programs or activities providing assistance to the persons and groups served.

(Pub. L. 88-452, title IV, § 403, as added Pub. L. 95-568, § 9, Nov. 2, 1978, 92 Stat. 2429.)

Prior Provisions

A prior section 2903, Pub. L. 88-452, title IV, § 403, Aug. 20, 1964, 78 Stat. 526, which required that financial assistance under former section 2902 of this title be coordinated with any community action program covering the same community, was repealed by Pub. L. 89-794, title IV, § 403, Nov. 8, 1966, 80 Stat. 1465.

§ 2904. Technical assistance, training and evaluation

The Director may provide directly or through grants, contracts, or other arrangements, such technical assistance or training of personnel as may be required to implement effectively the purpose of this subchapter.

(Pub. L. 88-452, title IV, § 404, as added Pub. L. 95-568, § 9, Nov. 2, 1978, 92 Stat. 2429.)

Prior Provisions

A prior section 2904, Pub. L. 88-452, title IV, § 404, Aug. 20, 1964, 78 Stat. 526, which provided that the lending and guaranty functions which are delegated to the Small Business Administration may be financed with funds under the revolving fund established by section 633(c) of Title 15, Commerce and Trade, for the purposes of sections 636(a), 636(b), and 637(a) of Title 15, was repealed by Pub. L. 89-794, title IV, § 403, Nov. 8, 1966, 80 Stat. 1465.

§ 2905. Special responsibilities

The Director shall be responsible for coordinating programs under this subchapter with other Federal programs designed to assist or serve migrant and seasonal farmworkers, for reviewing and monitoring such programs, and for insuring that programs assisted under this subchapter cooperate with and receive the cooperation of programs assisted under section 2808 of this title in communities which such programs mutually serve. Programs under this subchapter shall be administered at the national level.

(Pub. L. 88-452, title IV, § 405, as added Pub. L. 95-568, § 9, Nov. 2, 1978, 92 Stat. 2430.)

Prior Provisions

A prior section 2905, Pub. L. 88-452, title IV, § 403, formerly § 405, Aug. 20, 1964, 78 Stat. 526, renumbered and amended Pub. L. 89-794, title IV, §§ 401, 406, Nov. 8, 1966, 80 Stat. 1465, which set forth terms and conditions of any loans made pursuant to former section 2902 of this title, was repealed by Pub. L. 93-386, § 2(b), Aug. 23, 1974, 88 Stat. 745.

Special Consideration for Agencies Previously Receiving Financial Assistance to Provide Services to Migrant or Other Seasonally Employed Farmworkers

Section 6(c) of Pub. L. 93-644, Jan. 4, 1975, 88 Stat. 2298, provided that: "In providing financial assistance under the provisions of part B of title III of the Economic Opportunity Act of 1964 [former sections 2861 to 2865 of this title], the Director shall give special consideration to any public or private nonprofit agency which has previously received financial assistance thereunder for the provision of services for migrant and other seasonally employed farmworkers and their families, taking into account financial assistance provided to any such agency under section 303 of the Comprehensive Employment and Training Act of 1973 [section 873 of Title 29, Labor]."

§ 2906. Authorization of appropriations

There are authorized to be appropriated for carrying out the purposes of this subchapter $3,000,000 for fiscal year 1979, $5,000,000 for fiscal year 1980, $8,000,000 for fiscal year 1981.

(Pub. L. 88-452, title IV, § 406, as added Pub. L. 95-568, § 9, Nov. 2, 1978, 92 Stat. 2430.)

Prior Provisions

A prior section 2906, Pub. L. 88-452, title IV, § 404, formerly § 406, Aug. 20, 1964, 78 Stat. 527, renumbered and amended Pub. L. 89-794, title IV, §§ 401, 406, Nov. 8, 1966, 80 Stat. 1465; Pub. L. 90-222, title I, § 106(d), (3), Dec. 23, 1967, 81 Stat. 711, which required the Administrator to distribute financial assistance to insure that at least 50 per centum of amounts loaned or guaranteed are allotted to small business concerns located in designated urban areas, was repealed by Pub. L. 93-386, § 2(b), Aug. 23, 1974, 88 Stat. 745.

SUBCHAPTER V—HEADSTART AND FOLLOW THROUGH

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 644, 2706, 2707, 2796 of this title; title 20 section 2890, 2971, 3286; title 29 section 795a.

Part A—Headstart Programs

Part Referred to in Other Sections

This part is referred to in section 2923 of this title; title 20 section 3441.

§ 2928a. Authorization of appropriations

There are authorized to be appropriated for carrying out the purposes of this part such sums as may be necessary for fiscal years 1979 through 1981.

(As amended Pub. L. 95-568, § 10(a), Nov. 2, 1978, 92 Stat. 2430.)

Amendments

1978—Pub. L. 95-568 substituted appropriations authorization for fiscal years 1979 through 1981 for prior such authorization for fiscal years 1975 through 1977.

§ 2928b. Distribution of funds

(a) Allotments and reservations

(1) Of the sums appropriated pursuant to section 2928a of this title for any fiscal year beginning after September 30, 1978, the Secretary shall allot such sums in accordance with paragraphs (2) through (4).

(2) The Secretary shall allot at least 78 percent among the States, in accordance with the latest satisfactory data available, so that equal proportions are distributed on the basis of—

(A) the relative number of recipients receiving payments under the program of aid to families with dependent children under a State plan approved under part A of title IV of the Social Security Act [42 U.S.C. 601 et seq.] in each State as compared to all States; and

(B) the relative number of related children from birth through 5 years of age living with families with incomes below the poverty line in each State as compared to all States.

(3)(A) Subject to the provisions of subsection (b) of this section, the Secretary shall reserve 20 percent of the sums so appropriated for each fiscal year for use in accordance with the following order of priorities:

(i) funding shall be given with equal consideration to Indian and migrant Headstart programs and to services for handicapped children, except that—

(I) there shall be made available, for use by Indian and migrant Headstart programs, nationally, no less funds for fiscal year 1979 and thereafter than were obligated for use by Indian and migrant Headstart programs in fiscal year 1978, and

(II) cost-of-living adjustments (which shall, at the minimum reflect changes in the Consumer Price Index published by the Bureau of Labor Statistics of the United States Department of Labor) shall be made with respect to such Indian and migrant Headstart programs in fiscal year 1979 and thereafter;

(ii) payments shall be made available to each State or territory, if necessary, to maintain such State or territory at a level of funding equal to its level of funding for fiscal year 1978;

(iii) training and technical assistance activities which, at a minimum, are sufficient to meet the needs associated with program expansion and to foster program and management improvement activities; and

(iv) subject to the provisions of subparagraph (B), the remainder in accordance with such criteria and procedures as the Secretary shall prescribe by regulation.

(B) Additional financial assistance for a fiscal year may be provided to a State if funds are available after meeting the requirements of clauses (i) through (iii) of subparagraph (A), for purposes other than assistance to Indian and migrant programs, services for handicapped children, payments under subparagraph (A)(ii), and training and technical assistance activities, only if such State's allotment for such fiscal year under paragraph (2) and subparagraph (A)(ii) is not greater than 175 percent of the amount such State is eligible to receive in such fiscal year under paragraph (2).

(4)(A) Subject to the provisions of subparagraph (E), the Secretary shall reserve 2 percent of the sums appropriated for—

(i) allotment among Guam, American Samoa, the Trust Territory of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands, according to their respective needs, and

(ii) the provision of assistance to States in accordance with the provisions of subparagraph (C).

(B) A State shall receive the total amount of assistance calculated under subparagraph (C) for any fiscal year if—

(i) such State receives an allotment under paragraph (2) and paragraph (3)(A)(ii) which is greater than 100 percent and less than 140 percent of the amount such State is eligible to receive under paragraph (2); or

(ii) such State receives an allotment under paragraph (2) only and such allotment, as compared to the total amount of assistance received by such State in the previous fiscal year, represents an increase which is less than 50 percent of the percentage increase in the appropriation for such fiscal year for which the determination is made as compared to the appropriation for the fiscal year preceding the fiscal year for which the determination is made.

(C) Except as provided in subparagraph (D), each State specified in subparagraph (B) shall receive a total amount of assistance for any fiscal year which is equal to the sum of—

(i) the amount of the allotment received by such State under paragraph (2);

(ii) the amount of any payments received by such State under paragraph (3)(A)(ii); and

(iii) an amount equal to the difference between—

(I) an amount equal to the sum of the total amount of assistance received by such State for the fiscal year preceding the fiscal year for which the determination is made; and the amount derived by multiplying the total amount of assistance received by such State for the most recent fiscal year by a percentage equal to one-half of the percentage increase in the appropriation for that fiscal year for which the determination is made as compared to the appropriation for the fiscal year preceding the fiscal year for which the determination is made; and

(II) the total of the payments received by such State under paragraph (2) and paragraph (3)(A)(ii) for the fiscal year for which the determination is made.

In the case of any fiscal year for which there is no increase in the appropriation as compared to the appropriation for the preceding fiscal year, each State specified in subparagraph (B) shall receive a total amount of assistance for such fiscal year which is equal to the total amount of assistance such State received for such preceding fiscal year. In the case of any fiscal year for which there is a reduction in the appropriation as compared to the appropriation for the preceding fiscal year, the Secretary shall make such adjustments in the total amount of assistance which each State otherwise would receive under this subparagraph as may be necessary to assure an equitable distribution of such assistance under this subparagraph.

(D) For fiscal year 1979, each State described in subparagraph (B) shall receive payments in an amount equal to 69 percent of the percentage increase, up to 9 percent, in the appropriation for fiscal year 1979 over the appropriation for fiscal year 1978, or 50 percent of the percentage increase in the appropriation for fiscal year 1979 over the appropriation for fiscal year 1978, whichever is greater.

(E)(i) Any funds not allotted according to the provisions of this paragraph for any fiscal year shall be allotted according to the provisions of paragraph (2) to those States which, for such fiscal year, receive an allotment under paragraph (2) only.

(ii) If sums reserved under subparagraph (A) of this paragraph are insufficient in any fiscal year to carry out the provisions of subparagraphs (A), (B), (C), and (D) of this paragraph, the Secretary shall transfer from sums reserved under paragraph (3) an amount necessary to carry out such provisions.

(b) Reservation priorities

Whenever funds appropriated pursuant to section 2928a of this title for any fiscal year beginning after September 30, 1978, are equivalent to, or exceed $800,000,000, the Secretary, pursuant to the provision of subsection (a)(3) of this section, shall reserve not more than 20 percent of $800,000,000 or 15 percent of the funds so appropriated, whichever is greater.

(c) Limitations on assistance

Financial assistance extended under this part for a Headstart program shall not exceed 80 per centum of the approved costs of the assisted program or activities, except that the Secretary may approve assistance in excess of such percentage if the Secretary determines, in accordance with regulations establishing objective criteria, that such action is required in furtherance of the purposes of this part. Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, or services. The Secretary shall not require non-Federal contributions in excess of 20 per centum of the approved costs of programs or activities assisted under this part.

(d) Comparable service previously provided without Federal assistance

No programs shall be approved for assistance under this part unless the Secretary is satisfied that the services to be provided under such program will be in addition to, and not in substitution for, comparable services previously provided without Federal assistance. The requirement imposed by the preceding sentence shall be subject to such regulations as the Secretary may prescribe.

(e) Handicapped children

The Secretary shall establish policies and procedures designed to assure that for fiscal year 1975 not less than 10 per centum of the total number of enrollment opportunities in Headstart programs in the Nation shall be available for handicapped children and that for fiscal year 1976 and thereafter no less than 10 per centum of the total number of enrollment opportunities in Headstart programs in each State shall be available for handicapped children (as defined in paragraph (1) of section 1401 of title 20) and that services shall be provided to meet their special needs. The Secretary shall report to the Congress at least annually on the status of handicapped children in Headstart programs, including the number of children being served, their handicapping conditions, and the services being provided such children.

(f) Equitable distribution of benefits between rural and urban areas

The Secretary shall adopt appropriate administrative measures to assure that the benefits of this part will be distributed equitably between residents of rural and urban areas.

(As amended Pub. L. 95-568, §§ 10(b), 17(a)(17), Nov. 2, 1978, 92 Stat. 2430, 2441.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Part A of title IV of the Social Security Act is classified generally to part A (§ 601 et seq.) of subchapter IV of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-568, § 10(b)(1), added subsec. (a) and struck out similar subject matter covering: allotment of 2 per centum of appropriations among Guam, American Samoa, Trust Territory of Pacific Islands, and Virgin Islands; reservation of 20 per centum of appropriations for use in accordance with criteria and procedures the Secretary may prescribe; allotment of remainder among the States in accordance with latest satisfactory available data on basis of (1) relative number of public assistance recipients in each State as compared to all States, and (2) relative number of related children living with families with below poverty line incomes in each State as compared to all States; and requirements that: Headstart programs within each State have no less funds for any fiscal year than were so obligated within the State for fiscal year 1975; allocation of increases within each State be made to reflect the proportionate increases in program costs incurred by grantees; and the Secretary utilize Bureau of Census criteria of poverty used in compiling 1970 decennial census.

Subsec. (b). Pub. L. 95-568, § 10(b)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 95-568, §§ 10(b)(2), 17(a)(17), redesignated former subsec. (b) as (c) and substituted "the Secretary determines" for "he determines". Former subsec. (c) redesignated (d).

Subsecs. (d) to (f). Pub. L. 95-568, § 10(b)(2), redesignated former subsecs. (c) to (e) as (d) to (f).

§ 2928c. Designation of Headstart agencies

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Parents and area resident involvement

The Secretary shall require that the practice of significantly involving parents and area residents affected by the program in selection of Headstart agencies be continued.

(As amended Pub. L. 95-568, § 10(c), Nov. 2, 1978, 92 Stat. 2432.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-568 added subsec. (d).

§ 2928d. Powers and functions of Headstart agencies

[*See main edition for text of* (*a*)]

(b) In order to be so designated, a Headstart agency must also (1) establish effective procedures by which parents and area residents concerned will be enabled to directly participate in decisions that influence the character of programs affecting their interests, (2) provide for their regular participation in the implementation of such programs, and (3) provide technical and other support needed to enable parents and area residents to secure on their own behalf available assistance from public and private sources.

(As amended Pub. L. 95-568, § 10(d), Nov. 2, 1978, 92 Stat. 2432.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-568 substituted "to directly participate in decisions that influence" for "to influence".

§ 2928e. Submission of plans to Governors

In carrying out the provisions of this part, no contract, agreement, grant, or other assistance shall be made for the purpose of carrying out a Headstart program within a State unless a plan setting forth such proposed contract, agreement, grant, or other assistance has been submitted to the Governor of the State, and such plan has not been disapproved by the Governor within thirty days of such submission, or, if so disapproved, has been reconsidered by the Secretary and found by the Secretary to be fully consistent with the provisions and in furtherance of the purposes of this part. Funds to cover the costs of the proposed contract, agreement, grant, or other assistance shall be obligated from the appropriation which is current at the time the plan is submitted to the Governor. This section shall not, however, apply to contracts, agreements, grants, loans, or other assistance to any institution of higher education in existence on January 4, 1975.

(As amended Pub. L. 95-568, § 17(a)(18), Nov. 2, 1978, 92 Stat. 2441.)

AMENDMENTS

1978—Pub. L. 95-568 substituted "found by the Secretary" for "found by him".

§ 2928f. Administrative requirements and standards

[*See main edition for text of* (*a*)]

(b) Development and administration costs

No financial assistance shall be extended under this subchapter in any case in which the Secretary determines that the costs of developing and administering a program assisted under this subchapter exceed 15 per centum of the total costs, including non-Federal contributions to such costs, of such program. The Secretary shall establish by regulation, criteria for determining (i) the costs of developing and administering such program and (ii) the total costs of such program. In any case in which the Secretary determines that the cost of administering such program does not exceed 15 per centum of such total costs but is, in the judgment of the Secretary, excessive, the Secretary shall forthwith require the recipient of such financial assistance to take such steps prescribed by the Secretary as will eliminate such excessive administrative cost, including the sharing by one or more Headstart agencies of a common director and other administrative personnel. The Secretary may waive the limitation prescribed by this paragraph for specific periods of time not to exceed twelve months whenever the Secretary determines that such a waiver is necessary in order to carry out the purposes of this subchapter.

(c) Rules and regulations

The Secretary shall prescribe rules or regulations to supplement subsection (a) of this section, which shall be binding on all agencies carrying on Headstart program activities with financial assistance under this part. The Secretary may, where appropriate, establish special or simplified requirements for smaller agencies or agencies operating in rural areas. Policies and procedures shall be established to insure that indirect costs attributable to the common or joint use of facilities and services by programs assisted under this part and other programs shall be fairly allocated among the various programs which utilize such facilities and services.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 95-568, §§ 10(e), 17(a)(19), Nov. 2, 1978, 92 Stat. 2432, 2441.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-568, §§ 10(e), 17(a)(19)(A), substituted: "twelve months" for "six months"; and "the Secretary shall forthwith" and "the Secretary determines" for "he shall forthwith" and "he determines", "prescribed by the Secretary" for "prescribed by him", and "the judgment of the Secretary" for "his judgment".

Subsec. (c). Pub. L. 95-568, § 17(a)(19)(B), substituted in second sentence "The Secretary" for "He".

§ 2928g. Participation in Headstart programs

(a)(1) The Secretary shall by regulation prescribe eligibility for the participation of persons in Headstart programs assisted under this part. Except as provided in paragraph (2) of this subsection, such criteria may provide (A) that children from low-income families shall be eligible for participation in programs assisted under this part if their families are below the poverty line, or if their families are eligible or in the absence of child care would potentially be eligible for public assistance; and (B) pursuant to such regulations as the Secretary shall prescribe that programs assisted under this part may include, to a reasonable extent, participation of children in the area served who would benefit from such programs but whose families do not meet the low-income criteria prescribed pursuant to clause (A).

(2) Whenever a Headstart program is operated in a community with a population of 1,000 or

less individuals and (A) there is no other preschool program in the community, (B) the community is located in a medically underserved area as designated by the Secretary pursuant to section 254c(b)(3) of this title and is located in a health manpower shortage area as designated by the Secretary pursuant to section 254e(a)(1) of this title, (C) the community is in a location which, by reason of remoteness, does not permit reasonable access to the types of services described in clauses (A) and (B), and (D) not less than 50 per centum of the families to be served in the community are eligible under the eligibility criteria established by the Secretary under paragraph (1) of this subsection, the Headstart program in each such locality shall establish the criteria for eligibility, except that no child residing in such community whose family is eligible under such eligibility criteria shall, by virtue of such project's eligibility criteria, be denied an opportunity to participate in such program.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 95-568, § 10(f), Nov. 2, 1978, 92 Stat. 2432.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-568 designated existing provisions as par. (1), inserted introductory text of second sentence "Except as provided in paragraph (2) of this subsection", redesignated as cls. (A) and (B) former cls. (1) and (2), substituted in cl. (B) reference to "clause (A)" for "clause (1)", and added par. (2).

§ 2928g-1. Handicapped children; enrollment policies and report to Congress

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 2928h. Appeals, notice, and hearing

The Secretary shall prescribe procedures to assure that—

(1) special notice of and an opportunity for a timely and expeditious appeal to the Secretary will be provided for an agency or organization which desires to serve as a delegate agency under this part and whose application to the Headstart agency has been wholly or substantially rejected or has not been acted upon within a period of time deemed reasonable by the Secretary, in accordance with regulations which the Secretary shall prescribe;

[*See main edition for text of* (*2*) *and* (*3*)]

(As amended Pub. L. 95-568, § 17(a)(20), Nov. 2, 1978, 92 Stat. 2441.)

AMENDMENTS

1978—Par. (1). Pub. L. 95-568 substituted "the Secretary" for "he" shall prescribe.

§ 2928*l*. Announcement of research, demonstration and pilot project contracts

[*See main edition for text of* (*a*)]

(b) Time of announcement

The public announcements required by subsection (a)(1) of this section shall be made within thirty days of making such grants or contracts, and the public announcements required by subsection (a)(2) of this section shall be made within ninety days of the receipt of such results.

(c) Studies, proposals and data as property of United States

The Secretary shall take necessary action to assure that all studies, proposals, and data produced or developed with Federal funds employed under this subchapter shall become the property of the United States.

(d) Publication of summaries of results of activities; time; submission to committees of Congress

The Secretary shall publish summaries of the results of activities carried out pursuant to this subchapter not later than ninety days after the completion thereof. The Secretary shall submit to the appropriate committees of the Congress copies of all such summaries.

(As amended Pub. L. 95-568, § 10(g), (h), Nov. 2, 1978, 92 Stat. 2433.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-568, § 10(g), substituted references to "subsection (a)(1)" and "subsection (a)(2)" for "subsection (a)" and "subsection (b)" and "ninety days" for "thirty days" in two instances.

Subsec. (c). Pub. L. 95-568, § 10(h), substituted "Secretary" for "Director".

Subsec. (d). Pub. L. 95-568, § 10(h), substituted "Secretary" for "Director" in two instances.

§ 2928m. Evaluation of programs

[*See main edition for text of* (*a*)]

(b) Performance standards; revisions

The Secretary shall operate the programs and projects covered by this part in accordance with Headstart performance standards. Any revisions in such standards shall result in standards which are no less comprehensive than those in effect on November 2, 1978. The extent to which such standards have been met shall be considered in deciding whether to renew or supplement financial assistance authorized under this part.

[*See main edition for text of* (*c*) *to* (*f*)]

(As amended Pub. L. 95-568, § 10(i), Nov. 2, 1978, 92 Stat. 2433.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-568 substituted provisions respecting performance standards and revisions of the standards for prior provisions relating to publication of general standards of evaluation.

§ 2928n. Poverty line

(a) Revision of poverty line annually or at shorter intervals

The Secretary shall revise annually (or at any shorter interval the Secretary deems feasible and desirable) a poverty line which, except as provided in section 2928g of this title, shall be used as a criterion of eligibility for participation in Headstart programs.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 95-568, § 17(a)(21), Nov. 2, 1978, 92 Stat. 2441.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-568 substituted "the Secretary" for "he" deems.

PART B—FOLLOW THROUGH PROGRAMS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 20 section 3441.

§ 2929. Financial assistance

(a)[1] (1) The Secretary is authorized to provide financial assistance in the form of grants to local educational agencies, combinations of such agencies, and, as provided in paragraph (2) of this subsection, any other public or appropriate nonprofit private agencies, organizations, and institutions for the purpose of carrying out Follow Through programs focused primarily on children from low-income families in kindergarten and primary grades, including such children enrolled in private nonprofit elementary schools, who were previously enrolled in Headstart or similar programs. Other children in kindergarten and primary grades, including such other children enrolled in private nonprofit elementary schools, who were previously enrolled in preschool programs of a compensatory nature which received Federal financial assistance may participate in such Follow Through programs.

(2) Whenever the Secretary determines (A) that a local educational agency receiving assistance under paragraph (1) is unable or unwilling to include in a Follow Through program children enrolled in nonprofit private schools who would otherwise be eligible to participate therein, or (B) that it is otherwise necessary in order to accomplish the purposes of this section, the Secretary may provide financial assistance for the purpose of carrying out a Follow Through program to any other public or appropriate nonprofit private agency, organization, or institution.

(3) Programs to be assisted under this section shall provide such comprehensive educational, health, nutritional, social, and other services as will aid in the continued development of children described in paragraph (1) to their full potential. Such projects shall provide for the direct participation of the parents of such children in the development, conduct, and overall direction of the program at the local level. If the Secretary determines that participation in the project of children who are not from low-income families will serve to carry out the purposes of this section, the Secretary may provide for the inclusion of such children from non-low-income families, but only to the extent that their participation will not dilute the effectiveness of the services designed for children described in paragraph (1) of this subsection.

(As amended Pub. L. 95-568, §§ 11(a), (b), 17(a)(22), Nov. 2, 1978, 92 Stat. 2433, 2441.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-568, § 11(a), authorized participation in the Follow Through programs of children in kindergarten and primary grades who were previously enrolled in preschool programs of a compensatory nature which received Federal financial assistance.

Subsec. (a)(2). Pub. L. 95-568, § 17(a)(22), substituted "the Secretary may provide" for "he may provide".

Subsec. (a)(3). Pub. L. 95-568, §§ 11(b), 17(a)(22), substituted "comprehensive, educational, health, nutritional, social, and other services as" for "comprehensive services as the Secretary determines" preceding "will aid" and "the Secretary may provide" for "he may provide".

§ 2929a. Authorization of appropriations

(a) Appropriations for fiscal 1975 and two succeeding fiscal years

There is authorized to be appropriated for carrying out the purposes of this part $70,000,000 for fiscal year 1979, $85,000,000 for fiscal year 1980, and $100,000,000 for fiscal year 1981. Funds so appropriated shall remain available for obligation and expenditure during the fiscal year succeeding the fiscal year for which they are appropriated.

(b) Limitations of financial assistance; exceptions

Financial assistance extended under this part for a Follow Through program shall not exceed 80 per centum of the approved costs of the assisted program or activities, except that the Secretary may approve assistance in excess of such percentage if the Secretary determines, in accordance with regulations establishing objective criteria, that such action is required in furtherance of the purposes of this part. Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, or services. The Secretary shall not require non-Federal contributions in excess of 20 per centum of the approved costs of programs or activities assisted under this part.

[*See main edition for text of* (c)]

(As amended Pub. L. 95-568, §§ 11(c), 17(a)(23), Nov. 2, 1978, 92 Stat. 2433, 2441.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-568, § 11(c), substituted appropriations authorization of $70,000,000; $85,000,000; and $100,000,000 for fiscal years 1979 through 1981 for prior authorizatin of $60,000,000 for fiscal year 1975 and each of two succeeding fiscal years.

Subsec. (b). Pub. L. 95-568, § 17(a)(23), substituted "the Secretary" for "he" determines.

§ 2929b. Research, demonstration, and pilot projects

(a) The Secretary may provide financial assistance through grants or contracts for research, demonstration, or pilot projects conducted by public and private agencies which are designed to test or assist in the development of new approaches or methods that will aid in overcoming special problems or in otherwise furthering the purposes of this part.

(b) The Secretary shall establish an overall plan to govern the approval of research, demonstration, or pilot projects and the use of all research authority under this part. Such plan shall set forth specific objectives to be achieved and priorities among such objectives.

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[1] So in original. Section enacted without a subsec. (b).

(Pub. L. 88-452, title V, § 553, as added Pub. L. 95-568, § 11(d)(3), Nov. 2, 1978, 92 Stat. 2434.)

PRIOR PROVISIONS

A prior section 2929b, Pub. L. 88-452, title V, § 553, as added Pub. L. 93-644, § 8(a), Jan. 4, 1975, 88 Stat. 2307, related to research, demonstration, and pilot projects, and was repealed by Pub. L. 95-568, § 11(d)(1), Nov. 2, 1978, 92 Stat. 2433.

§ 2929b-1. Announcement of research, demonstration, and pilot project contracts

(a) Contents of announcements

The Secretary shall make a public announcement concerning—

(1) the title, purpose, intended completion date, identity of the grantee or contractor, and proposed cost of any grant or contract with a private or non-Federal public agency or organization for any research, demonstration, or pilot project under this part; and

(2) the results, findings, data, or recommendations made or reported as a result of such activities.

(b) Time of announcements

The public announcements required by subsection (a)(1) of this section shall be made not later than 30 days of making such grants or contracts, and the public announcements required by subsection (a)(2) of this section shall be made not later than 90 days of the receipt of such results.

(c) Studies, proposals, and data as property of United States

The Secretary shall take necessary action to assure that all studies, proposals, and data produced or developed with Federal funds employed under this part shall become the property of the United States.

(d) Publication of summaries of results of activities; time; submission to committees of Congress

The Secretary shall publish summaries of the results of activities carried out pursuant to this part not later than 90 days after the completion thereof. The Secretary shall submit to the appropriate committees of the Congress copies of all such summaries.

(Pub. L. 88-452, title V, § 554, as added Pub. L. 95-568, § 11(d)(3), Nov. 2, 1978, 92 Stat. 2434.)

PRIOR PROVISIONS

A prior section 554 of Pub. L. 88-452 was redesignated 557, and is classified to section 2929c of this title.

§ 2929b-2. Evaluation of program

(a) Continuing evaluation directly or through grants or contracts

The Secretary shall provide, directly or through grants or contracts, for the continuing evaluation of programs under this part, including evaluations that measure and evaluate the impact of programs authorized by this part, in order to determine their effectiveness in achieving stated goals, their impact on related programs, and their structure and mechanism for delivery of services, including, where appropriate, comparisons with appropriate control groups composed of persons who have not participated in such programs. Evaluations shall be conducted by persons not directly involved in the administration of the program or project evaluation.

(b) Publication of general standards of evaluation

The Secretary shall develop and publish general standards for evaluation of program and project effectiveness in achieving the objectives of this part. The extent to which such standards have been met shall be considered in deciding whether to renew or supplement financial assistance authorized under this part.

(c) Views of persons participating in and served by programs

In carrying out evaluations under this part, the Secretary shall, whenever feasible, arrange to obtain the specific views of persons participating in and served by programs and projects assisted under this part about such programs and projects.

(d) Publication of results of evaluation; time; submission to committees of Congress

The Secretary shall publish the results of evaluative research and summaries of evaluations of program and project impact and effectiveness not later than 90 days after the completion thereof. The Secretary shall submit to the appropriate committees of the Congress copies of all such research studies and evaluation summaries.

(e) Studies, evaluation, proposals, and data as property of United States

The Secretary shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with assistance under this section become the property of the United States.

(Pub. L. 88-452, title V, § 555, as added Pub. L. 95-568, § 11(d)(3), Nov. 2, 1978, 92 Stat. 2434.)

§ 2929b-3. Technical assistance and training

The Secretary may provide, directly or through grants or other appropriate arrangements (1) technical assistance to Follow Through programs in developing, conducting, and administering programs under this part, and (2) training for specialized or other personnel which is needed in connection with Follow Through programs.

(Pub. L. 88-452, title V, § 556, as added Pub. L. 95-568, § 11(d)(3), Nov. 2, 1978, 92 Stat. 2435.)

§ 2929c. Special conditions for financial assistance

[*See main edition for text of section*]

(Pub. L. 88-452, title V, § 557, formerly § 554, as added Pub. L. 93-644, § 8(a), Jan. 4, 1975, 88 Stat. 2308, and renumbered Pub. L. 95-568, § 11(d)(2), Nov. 2, 1978, 92 Stat. 2433.)

PART C—GENERAL PROVISIONS

§ 2930. Definitions

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 2930e. Political activities

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

PART D—DAY CARE PROJECTS

§ 2932. Financial assistance for day care projects

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Evaluation of program; report

Each project to which payments are made hereunder shall provide for a thorough evaluation. This evaluation shall be conducted by such agency or independent public or private organization as the Secretary shall designate, with a view to determining, among other things, the extent to which the day care provided may have increased the employment of parents and relatives of the children served, the extent to which such day care may have reduced the costs of aid and services to such children, the extent to which such children have received health and educational benefits, and the extent to which the project has been coordinated with other day care activities in the area served. Up to 100 per centum of the costs of evaluation may be paid by the Secretary from funds appropriated for the purposes of carrying out this part, except that where such evaluation is carried on by the assisted agency itself, the Secretary may pay only 90 per centum of such costs. Such evaluations, together with a report on the program described in this part, shall be included in the report required by section 2948 of the title.

(As amended Pub. L. 95-568, § 17(a)(24), Nov. 2, 1978, 92 Stat. 2441.)

AMENDMENTS

1978—Subsec. (e). Pub. L. 95-568 substituted "the Secretary may pay" for "he may pay".

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 2933. Duration of program

The Secretary shall carry out the programs provided for in this part during the fiscal year ending June 30, 1968, and the thirteen succeeding fiscal years.

(As amended Pub. L. 95-568, § 12, Nov. 2, 1978, 92 Stat. 2435.)

AMENDMENTS

1978—Pub. L. 95-568 substituted "thirteen" for "ten" succeeding fiscal years.

SUBCHAPTER VI—ADMINISTRATION AND COORDINATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2706, 2707, 2809, 2941 of this title; title 20 section 3286; title 29 section 795a.

PART A—ADMINISTRATION

§ 2941. Community Services Administration

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Responsibilities of Director; non-delegability of functions

The Administration shall be an independent agency. The Director shall have the responsibility for carrying out subchapters I, II, III-B, VI, VII, and IX of this chapter. The functions of the Director with respect to carrying out subchapters I, II (except section 2825 of this title), III-B, VI, VII, and IX of this chapter shall not be delegated to any other officer not directly responsible, both with respect to program operation and administration, to the Director. The Director shall promulgate rules and regulations regarding the final approval of grants and contracts.

(d) Community Services Administration as successor to Office of Economic Opportunity; continuing force and effectiveness of official actions; suits, actions, proceedings, or causes of action not abated; personnel

(1) All official actions taken by the Director of the Office of Economic Opportunity, the designee of the Director, or any other person under the authority of this chapter which are in force on January 4, 1975, and for which there is continuing authority under the provisions of this chapter, shall continue in full force and effect until modified, superseded, or revoked by the Director.

[*See main edition for text of* (*2*)]

(3) No suit, action, or other proceeding, and no cause of action, by or against the Office of Economic Opportunity, or any action by any officer thereof acting in the official capacity of such officer, shall abate by reason of the enactment of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 [42 U.S.C. 2701 et seq.].

[*See main edition for text of* (*4*)]

(e) to (h). Repealed. Pub. L. 95-568, § 13(a)(3), Nov. 2, 1978, 92 Stat. 2435

(As amended Pub. L. 95-568, §§ 13(a), 17(a)(25), Nov. 2, 1978, 92 Stat. 2435, 2441.)

REFERENCES IN TEXT

Subchapter III-B of this chapter, referred to in subsec. (c), was repealed by Pub. L. 95-568, § 8(a)(2), Nov. 2, 1978, 92 Stat. 2428.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-568, § 13(a)(1), (2), struck out introductory phrase "Subject to the provisions of subsection (e) of this section" and substituted rules and regulations promulgation authorization for prohibition, beginning after June 15, 1975, against delegation to any regional office or official of policymaking functions, including final approval of grants and contracts.

Subsec. (d). Pub. L. 95-568, § 17(a)(25), substituted in par. (1) "the designee of the Director" for "his designee" and in par. (3) "the official capacity of such officer" for "his official capacity".

Subsecs. (e) to (h). Pub. L. 95-568, § 13(a)(3), struck out provisions of subsec. (e), submission of reorganization plan and establishment of Community Services Administration and Community Economic Development Administration in Departments of Health, Education, and Welfare, and Commerce; subsec. (f), appointment of Director of Community Services Administration and Director of Community Economic Development Administration in the respective departments; subsec. (g), transfer of property, records, and unexpended balances of appropriations, allocations, and other funds; and (h), transfer of personnel, continuing force and effectiveness of official actions, and nonabatement of suits, actions, and proceedings, or causes of action.

§ 2942. Authority of Director

In addition to the authority conferred upon the Director by other sections of this chapter, the Director is authorized, in carrying out the functions of the Director under this chapter, to—

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Appointment of advisory committees

appoint, without regard to the civil service laws, one or more advisory committees composed of such private citizens and officials of the Federal, State, and local governments as the Director deems desirable to advise the Director with respect to the functions of the Director under this chapter; and members of such committees (including the National Advisory Council established in section 2945 of this title), other than those regularly employed by the Federal Government, while attending meetings of such committees or otherwise serving at the request of the Director, shall be entitled to receive compensation and travel expenses as provided in subsection (b) of this section with respect to experts and consultants;

(d) Reimbursement of other Federal agencies for performance of functions; delegation of powers

arrange with and reimburse the heads of other Federal agencies for the performance of any of the functions of the Director under this chapter and, as necessary or appropriate, delegate any of the powers of the Director under this chapter and authorize the redelegation thereof subject to provisions to assure the maximum possible liaison between the Community Services Administration and such other agencies at all operating levels, which shall include the furnishing of complete operational information by such other agencies to the Community Services Administration and the furnishing of such information by such Community Services Administration to such other agencies;

[*See main edition for text of* (*e*) *to* (*g*)]

(h) Allocation and expenditure of funds; transfer of funds to other Federal agencies

allocate and expend, or transfer to other Federal agencies for expenditure, funds made available under this chapter as the Director deems necessary to carry out the provisions hereof, including (without regard to the provisions of section 4774(d) of title 10) expenditure for construction, repairs, and capital improvements;

(i) Dissemination of data and information

disseminate, without regard to the provisions of section 3204 of title 39, data and information, in such form as the Director shall deem appropriate, to public agencies, private organizations, and the general public;

[*See main edition for text of* (*j*)]

(k) Acquisition, handling, or disposal of property acquired in connection with loans, participations, and guaranties

notwithstanding any other provision of law relating to the acquisition, handling, or disposal of real or personal property by the United States, deal with, complete, rent, renovate, modernize, or sell for cash or credit at his discretion any properties acquired by the Director in connection with loans, participations, and guaranties made by the Director pursuant to this chapter;

(*l*) Collection or compromise of obligations

collect or compromise all obligations to or held by the Director and all legal or equitable rights accruing to the Director in connection with the payment of obligations until such time as such obligations may be referred to the Attorney General for suit or collection;

(m) Expenditures for printing and binding, rent, and repair, alteration, and improvement of buildings

expend funds made available for purposes of this chapter—

(1) for printing and binding, in accordance with applicable law and regulation; and

(2) without regard to any other law or regulation, for rent of buildings and space in buildings and for repair, alteration, and improvement of buildings and space in buildings rented by the Director; but the Director shall not utilize the authority contained in this subparagraph (2)—

[*See main edition for text of* (*A*)]

(B) prior to having given written notification to the Administrator of General Services (if the exercise of such authority would affect an activity which otherwise would be under the jurisdiction of the General Services Administration) of the intention of the Director to exercise such authority, the item, service, or facility with respect to which such authority is proposed to be exercised, and the reasons and justifications for the exercise of such authority; and

(n) Other necessary or appropriate functions

establish such policies, standards, criteria, and procedures, prescribe such rules and regulations, enter into such contracts and agreements with public agencies and private organizations and persons, make such payments (in lump sum or installments, and in advance or by way of reimbursement, and in the case of grants, with necessary adjustments on account of overpayments or underpayments), and generally perform such functions and take such steps as the Director may deem to be necessary or appropriate to carry out the provisions of this chapter.

(As amended Pub. L. 95-568, §§ 13(b), 17(a)(26), Nov. 2, 1978, 92 Stat. 2435, 2441.)

AMENDMENTS

1978—Pub. L. 95-568, § 17(a)(26)(A), substituted in introductory text "upon the Director" and "the functions of the Director" for "upon him" and "his functions".

Subsec. (c). Pub. L. 95-568, § 17(a)(26)(B), substituted "the Director deems desirable to advise the Director with respect to the functions of the Director" for "he deems desirable to advise him with respect to his functions".

Subsec. (d). Pub. L. 95-568, §§ 13(b), 17(a)(26)(C), struck out "with the approval of the President," preceding "arrange with" and substituted "the functions of the Director" and "the powers of the Director" for "his functions" and "his powers".

Subsec. (h). Pub. L. 95-568, § 17(a)(26)(D), substituted "the Director" for "he".

Subsec. (i). Pub. L. 95-568, § 17(a)(26)(E), substituted "the Director" for "he".

Subsec. (k). Pub. L. 95-568, § 17(a)(26)(F), substituted "the Director" for "him" in two instances.

Subsec. (*l*). Pub. L. 95-568, § 17(a)(26)(G), substituted "the Director" for "him" in two instances.

Subsec. (m)(2). Pub. L. 95-568, § 17(a)(26)(H), substituted in par. (2) "rented by the Director" for "rented by him" and in par. (2)(B) "the intention of the Director" for "his intention".

Subsec. (n). Pub. L. 95-568, § 17(a)(26)(I), substituted "the Director may deem" for "he may deem".

OFFICE OF INSPECTOR GENERAL

All the functions, powers, and duties of the offices of Inspections Division, External Audit Division, and Internal Audit Division in the Community Services Administration were transferred to the Office of Inspector General in the Community Services Administration by section 9(a)(1)(G) of the Inspector General Act of 1978, of Pub. L. 95-452, set out in the Appendix to Title 5, Government Organization and Employees, section 2 of which established such Office of Inspector General.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2951 of this title.

§ 2943. Political activities of overall community action agencies

[*See main edition for text of* (a)]

(b) Use of programs for political purposes

Programs assisted under this chapter shall not be carried on in a manner involving the use of program funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (1) any partisan or nonpartisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (2) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (3) any voter registration activity. The Director, after consultation with the Director of the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance or other action necessary to permit enforcement on an emergency basis.

(c) Use of funds for political purposes

No part of any funds appropriated to carry out this chapter, subpart 1 of part B of title V of the Higher Education Act of 1965 [20 U.S.C. 1101 et seq.], or any program administered by ACTION shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or any voter registration activity, or to pay the salary of any officer or employee of the Community Services Administration, the Teacher Corps, or ACTION, who, while acting in an official capacity as such an officer or employee, engages in any such activity. As used in this section, the term "election" has the same meaning given such term by section 431(a) of title 2, and the term "Federal office" has the same meaning given such term by section 431(c) of title 2.

(As amended Pub. L. 95-568, § 17(a)(27), Nov. 2, 1978, 92 Stat. 2442; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3783.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-568 substituted "while acting in an official capacity" for "in his official capacity".

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statue in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 2944. Appeals, notice, and hearing

REFERENCES IN TEXT

Subchapter B of chapter III of this chapter, and section 2862 of this title, referred to in text, were repealed by Pub. L. 95-568, § 8(a)(2), Nov. 2, 1978, 92 Stat. 2428.

§ 2945. National Advisory Council on Economic Opportunity

(a) Establishment; appointment of members; chairman

There is hereby established in the Community Services Administration a National Advisory Council on Economic Opportunity (hereinafter referred to as the Advisory Council), to be composed of fifteen members appointed, for staggered terms and without regard to the civil service laws, by the President. Of such members, five shall be appointed from among poor persons, five shall be appointed from among individuals who represent poor persons, and five shall be appointed from among members of the general public. The President shall designate the chairman from among such members. The Advisory Council shall meet at the call of the chairman but not less often than four times a year. The Director shall be an ex officio member of the Advisory Council.

[*See main edition for text of* (b) *and* (c)]

(d) Limitations on expenditures and obligations

The Advisory Council may not make expenditures or incur obligations, from sums available to carry out this section, which exceed $225,000 for fiscal year 1979, $250,000 for fiscal year 1980, and $275,000 for fiscal year 1981.

(As amended Pub. L. 95-568, § 13(c), Nov. 2, 1978, 92 Stat. 2435.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-568, § 13(c)(1), (2), reduced composition of the Advisory Council to fifteen from twenty-one members and substituted provision for appointment of five members from each of three areas: poor persons, representatives of poor persons, and members of the general public for prior requirement that the members be representative of the public in general and appropriate fields of endeavor related to the purposes of this chapter.

Subsec. (d). Pub. L. 95-568, § 13(c)(3), added subsec. (d).

§ 2946. Announcement of research and demonstration contracts

[*See main edition for text of* (a) *and* (b)]

(c) Duty of Comptroller General to assure compliance; report to Congress

It shall be the duty of the Comptroller General to assure that the requirements of this section are met, and the Comptroller General shall at once report to the Congress concerning any failure to comply with these requirements.

(As amended Pub. L. 95-568, § 17(a)(28), Nov. 2, 1978, 92 Stat. 2442.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-568 substituted "the Comptroller General" for "he" preceding "shall at once".

§ 2948. Annual reports

Not later than one hundred and twenty days after the close of each fiscal year, the Director shall prepare and submit to the President for transmittal to the Congress a full and complete report on the activities of the Community Services Administration during such year, and shall include the types of services delivered by community action agencies and other programs funded under this chapter.

(As amended Pub. L. 95-568, § 13(d), Nov. 2, 1978, 92 Stat. 2435.)

AMENDMENTS

1978—Pub. L. 95-568 required the annual report to include the types of services delivered by community action agencies and other programs funded under this chapter.

§ 2950. Programs for the elderly poor

It is the intention of Congress that whenever feasible the special problems of the elderly poor shall be considered in the development, conduct, and administration of programs under this chapter. The Director shall (1) carry out such investigations and studies, including consultations with appropriate agencies and organizations, as may be necessary to develop and carry out a plan for the participation of the elderly poor in programs under this chapter, including programs providing employment opportunities, public service opportunities, education and other services and activities which assist the elderly poor to achieve self-sufficiency; (2) maintain a constant review of all programs under this chapter to assure that the needs of the elderly poor are given adequate consideration; (3) initiate and maintain interagency liaison with all other appropriate Federal agencies to achieve a coordinated national approach to the needs of the elderly poor; and (4) determine and recommend to the President and the Congress such programs requiring additional authority and the necessary legislation to provide such authority. In exercising the responsibilities of the Director under this section, the Director shall cooperate with the Commissioner on Aging. The Director shall describe the ways in which this section has been implemented in the annual report required by section 2948 of this title.

(Pub. L. 88-452, title VI, § 609, formerly § 610, as added Pub. L. 89-253, § 28, Oct. 9, 1965, 79 Stat. 978, and amended Pub. L. 89-794, title VI, § 601(b), Nov. 8, 1966, 80 Stat. 1468; Pub. L. 90-222, title I, § 108(g), Dec. 23, 1967, 81 Stat. 716, renumbered and amended Pub. L. 95-568, §§ 13(e), 17(a)(29), Nov. 2, 1978, 92 Stat. 2436, 2442.)

AMENDMENTS

1978—Pub. L. 95-568, § 17(a)(29) substituted "the responsibilities of the Director" for "his responsibilities".

§ 2951. Comparability of wages; average rate of compensation for substantially comparable services; minimum wages; relationship of salary to previous earnings; adjustment to annual basis

[*See main edition for text of* (a)]

(b) No person whose compensation exceeds $8,000 per annum and is paid pursuant to any grant, contract, or agreement authorized under part A of subchapter II of this chapter (except a person compensated as provided in section 2942 of this title) shall be employed at a rate of compensation which exceeds by more than 20 percent the salary which such person was receiving in the immediately preceding employment of such person, but the Director may grant exceptions for specific cases. In determining salary in preceding employment for one regularly employed for a period of less than 12 months per year, the salary shall be adjusted to an annual basis.

(Pub. L. 88-452, title VI, § 610, formerly § 610-1, as added Pub. L. 89-794, title VI, § 606, Nov. 8, 1966, 80 Stat. 1470, and amended Pub. L. 90-

222, title I, § 108(h), Dec. 23, 1967, 81 Stat. 716; Pub. L. 93-608, § 1(23), Jan. 2, 1975, 88 Stat. 1970; Pub. L. 94-341, § 2(a)(35), July 6, 1976, 90 Stat. 805; renumbered and amended Pub. L. 95-568, §§ 13(e), (f), 17(a)(30), Nov. 2, 1978, 92 Stat. 2436, 2442.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-568, §§ 13(f), 17(a)(30), substituted "$8,000" for "$6,000": and "such person" and "the immediately preceding employment of such person" for "he" and "his immediately preceding employment".

§ 2961. Limitation on benefits for those voluntarily poor

The Director shall take such action as may be necessary to assure that, in determining a person's eligibility for benefits under this chapter on account of the poverty of such person, such person will not be deemed to meet the poverty criteria if the lack of income of such person results from the refusal of such person, without good cause, to seek or accept employment commensurate with the health, age, education, and ability of such person.

(As amended Pub. L. 95-568, § 17(a)(31), Nov. 2, 1978, 92 Stat. 2442.)

AMENDMENTS

1978—Pub. L. 95-568 substituted "the poverty of such person" for "his poverty", "the lack of income of such person" for "his lack of income", "the refusal of such person" for "his refusal", and "the health, age, education, and ability of such person" for "his health, age, education, and ability".

§ 2965. Duration of program

The Director shall carry out the programs provided for in this subchapter during the fiscal year ending June 30, 1967, and the fourteen succeeding fiscal years. For each such fiscal year only such sums may be appropriated as the Congress may authorize by law.

(As amended Pub. L. 95-568, § 13(g), Nov. 2, 1978, 92 Stat. 2436.)

AMENDMENTS

1978—Pub. L. 95-568 substituted "fourteen" for "eleven" succeeding fiscal years.

§ 2970. Maximum use of private enterprise resources

The Director and the heads of any other Federal departments or agencies to which the conduct of programs described in this chapter have been delegated shall take such steps as may be desirable and appropriate to insure that the resources of private enterprise are employed to the maximum feasible extent in the programs described in this chapter.

(As amended Pub. L. 95-568, § 13(h), Nov. 2, 1978, 92 Stat. 2436.)

AMENDMENTS

1978—Pub. L. 95-568 struck out requirement for an annual joint or combined report to the Congress by the Director and other agency heads describing actions taken and progress made under this section.

§ 2971. Repealed. Pub. L. 95-568, § 13(i), Nov. 2, 1978, 92 Stat. 2436

Section, Pub. L. 88-452, title VI, § 621, as added Pub. L. 90-222, title I, § 108(m)(1), Dec. 23, 1967, 81 Stat. 717, related to responsibilities for "Follow Through" program.

§ 2971a. Advance funding

[*See main edition for text of section*]

(Pub. L. 88-452, title VI, § 621, formerly § 622, as added Pub. L. 91-177, title I, § 111(a), Dec. 30, 1969, 83 Stat. 831, and renumbered Pub. L. 95-568, § 13(i), Nov. 2, 1978, 92 Stat. 2436.)

PRIOR PROVISIONS

A prior section 621 of Pub. L. 88-452 was classified to section 2971 of this title and was repealed by Pub. L. 95-568.

§ 2971b. Guidelines etc.; publication in Federal Register

[*See main edition for text of section*]

(Pub. L. 88-452, title VI, § 622, formerly § 623, as added Pub. L. 92-424, § 22, Sept. 19, 1972, 86 Stat. 696, and renumbered Pub. L. 95-568, § 13(i), Nov. 2, 1978, 92 Stat. 2436.)

PRIOR PROVISIONS

A prior section 622 of Pub. L. 88-452 was renumbered 621, and is classified to section 2971a of this title.

§ 2971c. Nondiscrimination provisions

[*See main edition for text of section*]

(Pub. L. 88-452, title VI, § 623, formerly § 624, as added Pub. L. 92-424, § 23, Sept. 19, 1972, 86 Stat. 696, and renumbered Pub. L. 95-568, § 13(i), Nov. 2, 1978, 92 Stat. 2436.)

PRIOR PROVISIONS

A prior section 623 of Pub. L. 88-452 was renumbered 622, and is classified to section 2971b of this title.

§ 2971d. Poverty line

[*See main edition for text of section*]

(Pub. L. 88-452, title VI, § 624, formerly § 625, as added Pub. L. 92-424, § 24, Sept. 19, 1972, 86 Stat. 697, and amended Pub. L. 93-644, § 9(d), Jan. 4, 1975, 88 Stat. 2314; renumbered Pub. L. 95-568, § 13(i), Nov. 2, 1978, 92 Stat. 2436.)

PRIOR PROVISIONS

A prior section 624 of Pub. L. 88-452 was renumbered 623, and is classified to section 2971c of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1758, 5011, 5061 of this title; title 7 sections 2014, 3175.

§ 2971e. Independence of Legal Services Corporation

[*See main edition for text of section*]

(Pub. L. 88-452, title VI, § 625, formerly § 626, as added Pub. L. 93-355, § 3(f), July 25, 1974, 88 Stat. 390, and renumbered Pub. L. 95-568, § 13(i), Nov. 2, 1978, 92 Stat. 2436.)

PRIOR PROVISIONS

A prior section 625 of Pub. L. 88-452 was renumbered 624, and is classified to section 2971d of this title.

§ 2971f. Criminal provisions

[*See main edition for text of section*]

(Pub. L. 88-452, title VI, § 626, formerly § 626, as added Pub. L. 93-644, § 9(e), Jan. 4, 1975, 88 Stat. 2314, and renumbered § 627, Pub. L. 94-341, § 2(c), July 6, 1976, 90 Stat. 806; renumbered § 626, Pub. L. 95-568, § 13(i), Nov. 2, 1978, 92 Stat. 2436.)

§ 2971g. Withholding certain federal taxes by antipoverty agencies

Upon notice from the Secretary of the Treasury that any person otherwise entitled to receive a payment made pursuant to a grant, contract, agreement, loan or other assistance made or entered into under this chapter is delinquent in paying or depositing (1) the taxes imposed on such person under chapters 21 and 23 of title 26, or (2) the taxes deducted and withheld by such person under chapters 21 and 24 of title 26, the Director shall suspend such portion of such payment due to such person, which, if possible, is sufficient to satisfy such delinquency, and shall not make or enter into any new grant, contract, agreement, loan or other assistance under this chapter with such person until the Secretary of the Treasury has notified the Director that such person is no longer delinquent in paying or depositing such tax or the Director determines that adequate provision has been made for such payment. In order to effectuate the purpose of this section on a reasonable basis the Secretary of the Treasury and the Director shall consult on a quarterly basis.

(Pub. L. 88-452, title VI, § 627, formerly § 627, as added Pub. L. 93-644, § 9(e), Jan. 4, 1975, 88 Stat. 2314, renumbered § 628, Pub. L. 94-341, § 2(c), July 6, 1976, 90 Stat. 806, and renumbered § 627 and amended Pub. L. 95-568, §§ 13(i), 17(a)(32), Nov. 2, 1978, 92 Stat. 2436, 2442.)

AMENDMENTS

1978—Pub. L. 95-568, § 17(a)(32), struck out "or his delegate" following "Secretary of the Treasury" in two instances and substituted "has notified the Director" for "has notified him".

PART B—COORDINATION

§ 2972. Congressional statement of purpose

TRANSFER OF FUNCTIONS

The Economic Opportunity Council, established pursuant to this Part, was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5G of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Economic Opportunity Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

§ 2973. Economic Opportunity Council

(a) Establishment; composition; designation of members and chairman

There is established, in the Executive Office of the President, the Economic Opportunity Council (hereinafter referred to as the "Council"), which shall be composed of the Director and the heads of such Federal departments and agencies, such Presidential assistants and such other officials of the Federal Government as the President may from time to time designate. The President shall designate one of the members of the Council to serve as chairman. Each member shall designate an alternate to sit in place of such member in the event of the unavoidable absence of such member.

[*See main edition for text of* (*b*)]

(c) Executive Secretary; detail of Federal employees

The President shall appoint an Executive Secretary of the Council. The Executive Secretary is authorized to appoint and fix the compensation of such personnel as may be necessary to assist the Executive Secretary in the performance of the duties of the Executive Secretary. Employees of other Federal departments and agencies may be detailed to the Council from time to time to provide temporary assistance.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended Pub. L. 95-568, § 17(a)(33), Nov. 2, 1978, 92 Stat. 2442.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-568, § 17(a)(33)(A), substituted "alternate to sit in place of such member in the event of the unavoidable absence of such member" for "alternate to sit in his stead in the event of his unavoidable absence".

Subsec. (c). Pub. L. 95-568, § 17(a)(33)(B), substituted "assist the Executive Secretary in the performance of the duties of the Executive Secretary" for "assist him in the performance of his duties".

TRANSFER OF FUNCTIONS

The Economic Opportunity Council, established pursuant to this Part, was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5G of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Economic Opportunity Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

§ 2974. Responsibilities of the Director

In addition to the other powers of the Director under this chapter, and to assist the President in coordinating the antipoverty efforts of all Federal agencies, the Director shall—

(1) undertake special studies of specific coordination problems at the request of the President or the Council, or on the initiative of the Director;

[*See main edition for text of* (*2*)]

(3) prepare a five-year national poverty action plan showing estimates of Federal and

other governmental expenditures, and, where feasible, the contributions of the private sector, needed to eliminate poverty in this country within alternative periods of time. The Director shall consult with community action agencies and State offices of economic opportunity in the development of such plan. Such plan shall include estimates of the funds necessary to finance all relevant programs authorized by this chapter and other Acts, and any new programs which may be necessary to eliminate poverty in this country, and it shall include recommendations for such new programs. The plan shall be presented to the Congress and updated on an annual basis.

(As amended Pub. L. 95-568, §§ 13(j), 17(a)(34), Nov. 2, 1978, 92 Stat. 2436, 2442.)

AMENDMENTS

1978—Pub. L. 95-568, § 17(a)(34)(A), substituted in introductory text "the other powers of the Director" for "his other powers".

Par. (1). Pub. L. 95-568, § 17(a)(34)(B), substituted "the initiative of the Director" for "his own initiative".

Par. (3). Pub. L. 95-568, § 13(j), required the Director to consult with community action agencies and State offices of economic opportunity in the development of the plan.

TRANSFER OF FUNCTIONS

The Economic Opportunity Council, established pursuant to this Part, was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5G of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Economic Opportunity Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

§§ 2975, 2976

TRANSFER OF FUNCTIONS

The Economic Opportunity Council, established pursuant to this Part, was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5G of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Economic Opportunity Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

§ 2977. Information center

[*See main edition for text of* (*a*)]

(b) Catalog of Federal programs relating to individual and community improvement

The Director shall publish and maintain on a current basis, a catalog of Federal programs relating to individual and community improvement. The Director may also make grants, from funds appropriated to carry out subchapter II of this chapter, to States and communities to establish information service centers for the collection, correlation, and distribution of information required to further the purposes of this chapter.

[*See main edition for text of* (c)]

(As amended Pub. L. 95-568, § 17(a)(35), Nov. 2, 1978, 92 Stat. 2443.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-568 substituted "The Director" for "He" may also make grants.

TRANSFER OF FUNCTIONS

The Economic Opportunity Council, established pursuant to this Part, was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5G of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Economic Opportunity Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

§ 2978. Duplication of existing functions by new departments or offices prohibited

TRANSFER OF FUNCTIONS

The Economic Opportunity Council, established pursuant to this Part, was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5G of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Economic Opportunity Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

§ 2979. Special responsibilities; training programs

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

TRANSFER OF FUNCTIONS

The Economic Opportunity Council, established pursuant to this Part, was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5G of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Economic Opportunity Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

EX. ORD. NO. 11422. COOPERATIVE AREA MANPOWER PLANNING SYSTEM

Ex. Ord. No. 11422, Aug. 15, 1968, 33 F.R. 11739, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, provided:

[*See main edition for text of first four pars. ; Sec. 1*]

SEC. 2. *The Cooperative Area Manpower Planning System.* (a) The Cooperative Area Manpower Planning System (hereinafter referred to as CAMPS) is hereby recognized as a primary instrument for carrying out the policy stated in section 1 above.

(b) The Departments of Labor; Health, Education, and Welfare; Commerce; Housing and Urban Development; Agriculture; and the Interior; the Office of Economic Opportunity; and the Office of Personnel Management, together with their affiliated organizations and such additional Federal executive departments and agencies as may be mutually agreed upon by them, shall participate in CAMPS for the purposes of cooperatively planning and executing manpower programs and supportive manpower service programs in urban and rural areas.

[*See main edition for text of* (c) *and* (d); *Secs. 3 and 4*]

§ 2979a. Regional offices

(a) The Director may utilize regional Community Services Administration offices for the purpose of—

(1) carrying out the national responsibilities and directives delegated to them;

(2) processing and finalizing grants and contracts authorized under this chapter;

(3) monitoring and evaluating programs funded under this chapter within that designated region;

(4) monitoring and evaluating on an annual basis all relevant regulations and guidelines applicable to programs funded under this chapter within that designated region; and

(5) providing technical assistance to local community action agencies and other programs funded under this chapter.

(b) The Director shall monitor and evaluate at least annually the activities of regional offices as described in subsection (a) of this section.

(Pub. L. 88-452, title VI, § 638, as added Pub. L. 95-568, § 13(k), Nov. 2, 1978, 92 Stat. 2436.)

PRIOR PROVISIONS

A prior section 638 of Pub. L. 88-452 was renumbered 639, and is classified to section 2980 of this title.

TRANSFER OF FUNCTIONS

The Economic Opportunity Council, established pursuant to this Part, was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5G of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Economic Opportunity Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

§ 2980. Definitions

[*See main edition for text of section*]

(Pub. L. 88-452, title VI, § 639, formerly § 638, as added Pub. L. 90-222, title I, § 108(m)(3), Dec. 23, 1967, 81 Stat. 721, and renumbered Pub. L. 95-568, § 13(k), Nov. 2, 1978, 92 Stat. 2436.)

TRANSFER OF FUNCTIONS

The Economic Opportunity Council, established pursuant to this Part, was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5G of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Economic Opportunity Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

SUBCHAPTER VII—COMMUNITY ECONOMIC DEVELOPMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2707, 2809, of this title; title 20 section 3286; title 29 section 795a.

§ 2981. Congressional statement of purpose

CONGRESSIONAL REVIEW

Section 13 of Pub. L. 93-644 which required specific committees of the House of Representatives and Senate to conduct a joint study considering which agency should conduct the programs under this subchapter after July 1, 1975, and evaluating the programs and utilization of Federal, public, and private agencies under this subchapter and submit reports not later than one year after Jan. 4, 1975, was omitted from the Code as executed.

§ 2981b. Authorization of appropriations

For the purpose of carrying out this subchapter, there is authorized to be appropriated $70,000,000 for fiscal year 1979, $85,000,000 for fiscal year 1980, and $105,000,000 for fiscal year 1981. Any sums appropriated under this section shall remain available until expended.

(As amended Pub. L. 95-568, § 14(a), Nov. 2, 1978, 92 Stat. 2436.)

AMENDMENTS

1978—Pub. L. 95-568 substituted appropriations authorization of $70,000,000; $85,000,000; and $105,000,000 for fiscal years 1979 through 1981 for prior authorization of $39,000,000 to carry out the subchapter and additional necessary sums for fiscal year 1975, and necessary sums for each of the two succeeding fiscal years, and provided that appropriated sums shall remain available until expended.

§ 2981c. Advisory community investment boards

(a) Establishment, etc., of National Advisory Community Investment Board

The President is authorized to establish a National Advisory Community Investment Board (hereinafter in this section referred to as the "Investment Board"). Such Investment Board shall be composed of fifteen members appointed, for staggered terms and without regard to the civil service laws, by the President, in consultation with the Director. Such members shall be representative of the investment and business communities and appropriate fields of endeavor related to this subchapter. The Investment Board shall meet at the call of the chairperson, but not less often than three times each year. The Director and the administrator of community economic development programs shall be ex officio members of the Investment Board.

(b) Functions of National Advisory Community Investment Board

The Investment Board shall promote cooperation between private investors and businesses and community development corporation projects through—

(1) advising the Director and the community development corporations on ways to facilitate private investment;

(2) advising businesses and other investors of opportunities in community development corporation projects; and

(3) advising the Director, Community development corporations, and private investors and businesses of ways in which they might engage in mutually beneficial efforts.

(c) Functions of Community Development Corporation with respect to advisory community investment boards

The governing body of each Community Development Corporation may establish an advisory community investment board composed of not to exceed 15 members who shall be appointed by the governing body after consultation with appropriate local officials. Each such board shall promote cooperation between private investors and businesses and the governing body of the Community Development Corporation through—

(1) advising the governing body on ways to facilitate private investors;

(2) advising businesses and other investors of opportunities in Community Development Corporation projects; and

(3) advising the governing body, private investors, and businesses of ways in which they might engage in mutually beneficial efforts.

(Pub. L. 88-452, title VII, § 704, as added Pub. L. 95-568, § 14(b), Nov. 2, 1978, 92 Stat. 2436.)

References in Text

The civil service laws, referred to in subsec. (a), are set forth in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

Termination of Advisory Boards

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

Part A—Urban and Rural Special Impact Programs

§ 2982a. Establishment and scope of programs

(a) The Director is authorized to provide financial assistance in the form of grants to nonprofit and for profit community development corporations and other affiliated and supportive agencies and organizations associated with qualifying community development corporations for the payment of all or part of the cost of programs which are designed to carry out the purposes of this part. Financial assistance shall be provided so that each community economic development program is of sufficient size, scope, and duration to have an appreciable impact on the area served. Such programs may include—

(1) community business and commercial development programs, including but not limited to: (A) programs which provide financial and other assistance (including equity capital) to start, expand, or locate businesses in or near the area served so as to provide employment and ownership opportunities for residents of such areas, and (B) programs for small businesses located in or owned by residents of such areas;

(2) community physical development programs, including industrial parks and housing activities, which contribute to an improved environment and which create new training, employment, and ownership opportunities for residents of such area;

(3) training and public service employment programs and related services for unemployed or low-income persons which support and complement community development programs financed under this part, including, without limitation, activities such as those described in the Comprehensive Employment and Training Act of 1973 [29 U.S.C. 801 et seq.], and in section 2809(a)(7) of this title; and

(4) social service programs which support and complement community business and commercial development programs financed under this part, including but not limited to child care, educational services, health services, credit counseling, energy conservation, recreation services, and programs for the maintenance of housing facilities.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 95-568, § 14(c), Nov. 2, 1978, 92 Stat. 2437.)

References in Text

The Comprehensive Employment and Training Act of 1973, referred to in subsec. (a)(3) is Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 839, as amended, now known as the Comprehensive Employment and Training Act, which is classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note, set out under section 801 of Title 29 and Tables.

Amendments

1978—Subsec. (a). Pub. L. 95-568, in par. (1), substituted "community business and commercial development programs" for "community economic and business development programs"; in par. (2), substituted "community physical development programs" for "community development programs"; in par. (3), included activities described in section 2809(a)(7) of this title; and in par. (4), substituted "community business and commercial development programs" for "community economic development programs" and extended social services programs to include recreation services.

Section Referred to in Other Sections

This section is referred to in section 2982c of this title.

§ 2982b. Financial assistance for community economic development programs

(a) Requirements

The Director, under such regulations as the Director may establish, shall not provide financial assistance for any community economic development program under this part unless the Director determines that—

[*See main edition for text of* (*1*) *to* (*14*)]

(b) Relocation of establishments resulting in increase of unemployment

Financial assistance under this section shall not be extended to assist in the relocation of establishments from one location to another if such relocation would result in a substantial increase in unemployment in the area of original location.

[*See main edition for text of* (c)]

(d) Development goals and development timetable specifications; experience factor

Financial assistance for commercial development under this part shall not be extended until the community economic development program that has applied for assistance under this subchapter has specified in some detail its development goals and its development timetable. The Director, in providing continued financial assistance to a community economic development program, shall give serious consideration to the experience that program has had in meeting development goals or in adhering to development timetables.

(As amended Pub. L. 95-568, §§ 14(d), (e), 17(a)(36), Nov. 2, 1978, 92 Stat. 2437, 2443.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-568, § 17(a)(36), substituted in text preceding par. (1) "the Director" for "he" the last two times.

Subsec. (b). Pub. L. 95-568, § 14(d), substituted "a substantial increase" for "an increase".

Subsec. (d). Pub. L. 95-568, § 14(e), added subsec. (d).

§ 2982c. Federal share of program costs

(a)(1) Assistance provided under this subchapter to any program described in section 2982a(a) of this title shall not exceed 90 per centum of the cost of such program including costs of administration unless the Director determines that the assistance in excess of such percentage is required in furtherance of the purposes of this subchapter. Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services.

(2) The assistance referred to in paragraph (1) shall be made available (A) for deposit to the order of grantees which have demonstrated successful program performance, under conditions which the Director deems appropriate, within thirty days following approval of the grant agreement by the Director and such grantee, or (B) whenever the Director deems appropriate, in accordance with applicable rules and regulations prescribed by the Secretary of the Treasury, and including any other conditions which the Director deems appropriate, within 30 days following approval of the grant agreement by the Director and such grantee.

(b) Property acquired as a result of capital investments made by any community development corporation with funds granted as its Federal share of the cost of programs carried out under this subchapter, and the proceeds from such property, shall become the property of the community development corporation and shall not be considered to be Federal property. The Federal Government retains the right to direct that on severance of the grant relationship the assets purchased with grant funds shall continue to be used for the original purpose for which they were granted.

(As amended Pub. L. 95-568, § 14(f), Nov. 2, 1978, 92 Stat. 2438.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-568 incorporated part of existing paragraph in provisions designated subsec. (a), pars. (1) and (2), and added par. (2)(B).

Subsec. (b). Pub. L. 95-568 incorporated remainder of existing paragraph in provisions designated subsec. (b), substituting statement that acquired property shall become the property of the community development corporation for prior provision for vesting of title in such corporation upon investment of Federal assistance funds.

PART B—SPECIAL RURAL PROGRAMS

§ 2983a. Financial assistance

[*See main edition for text of* (a)]

(b) Local cooperative associations in rural areas; defrayable costs

The Director is authorized to provide financial assistance to local cooperative associations or local public and private nonprofit organizations or agencies in rural areas containing concentrations or substantial numbers of low-income persons for the purpose of defraying all or part of the costs of establishing and operating cooperative programs for farming, purchasing, marketing, processing, and to improve their income as producers and their purchasing power as consumers, and to provide such essentials as credit and health services. Costs which may be defrayed shall include but not be limited to—

[*See main edition for text of* (1) *to* (4)]

(As amended Pub. L. 95-568, § 14(g), Nov. 2, 1978, 92 Stat. 2438.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-568 authorized financial assistance to local public and private nonprofit organizations in rural areas.

PART C—DEVELOPMENT LOANS TO COMMUNITY ECONOMIC DEVELOPMENT PROGRAMS

§ 2984. Development loans

(a) Prerequisites to loans, guarantees, or other financial assistance

The Director is authorized to make or guarantee loans (either directly or in cooperation with banks or other organizations through agreements to participate on an immediate or deferred basis) to community development corporations, to families and local cooperatives and the designated supportive organizations of cooperatives eligible for financial assistance under this subchapter, to community action agencies and other community-based organizations eligible for financial assistance under subchapter II of this chapter, or to public and private nonprofit organizations or agencies, for business facilities and community development projects, including community development credit unions, which the Director determines will carry out the purposes of this part. No loans, guarantees, or other financial assistance shall be provided under this section unless the Director determines that—

[*See main edition for text of (1) to (3) and concluding par.*]

(b) Authority to adjust interest rates, grant moratoriums, collect or compromise obligations

The Director is authorized to adjust interest rates, grant moratoriums on repayment of principal and interest, collect or compromise any obligations held by the Director, and to take such other actions in respect to such loans as the Director shall determine to be necessary or appropriate, consistent with the purposes of this section.

(c) Development Loan Fund; Rural Development Loan Fund; Community Development Loan Fund

[*See main edition for text of (1) and (2)*]

(3) The Community Development Loan Fund shall consist of such amounts as may be deposited in such fund by the Director out of funds made available from appropriations for the purpose of carrying out this subchapter. The Director may make deposits in the Community Development Loan Fund in any fiscal year in which the Director has made available for grants to community development corporations under this subchapter not less than $60,000,000 out of funds made available from appropriations for the purpose of carrying out this subchapter.

(As amended Pub. L. 95-568, §§ 14(h), 17(a)(37), Nov. 2, 1978, 92 Stat. 2438, 2443.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-568, § 14(h), authorized loans to the designated supportive organizations of cooperatives and community action agencies and other community-based organizations, eligible for financial assistance, and substituted provision for such loans for business facilities and community development projects, including community development credit unions, for prior provision for loans for business, housing, and community development projects.

Subsec. (b). Pub. L. 95-568, § 17(a)(37)(A), substituted "held by the Director" for "held by him" and "the Director shall determine" for "he shall determine".

Subsec. (c)(3). Pub. L. 95-568, § 17(a)(37)(B), substituted "the Director" for "he" has made available.

§ 2984a. Model Community Economic Development Finance Corporation

[*See main edition for text of (a)*]

(b) Not later than June 1, 1979, the Director shall submit to the appropriate committees of the Congress the plan required by this section.

(As amended Pub. L. 95-568, § 14(i), Nov. 2, 1978, 92 Stat. 2438.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-568 extended the date to June 1, 1979, from June 1, 1975, for submission of the plan to appropriate Congressional committees.

PART D—SUPPORTIVE PROGRAMS AND ACTIVITIES

§ 2985a. Application of other Federal resources; Small Business Administration and Department of Commerce programs

[*See main edition for text of (a)(1)*]

(2) Within ninety days of January 4, 1975, the Administrator of the Small Business Administration, after consultation with the Director, shall promulgate regulations to insure the availability to community development corporations of such programs as shall further the purposes of this subchapter, including, but not limited to, programs under section 637(a) of title 15.

[*See main edition for text of (b)*]

(As amended Pub. L. 95-568, § 14(j), Nov. 2, 1978, 92 Stat. 2438.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-568 substituted "promulgate regulations" for "prescribe such regulations as may be necessary and appropriate" and included without program limitation, as available to community development corporations, small business programs under section 637(a) of title 15.

§ 2985c-1. Repealed. Pub. L. 95-568, § 14(k), Nov. 2, 1978, 92 Stat. 2438

Section, Pub. L. 88-452, title VII, § 745, formerly § 744(b), as added Pub. L. 93-644, § 10(a), Jan. 4, 1975, 88 Stat. 2322, and renumbered and amended Pub. L. 94-341, § 2(b)(15), (17)(C), July 6, 1976, 90 Stat. 806, set forth provisions relating to report by Director on availability and effectiveness of Federal agency programs.

§ 2985d. Coordination and eligibility

[*See main edition for text of section*]

(Pub. L. 88-452, title VII, § 745, formerly § 745, as added Pub. L. 93-644, § 10(a), Jan. 4, 1975, 88 Stat. 2322, renumbered § 746, Pub. L. 94-341, § 2(b)(16), July 6, 1976, 90 Stat. 806, and renumbered § 745, Pub. L. 95-568, § 14(k), Nov. 2, 1978, 92 Stat. 2438.)

§ 2985e. Evaluation, research, and demonstration

[*See main edition for text of (a)*]

(b) The Director shall conduct, either directly or through grants or other arrangements, research and demonstration projects designed to suggest new programs and policies to achieve the purposes of this subchapter in such ways as to provide opportunities for employment, ownership, and a better quality of life for low-income residents.

(Pub. L. 88-452, title VII, § 746, formerly § 746, as added Pub. L. 93-644, § 10(a), Jan. 4, 1975, 88 Stat. 2322, renumbered § 747, Pub. L. 94-341, § 2(b)(16), July 6, 1976, 90 Stat. 806, and renumbered § 746 and amended Pub. L. 95-568, § 14(k), (*l*), Nov. 2, 1978, 92 Stat. 2438, 2439.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-568 substituted "research and demonstration projects" for "research".

§ 2985f. Planning grants

[*See main edition for text of section*]

(Pub. L. 88-452, title VII, § 747, formerly § 747, as added Pub. L. 93-644, § 10(a), Jan. 4, 1975, 88 Stat. 2323, renumbered § 748, Pub. L. 94-341, § 2(b)(16), July 6, 1976, 90 Stat. 806, and renumbered § 747, Pub. L. 95-568, § 14(k), Nov. 2, 1978, 92 Stat. 2438.)

§ 2985g. Nondiscrimination

[*See main edition for text of section*]

(Pub. L. 88-452, title VII, § 748, formerly § 748, as added Pub. L. 93-644, § 10(a), Jan. 4, 1975, 88 Stat. 2323, renumbered § 749, Pub. L. 94-341, § 2(16), July 6, 1976, 90 Stat. 806, and renumbered § 748, Pub. L. 95-568, § 14(k), Nov. 2, 1978, 92 Stat. 2438.)

SUBCHAPTER VIII—NATIVE AMERICAN PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2706, 2707, 4973 of this title; title 20 section 3286; title 29 section 795a.

§ 2991b. Financial assistance for native American projects

[*See main edition for text of* (*a*)]

(b) Limitations of financial assistance; exceptions; non-Federal contributions

Financial assistance extended to an agency under this subchapter shall not exceed 80 per centum of the approved costs of the assisted project, except that the Secretary may approve assistance in excess of such percentage if the Secretary determines, in accordance with regulations establishing objective criteria, that such action is required in furtherance of the purposes of this subchapter. Non-Federal contributions may be in cash or in kind, fairly evaluated, including but not limited to plant, equipment, and services. The Secretary shall not require non-Federal contributions in excess of 20 per centum of the approved costs of programs or activities assisted under this subchapter.

(c) Assistance as addition to, and not substitution for, activities previously carried out without Federal assistance; waiver

No project shall be approved for assistance under this subchapter unless the Secretary is satisfied that the activities to be carried out under such project will be in addition to, and not in substitution for, comparable activities previously carried out without Federal assistance, except that the Secretary may waive this requirement in any case in which the Secretary determines, in accordance with regulations establishing objective criteria, that application of the requirement would result in unnecessary hardship or otherwise be inconsistent with the purposes of this subchapter.

(As amended Pub. L. 95-568, § 17(a)(39), Nov. 2, 1978, 92 Stat. 2443.)

AMENDMENTS

1978—Pub. L. 95-568 substituted in subsecs. (b) and (c) "the Secretary determines" for "he determines".

§ 2991f. Submission of plans to State and local officials

[*See main edition for text of* (*a*)]

(b) Notification to chief executive officer of State

No financial assistance may be provided to any project under section 2991b of this title or any research, demonstration, or pilot project under section 2991d of this title, which is to be carried out in a State other than on or in an Indian reservation or Alaskan Native village or Hawaiian Homestead, unless the Secretary has notified the chief executive officer of the State of the decision of the Secretary to provide that assistance.

(c) Notification to local governing officials of political subdivision

No financial assistance may be provided to any project under section 2991b of this title or any research, demonstration, or pilot project under section 2991d of this title, which is to be carried out in a city, county, or other major political subdivision of a State, other than on or in an Indian reservation or Alaskan Native village, or Hawaiian Homestead, unless the Secretary has notified the local governing officials of the political subdivision of the decision of the Secretary to provide that assistance.

(As amended Pub. L. 95-568, § 17(a)(40), Nov. 2, 1978, 92 Stat. 2443.)

AMENDMENTS

1978—Pub. L. 95-568 substituted in subsecs. (b) and (c) "the decision of the Secretary" for "his decision".

§ 2992b. Delegation of authority

(a) Delegation by Secretary to heads of other departments and agencies

The Secretary is authorized to delegate to the heads of other departments and agencies of the Federal Government any of the functions, powers, and duties of the Secretary under this subchapter, as the Secretary may deem appropriate, and to authorize the redelegation of such functions, powers, and duties by the heads of such departments and agencies.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 95-568, § 17(a)(41), Nov. 2, 1978, 92 Stat. 2443.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-568 substituted "the functions, powers, and duties of the Secretary" for "his functions, powers, and duties" and "the Secretary may deem" for "he may deem".

§ 2992d. Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out the provisions of this subchapter, such sums as may be necessary for fiscal years 1979 through 1981.

(As amended Pub. L. 95-568, § 15, Nov. 2, 1978, 92 Stat. 2439.)

AMENDMENTS

1978—Pub. L. 95-568 substituted appropriations authorization for fiscal years 1979 through 1981 for prior such authorization for fiscal years 1975 through 1977.

SUBCHAPTER IX—EVALUATION

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 2707, 2941 of this title; title 20 section 3286; title 29 section 795a.

§ 2995. Program and project evaluation

(a) Duty of Director; reassessment of priorities; annual report to Congress

[*See main edition for text of* (*1*)]

(2) In carrying out the responsibilities of the Director under this section, the Director, in the case of research, demonstrations, and related activities carried out under subchapter I of this chapter, shall, after taking into consideration the views of State agencies and community action agencies designated pursuant to section 2790 of this title; on an annual basis—

[*See main edition for text of* (*A*) *and* (*B*)]

(3) The Director shall, within 12 months after January 4, 1975, and on each April 1 thereafter, prepare and furnish to the appropriate committees of the Congress a complete report on the determination and review carried out under paragraph (2) of this subsection, together with such recommendations, including any recommendations for additional legislation, as the Director deems appropriate.

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended Pub. L. 95-568, § 17(a)(42), Nov. 2, 1978, 92 Stat. 2443.)

Amendments

1978—Subsec. (a). Pub. L. 95-568 substituted in par. (2) "the responsibilities of the Director" for "his responsibilities" and in par. (3) "the Director deems" for "he deems".

§ 2995a. Cooperation and consultation with other Federal agencies

(a) Such information and cooperation as the Director may deem necessary for purposes of the evaluations conducted under this subchapter shall be made available to the Director, upon request, by the agencies of the executive branch.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 95-568, § 17(a)(43), Nov. 2, 1978, 92 Stat. 2443.)

Amendments

1978—Subsec. (a). Pub. L. 95-568 substituted "available to the Director" for "available to him".

§ 2995c. Authorization of appropriations

There is authorized to be appropriated for the purpose of carrying out the provisions of this subchapter $4,000,000 for fiscal year 1979, $7,000,000 for fiscal year 1980, and $10,000,000 for fiscal year 1981.

(Pub. L. 88-452, title IX, § 904, as added Pub. L. 95-568, § 16, Nov. 2, 1978, 92 Stat. 2439.)

Prior Provisions

A prior section 2995c, Pub. L. 88-452, title IX, § 904, as added Pub. L. 92-424, § 27(a), Sept. 19, 1972, 86 Stat. 705, which provided for the publication of summaries of evaluations of the results of research, was omitted as superseded in the general reorganization and amendment of this subchapter by Pub. L. 93-644, § 12, Jan. 4, 1975, 88 Stat. 2327. See section 2995(d) and (e) of this title.

§ 2995d. Omitted

Codification

Section, Pub. L. 88-452, title IX, § 905, as added Pub. L. 92-424, § 27(a), Sept. 19, 1972, 86 Stat. 705, which allowed the head of any agency administering a program authorized under this chapter to conduct evaluations and take other action to the same extent as the Director under this subchapter, was omitted as superseded in the general reorganization and amendment of this subchapter by Pub. L. 93-644, § 12, Jan. 4, 1975, 88 Stat. 2327. See section 2995(b) of this title.

SUBCHAPTER X—LEGAL SERVICES CORPORATION

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 2971e, 2796, 3027 of this title; title 20 section 3286.

§ 2996. Congressional findings and declaration of purpose

The Congress finds and declares that—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) providing legal assistance to those who face an economic barrier to adequate legal counsel will serve best the ends of justice and assist in improving opportunities for low-income persons consistent with the purposes of this chapter.

[*See main edition for text of* (*4*) *to* (*6*)]

(As amended Pub. L. 95-222, § 2, Dec. 28, 1977, 91 Stat. 1619.)

Amendments

1977—Par. (3). Pub. L. 95-222 added provision relating to assistance in improving opportunities for low-income persons consistent with this chapter.

Effective Date of 1977 Amendment

Section 17(b) of Pub. L. 95-222 provided that: "The amendments made by provisions of this Act other than sections 11 and 15 [amending sections 2996, 2996c, 2996e, 2996f(a), (b), (f), and (h), 2996g, 2996h, 2996i(d), and 2996j of this title] shall be effective on the date of enactment of this Act [Dec. 28, 1977]."

Short Title of 1977 Amendment

Section 1 of Pub. L. 95-222 provided that: "This Act [amending sections 2996, 2996c, and 2996e to 2996j of this title, and enacting provisions set out as notes under sections 2701, 2996, 2996f and 2996i of this title] may be cited as the 'Legal Services Corporation Act Amendments of 1977'."

§ 2996c. Board of Directors

(a) Establishment; membership

The Corporation shall have a Board of Directors consisting of eleven voting members appointed by the President, by and with the advice and consent of the Senate, no more than six of whom shall be of the same political party. A majority shall be members of the bar of the highest court of any State, and none shall be a full-time employee of the United States. Effective with respect to appointments made after December 28, 1977, but not later than July 31, 1978, the membership of the Board shall be appointed so as to include eligible clients, and to be generally representative of the organized bar, attorneys providing legal assistance to eligible clients, and the general public.

[*See main edition for text of* (*b*) *to* (*f*)]

(g) Open meetings; applicability of Government in the Sunshine provisions

All meetings of the Board, of any executive committee of the Board, and of any advisory council established in connection with this subchapter shall be open and shall be subject to the requirements and provisions of section 552b of title 5 (relating to open meetings).

[*See main edition for text of* (*h*)]

(As amended Pub. L. 95-222, §§ 3, 4, Dec. 28, 1977, 91 Stat. 1619.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-222, § 3, added provision relating to appointments made after Dec. 28, 1977.

Subsec. (g). Pub. L. 95-222, § 4, substituted provisions relating to applicability of section 552b of title 5, for provisions setting forth requirements respecting availability of minutes of public meetings.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub. L. 95-222, set out as an Effective Date of 1977 Amendment note under section 2996 of this title.

§ 2996e. Powers, duties, and limitations

(a) Powers of nonprofit corporation; additional powers

To the extent consistent with the provisions of this subchapter, the Corporation shall exercise the powers conferred upon a nonprofit corporation by the District of Columbia Nonprofit Corporation Act (except for section 1005(*o*) of title 29 of the District of Columbia Code). In addition, the Corporation is authorized—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) to undertake directly, or by grant or contract, the following activities relating to the delivery of legal assistance—

(A) research, except that broad general legal or policy research unrelated to representation of eligible clients may not be undertaken by grant or contract,

[*See main edition for text of* (*B*) *and* (*C*)]

(b) Disciplinary powers; representational questions; interference with professional responsibilities of attorneys; bar membership; restrictions; languages other than English

(1)(A) The Corporation shall have authority to insure the compliance of recipients and their employees with the provisions of this subchapter and the rules, regulations, and guidelines promulgated pursuant to this subchapter, and to terminate, after a hearing in accordance with section 2996j of this title, financial support to a recipient which fails to comply.

(B) No question of whether representation is authorized under this subchapter, or the rules, regulations or guidelines promulgated pursuant to this subchapter, shall be considered in, or affect the final disposition of, any proceeding in which a person is represented by a recipient or an employee of a recipient. A litigant in such a proceeding may refer any such question to the Corporation which shall review and dispose of the question promptly, and take appropriate action. This subparagraph shall not preclude judicial review available under applicable law.

[*See main edition for text of* (*2*) *to* (*6*)]

(c) Participation in litigation; lobbying activities

The Corporation shall not itself—

(1) participate in litigation unless the Corporation or a recipient of the Corporation is a party, or a recipient is representing an eligible client in litigation in which the interpretation of this subchapter or a regulation promulgated under this subchapter is an issue, and shall not participate on behalf of any client other than itself; or

[*See main edition for text of* (*2*)]

(d) Miscellaneous prohibitions

[*See main edition for text of* (*1*) *to* (*5*)]

(6) Attorneys employed by a recipient shall be appointed to provide legal assistance without reasonable compensation only when such appointment is made pursuant to a statute, rule, or practice applied generally to attorneys practicing in the court where the appointment is made.

(e) Political activities of Corporation employees and staff attorneys

[*See main edition for text of* (*1*)]

(2) Employees of the Corporation and staff attorneys shall be deemed to be State or local employees for purposes of chapter 15 of title 5, except that no staff attorney may be a candidate in a partisan political election.

[*See main edition for text of* (*2*)]

(f) Harassment; malicious abuse of legal process

If an action is commenced by the Corporation or by a recipient and a final order is entered in favor of the defendant and against the Corporation or a recipient's plaintiff, the court shall, upon motion by the defendant and upon a finding by the court that the action was commenced or pursued for the sole purpose of harassment of the defendant or that the Corporation or a recipient's plaintiff maliciously abused legal process, enter an order (which shall be appealable before being made final) awarding reasonable costs and legal fees incurred by the defendant in defense of the action, except when in contravention of a State law, a rule of court, or a statute of general applicability. Any such costs and fees shall be directly paid by the Corporation.

(As amended Pub. L. 95-222, §§ 5(a), (b), 6, 7(a), 8, Dec. 28, 1977, 91 Stat. 1619, 1620.)

REFERENCES IN TEXT

The District of Columbia Nonprofit Corporation Act, referred to in subsec. (a), is Pub. L. 87-569, Aug. 6, 1962, 76 Stat. 265, as amended, which is classified generally to chapter 10 (§ 29-1001 et seq.) of Title 29, Corporations, of the District of Columbia Code. Section 1005(o) of the District of Columbia Code, referred to in subsec. (a), means section 5(o) of the District of Columbia Nonprofit Corporation Act.

AMENDMENTS

1977—Subsec. (a)(3). Pub. L. 95-222, §§ 5(a), (b), substituted ", or" for "and not" and in par. (A) added exception for broad general legal or policy research.

Subsec. (b)(1). Pub. L. 95-222, § 6(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c)(1). Pub. L. 95-222, § 6(b), added provisions setting forth situations when the Corporation may participate in litigation.

Subsec. (d)(6). Pub. L. 95-222, § 6(c), added subsec. (d)(6).

Subsec. (e)(2). Pub. L. 95-222, § 7(a), added provisions relating to staff attorneys.

Subsec. (f). Pub. L. 95-222, § 8, substituted "the court shall" for "the court may".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub. L. 95-222, set out as an Effective Date of 1977 Amendment note under section 2996 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2996a, 2996i of this title.

§ 2996f. Grants and contracts

(a) Requisites

With respect to grants or contracts in connection with the provision of legal assistance to eligible clients under this subchapter, the Corporation shall—

[*See main edition for text of* (*1*)]

(2) [*See main edition for text of* (*A*)]

(B) establish guidelines to insure that eligibility of clients will be determined by recipients on the basis of factors which include—

[*See main edition for text of* (*i*) *to* (*iii*)]

(iv) such other factors as relate to financial inability to afford legal assistance, which may include evidence of a prior determination that such individual's lack of income results from refusal or unwillingness, without good cause, to seek or accept an employment situation; and

(C) insure that (i) recipients, consistent with goals established by the Corporation, adopt procedures for determining and implementing priorities for the provision of such assistance, taking into account the relative needs of eligible clients for such assistance (including such outreach, training, and support services as may be necessary), including particularly the needs for service on the part of significant segments of the population of eligible clients with special difficulties of access to legal services or special legal problems (including elderly and handicapped individuals); and (ii) appropriate training and support services are provided in order to provide such assistance to such significant segments of the population of eligible clients;

[*See main edition for text of* (*3*) *and* (*4*)]

(5) insure that no funds made available to recipients by the Corporation shall be used at any time, directly or indirectly, to influence the issuance, amendment, or revocation of any executive order or similar promulgation by any Federal, State, or local agency, or to undertake to influence the passage or defeat of any legislation by the Congress of the United States, or by any State or local legislative bodies, or State proposals by initiative petition, except where—

(A) representation by an employee of a recipient for any eligible client is necessary to the provision of legal advice and representation with respect to such client's legal rights and responsibilities (which shall not be construed to permit an attorney or a recipient employee to solicit a client, in violation of professional responsibilities, for the purpose of making such representation possible); or

(B) a governmental agency, legislative body, a committee, or a member thereof—

(i) requests personnel of the recipient to testify, draft, or review measures or to make representations to such agency, body, committee, or member, or

(ii) is considering a measure directly affecting the activities under this subchapter of the recipient or the Corporation.

(6) insure that all attorneys engaged in legal assistance activities supported in whole or in part by the Corporation refrain, while so engaged, from—

(A) any political activity, or

(B) any activity to provide voters or prospective voters with transportation to the polls or provide similar assistance in connection with an election (other than legal advice and representation), or

(C) any voter registration activity (other than legal advice and representation);

[*See main edition for text of* (*7*) *to* (*10*)]

(b) Limitations on uses

No funds made available by the Corporation under this subchapter, either by grant or contract, may be used—

(1) to provide legal assistance (except in accordance with guidelines promulgated by the Corporation) with respect to any fee-generating case (which guidelines shall not preclude the provision of legal assistance in cases in which a client seeks only statutory benefits and appropriate private representation is not available);

(2) to provide legal assistance with respect to any criminal proceeding, except to provide assistance to a person charged with a misdemeanor or lesser offense or its equivalent in an Indian tribal court;

(3) to provide legal assistance in civil actions to persons who have been convicted of a criminal charge where the civil action arises out of alleged acts or failures to act and the

action is brought against an officer of the court or against a law enforcement official for the purpose of challenging the validity of the criminal conviction;

(4) for any of the political activities prohibited in paragraph (6) of subsection (a) of this section;

(5) to make grants to or enter into contracts with any private law firm which expends 50 percent or more of its resources and time litigating issues in the broad interests of a majority of the public;

(6) to support or conduct training programs for the purpose of advocating particular public policies or encouraging political activities, labor or antilabor activities, boycotts, picketing, strikes, and demonstrations, as distinguished from the dissemination of information about such policies or activities, except that this provision shall not be construed to prohibit the training of attorneys or paralegal personnel necessary to prepare them to provide adequate legal assistance to eligible clients;

(7) to initiate the formation, or act as an organizer, of any association, federation, or similar entity, except that this paragraph shall not be construed to prohibit the provision of legal assistance to eligible clients;

(8) to provide legal assistance with respect to any proceeding or litigation which seeks to procure a nontherapeutic abortion or to compel any individual or institution to perform an abortion, or assist in the performance of an abortion, or provide facilities for the performance of an abortion, contrary to the religious beliefs or moral convictions of such individual or institution;

(9) to provide legal assistance with respect to any proceeding or litigation relating to the desegregation of any elementary or secondary school or school system, except that nothing in this paragraph shall prohibit the provision of legal advice to an eligible client with respect to such client's legal rights and responsibilities; or

(10) to provide legal assistance with respect to any proceeding or litigation arising out of a violation of the Military Selective Service Act [50 App. U.S.C. 451 et seq.] or of desertion from the Armed Forces of the United States, except that legal assistance may be provided to an eligible client in a civil action in which such client alleges that he was improperly classified prior to July 1, 1973, under the Military Selective Service Act or prior corresponding law.

(c) Recipient organizations

(c) In making grants or entering into contracts for legal assistance, the Corporation shall insure that any recipient organized solely for the purpose of providing legal assistance to eligible clients is governed by a body at least 60 percent of which consists of attorneys who are members of the bar of a State in which the legal assistance is to be provided (except that the Corporation (1) shall, upon application, grant waivers to permit a legal services program, supported under section 2809(a)(3) of this title, which on July 25, 1974, has a majority of persons who are not attorneys on its policy-making board to continue such a non-attorney majority under the provisions of this subchapter, and (2) may grant, pursuant to regulations issued by the Corporation, such a waiver for recipients which, because of the nature of the population they serve, are unable to comply with such requirement) and at least one-third of which consists of persons who are, when selected, eligible clients who may also be representatives of associations or organizations of eligible clients. Any such attorney, while serving on such board, shall not receive compensation from a recipient.

[*See main edition for text of* (*d*) *and* (*e*)]

(f) Public notification

At least thirty days prior to the approval of any grant application or prior to entering into a contract or prior to the initiation of any other project, the Corporation shall announce publicly, and shall notify the Governor, the State bar association of any State, and the principal local bar associations (if there be any) of any community, where legal assistance will thereby be initiated, of such grant, contract, or project. Notification shall include a reasonable description of the grant application or proposed contract or project and request comments and recommendations.

[*See main edition for text of* (*g*)]

(h) Study and report to Congress on special needs of eligible clients

The Corporation shall conduct a study on whether eligible clients who are—

(1) veterans,

(2) native Americans,

(3) migrants or seasonal farm workers,

(4) persons with limited English-speaking abilities, and

(5) persons in sparsely populated areas where a harsh climate and an inadequate transportation system are significant impediments to receipt of legal services

have special difficulties of access to legal services or special legal problems which are not being met. The Corporation shall report to Congress not later than January 1, 1979, on the extent and nature of any such problems and difficulties and shall include in the report and implement appropriate recommendations.

(As amended Pub. L. 95-222, §§ 7(b), 9(a), (b)(1), (c), 10-13, Dec. 28, 1977, 91 Stat. 1620-1623.)

REFERENCES IN TEXT

The Military Selective Service Act, referred to in subsec. (b)(10), is act June 24, 1948, ch. 625, 62 Stat. 204, as amended, which is classified principally to section 451 et seq. of Title 50, App., War and National Defense. For complete classification of this Act to the Code, see References in Text note set out under section 451 of Title 50 App. and Tables.

AMENDMENTS

1977—Subsec. (a)(2)(B)(iv). Pub. L. 95-222, § 9(a), substituted provisions setting forth factors which may be included in determining financial ability, for provisions setting forth factors required to be included in determining financial ability.

Subsec. (a)(2)(C). Pub. L. 95-222, § 9(b)(1), expanded existing provisions by requiring the Corporation to establish procedures for determining and implementing priorities and criteria for such priorities, and added provisions relating to appropriate training and support services.

Subsec. (a)(5). Pub. L. 95-222, § 9(c), in introductory matter added prohibition relating to influencing the passage or defeat of State proposals by initiative referendum, in subpar. (A) substituted provisions relating to representation by an employee of a recipient for any eligible client, for provisions relating to representation by an attorney as attorney for any eligible client, and in subpar. (B) designated existing provision as cl. (i) and, as so designated, added exception for testifying, drafting, or reviewing measures, and added cl. (ii).

Subsec. (a)(6). Pub. L. 95-222, § 7(b), struck out provisions relating to prohibitions against political activities by staff attorneys of the types described under cls. (B) and (C) of this par. and section 1502(a) of title 5.

Subsec. (b). Pub. L. 95-222, § 10, redesignated and reorganized provisions of former par. (1) as pars. (1) to (3) and, as so redesignated, enumerated criteria for assistance under such pars., redesignated former pars. (2) and (3) as (4) and (5), respectively, struck out former par. (4) relating to assistance to any unemancipated person of less than eighteen years of age, redesignated former par. (5) as (6), redesignated former par. (6) as (7) and, as so redesignated, added provision relating to initiation and provision relating to acting as an organizer, and struck out provisions relating to organization, assistance or encouragement to organize, or to plan for the creation, formation or structuring of entities, and provision respecting guidelines for assistance to clients, redesignated former par. (7) as (9) and, as so redesignated, added exception for legal advice to clients, reenacted par. (8) without change, and redesignated former par. (9) as (10) and, as so redesignated, added exception for actions concerning classifications prior to July 1, 1973.

Subsec. (c). Pub. L. 95-222, § 11, substituted provisions requiring recipients to include at least one-third membership of eligible clients or eligible clients who may also be representatives of associations or organizations of eligible clients, for provisions requiring recipients to include at least one individual eligible to receive legal assistance.

Subsec. (f). Pub. L. 95-222, § 12, added provision requiring notice to the principal local bar association, if any, of the community.

Subsec. (h). Pub. L. 95-222, § 13, added subsec. (h).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsecs. (a), (b), (f), and (h) by Pub. L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub. L. 95-222, set out as an Effective Date of 1977 Amendment note under section 2996 of this title.

Section 17(a)(1) of Pub. L. 95-222 provided that: "The amendment made by section 11 of this Act [amending subsec. (c) of this section] shall be effective six months after the first day of the first calendar month following the date of enactment of this Act [Dec. 28, 1977]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2996e, 2996g of this title.

§ 2996g. Records and reports

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Annual report to President and Congress; contents

The Corporation shall publish an annual report which shall be filed by the Corporation with the President and the Congress. Such report shall include a description of services provided pursuant to section 2996f(a)(2)(C)(i) and (ii) of this title.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended Pub. L. 95-222, § 9(b)(2), Dec. 28, 1977, 91 Stat. 1621.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-222 added provisions setting forth required contents of the annual report.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub. L. 95-222, set out as an Effective Date of 1977 Amendment note under section 2996 of this title.

§ 2996h. Audits

[*See main edition for text of* (*a*)]

(b) Audit by General Accounting Office

[*See main volume for text of* (*1*)]

(2) Any such audit shall be conducted at the place or places where accounts of the Corporation are normally kept. The representatives of the General Accounting Office shall have access to all books, accounts, financial records, reports, files, and other papers or property belonging to or in use by the Corporation and necessary to facilitate the audit; and full facilities for verifying transactions with the balances and securities held by depositories, fiscal agents, and custodians shall be afforded to such representatives. All such books, accounts, financial records, reports, files, and other papers or property of the Corporation shall remain in the possession and custody of the Corporation throughout the period beginning on the date such possession or custody commences and ending three years after such date, but the General Accounting Office may require the retention of such books, accounts, financial records, reports, files, papers, or property for a longer period under section 67(b) of title 31.

[*See main edition for text of* (*3*); (*c*) *and* (*d*)]

(As amended Pub. L. 95-222, § 14, Dec. 28, 1977, 91 Stat. 1623.)

AMENDMENTS

1977—Subsec. (b)(2). Pub. L. 95-222 added provisions relating to duration of retention of books, etc., by the Corporation.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub. L. 95-222, set out as an Effective Date of 1977 Amendment note under section 2996 of this title.

§ 2996i. Financing

(a) Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation, $90,000,000 for fiscal year 1975, $100,000,000 for fiscal year 1976, and such sums as may be necessary for fiscal year 1977. There are authorized to be appropriated for the purpose of carrying out the activities of the Corporation $205,000,000 for the fiscal year 1978, and such sums as may be necessary for each of the two succeeding fiscal years. The first appropriation may be made available to the Corporation at any time after six or more members of the Board have been appointed and qualified. Appropriations for that purpose shall be made for not more than two fiscal years, and shall be paid to the Corporation in annual installments at the beginning of each fiscal year in such amounts as may be specified in Acts of Congress making appropriations.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Limitations on grant or contract authority

Not more than 10 percent of the amounts appropriated pursuant to subsection (a) of this section for any fiscal year shall be available for grants or contracts under section 2996e(a)(3) of this title in any such year.

(As amended Pub. L. 95-222, §§ 5(c), 15, Dec. 28, 1977, 91 Stat. 1619, 1623.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-222, § 15, added provisions authorizing appropriations for fiscal year 1978 and the two succeeding fiscal years, and substituted provisions requiring appropriations to be made for not more than two fiscal years and payments in annual installments at the beginning of each fiscal year in appropriated amounts, for provisions requiring appropriations to be for not more than two fiscal years, and, if for more than one year, in payments in annual installments at the beginning of each fiscal year in appropriated amounts.

Subsec. (d). Pub. L. 95-222, § 5(c), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Section 17(a)(2) of Pub. L. 95-222 provided that: "The amendment made by section 15 of this Act [amending subsec. (a) of this section] shall be effective with respect to fiscal years beginning after September 30, 1977."

Amendment of subsec. (d) by Pub. L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub. L. 95-222, set out as an Effective Date of 1977 Amendment note under section 2996 of this title.

§ 2996j. Special limitations

The Corporation shall prescribe procedures to insure that—

[*See main edition for text of* (*1*)]

(2) financial assistance under this subchapter shall not be terminated, an application for refunding shall not be denied, and a suspension of financial assistance shall not be continued for longer than thirty days, unless the grantee, contractor, or person or entity receiving financial assistance under this subchapter has been afforded reasonable notice and opportunity for a timely, full, and fair hearing, and, when requested, such hearing shall be conducted by an independent hearing examiner. Such hearing shall be held prior to any final decision by the Corporation to terminate financial assistance or suspend or deny funding. Hearing examiners shall be appointed by the Corporation in accordance with procedures established in regulations promulgated by the Corporation.

(As amended Pub. L. 95-222, § 16, Dec. 28, 1977, 91 Stat. 1624.)

AMENDMENTS

1977—Par. (2). Pub. L. 95-222 added provisions relating to function and appointment of an independent hearing examiner, and the time for any hearings.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-222 effective on Dec. 28, 1977, see section 17(b) of Pub. L. 95-222, set out as an Effective Date of 1977 Amendment note under section 2996 of this title.

CHAPTER 35—PROGRAMS FOR OLDER AMERICANS

SUBCHAPTER II—ADMINISTRATION ON AGING

Sec.

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3020c. Contracting and grant authority [New].
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SUBCHAPTER III—GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

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  (b) Definitions.
  (c) Authority of Secretary.
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Sec.
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Chapter Referred to in Other Sections

This chapter is referred to in sections 4913, 8004 of this title; title 20 sections 364, 1008a, 1208a, 3286; title 29 section 850.

SUBCHAPTER I—DECLARATION OF OBJECTIVES AND DEFINITIONS

§ 3001. Congressional declaration of objectives

The Congress hereby finds and declares that, in keeping with the traditional American concept of the inherent dignity of the individual in our democratic society, the older people of our Nation are entitled to, and it is the joint and several duty and responsibility of the governments of the United States and of the several States and their political subdivisions to assist our older people to secure equal opportunity to the full and free enjoyment of the following objectives:

[*See main edition for text of* (*1*) *to* (*7*)]

(8) Efficient community services, including access to low-cost transportation, which provide a choice in supported living arrangements and social assistance in a coordinated manner and which are readily available when needed.

[*See main edition for text of* (*9*) *and* (*10*)]

(As amended Pub. L. 95-478, title I, § 101, Oct. 18, 1978, 92 Stat. 1513.)

Amendments

1978—Pub. L. 95-478 included in cl. (8) the objective of community services which provide a choice in supported living arrangements.

Effective Date of 1978 Amendment

Section 504 of Pub. L. 95-478 provided that: "This Act [see Short Title of 1978 Amendment note hereunder], and the amendments made by this Act, shall take effect at the close of September 30, 1978."

Short Title of 1978 Amendment

Section 1(a) of Pub. L. 95-478 provided that: "This Act [which enacted sections 3020b to 3020d, 3030 to 3030g, 3035b to 3035h, 3057 to 3057g and 6106a of this title, amended sections 3001, 3002, 3011 to 3017, 3020a, 3021 to 3029, 3031 to 3035, 3036 to 3037a, 3056 to 3056f, 5001, 5011, 5012, 5082, 6101, 6103 and 6104 of this title, repealed sections 3035a, 3041 to 3041f, 3042 and 3045 to 3045i of this title, enacted provisions set out as notes under sections 1975c, 3001, 3021 and 3045 of this title, amended a provision set out as a note under this section, and repealed provision set out as a note under section 3056 of this title] may be cited as the 'Comprehensive Older Americans Act Amendments of 1978'."

Short Title of 1975 Amendment

Pub. L. 89-73, title V, § 501, formerly title IX, § 901, as added by Pub. L. 94-135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 720, and renumbered by Pub. L. 95-478, title I, § 105(a), Oct. 18, 1978, 92 Stat. 1547, provided that: "The provisions of this title [subchapter IX of this chapter] may be cited as the 'Older American Community Service Employment Act'."

White House Conference on Aging

Pub. L. 95-478, title II, Oct. 18, 1978, 92 Stat. 1551-1554, provided that:

"SHORT TITLE

"Sec. 201. This title may be cited as the '1981 White House Conference on Aging Act'.

"FINDINGS AND POLICY

"Sec. 202. (a) The Congress finds that—

"(1) the number of individuals fifty-five years of age or older was approximately 43,000,000 in 1976, and will, by the end of this century, be over 57,000,000;

"(2) nearly 5,200,000 individuals fifty-five years of age or older had incomes below the poverty level in 1976, as determined by the Federal Government;

"(3) there is a great need to improve the economic well-being of older individuals;

"(4) there is a great need to make comprehensive and quality health care more readily available to older individuals;

"(5) there is a great need for expanding the availability of suitable and reasonably priced housing for older individuals, together with services needed for independent or semi-independent living;

"(6) there is a great need for a more comprehensive and effective social service delivery system for older individuals;

"(7) there is a great need for a more comprehensive long-term care policy responsive to the needs of older patients and their families;

"(8) there is a great need to promote greater employment opportunities for middle-aged and older individuals who want or need to work;

"(9) there is a great need to develop a national retirement policy that contributes to the fulfillment, dignity, and satisfaction of retirement years for older individuals;

"(10) there is a great need for a national policy with respect to increasing, coordinating, and expediting biomedical and other appropriate research directed at determining the causes of the aging process; and

"(11) false stereotypes about aging and the process of aging are prevalent throughout the Nation and policies should be developed to overcome such stereotypes.

"(b)(1) It is the policy of the Congress that the Federal Government should work jointly with the States and their citizens to develop recommendations and plans for action to meet the challenges and needs of older individuals, consistent with the objectives of this title.

"(2) In developing programs for the aging pursuant to this title, emphasis should be placed upon the right and obligation of older individuals to free choice and self-help in planning their own futures.

"AUTHORITY OF THE PRESIDENT AND SECRETARY; FINAL REPORT

"Sec. 203. (a) The President may call a White House Conference on Aging in 1981 in order to develop recommendations for further research and action in the field of aging which will further the policies set forth in section 202. The Conference shall be planned and conducted under the direction of the Secretary in cooperation with the Commissioner on Aging and the Director of the National Institute on Aging, and the heads of such other Federal departments and agencies as are appropriate. Such assistance may include the assignment of personnel.

"(b) For the purpose of arriving at facts and recommendations concerning the utilization of skills, experience, and energies and the improvement of the conditions of older individuals, the Conference shall bring together representatives of Federal, State, and local governments, professional and lay people who are working in the field of aging (including researchers on problems of the elderly and the process of aging), and representatives of the general public, including older individuals.

"(c) A final report of the Conference, which shall include a statement of a comprehensive coherent national policy on aging together with recommendations for the implementation of the policy, shall be submitted to the President not later than 180 days following the date on which the Conference is adjourned. The findings and recommendations included in the report shall be immediately available to the public. The Secretary shall, within 90 days after submission of the report, transmit to the President and to the Congress his recommendations for administrative action and the legislation necessary to implement the recommendations contained in the report.

"ADMINISTRATION

"Sec. 204. (a) In administering this title the Secretary shall—

"(1) request the cooperation and assistance of the heads of such other Federal departments and agencies as may be appropriate in carrying out the provisions of this title;

"(2) render all reasonable assistance, including financial assistance, to State agencies on the aging and to area agencies on aging, and to other appropriate organizations to enable them to organize and conduct conferences on aging prior to the Conference;

"(3) prepare and make available background materials for the use of delegates to the Conference which he deems necessary, and prepare and distribute any such report of the Conference as may be necessary and appropriate; and

"(4) engage such additional personnel as may be necessary to carry out the provisions of this title without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates.

"(b) In carrying out his functions under clause (2) of subsection (a) the Secretary shall assure that conferences will be so conducted as to assure broad participation of older individuals.

"(c) In carrying out his responsibilities under this title the Secretary shall assure that current and adequate statistical data and other information on the well-being of older individuals in the United States are readily available, in advance of the Conference, to participants in the Conference, together with such information as may be necessary to evaluate Federal programs and policies relating to aging. In carrying out the requirements of this subsection the Secretary may make grants to, and enter into contracts with, public agencies and nonprofit private organizations.

"ADVISORY COMMITTEES

"SEC. 205. (a) The Secretary shall establish an advisory committee to the Conference which shall include representation from the Federal Council on Aging and other public agencies and private nonprofit organizations as appropriate. The Secretary shall establish such other committees, including technical committees, as may be necessary to assist in planning, conducting, and reviewing the Conference. Each such committee shall be composed of professional and public members and shall include individuals from low-income families and from minority groups. A majority of the public members of each such committee shall be 55 years of age or older.

"(b) Appointed members of any such committee (other than any officers or employees of the Federal Government), while attending conferences or meetings of the committee or otherwise serving at the request of the Secretary, shall be entitled to receive compensation at a rate to be fixed by the Secretary but not to exceed the daily rate prescribed for GS-18 under section 5332 of title 5, United States Code (including travel time). While away from their homes or regular places of business, such members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized under section 5703 of such title for persons in Federal Government service employed intermittently.

"DEFINITIONS

"SEC. 206. For the purpose of this title—

"(1) The term 'area agency on aging' means the agency designated under section 305(a)(2)(A) of the Older Americans Act of 1965 [section 3025(a)(2)(A) of this title].

"(2) The term 'State agency on aging' means the agency designated under 305(a)(1) of the Older Americans Act of 1965 [section 3025(a)(1) of this title].

"(3) The term 'Secretary' means the Secretary of Health, Education, and Welfare.

"(4) The term 'Conference' means the White House Conference on Aging authorized in section 203(a).

"(5) The term 'State' includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

"AUTHORIZATION OF APPROPRIATIONS

"SEC. 207. There are authorized to be appropriated such sums as may be necessary, for fiscal years 1979, 1980, and 1981, to carry out the provisions of this title."

EX. ORD. NO. 11022. PRESIDENT'S COUNCIL ON AGING

Ex. Ord. No. 11022, May 14, 1962, 27 F.R. 4659, as amended by Ex. Ord. No. 11376, Oct. 17, 1967, 32 F.R. 14545; Ex. Ord. No. 12106, Dec. 28, 1978, 44 F.R. 1053, provided:

By virtue of the authority vested in me as President of the United States, it is hereby ordered as follows:

SECTION 1. (a) There is hereby established the President's Council on Aging (hereinafter referred to as the "Council").

(b) The Council shall be composed of the Secretary of Health, Education, and Welfare, who shall be Chairman, the Secretary of the Treasury, the Secretary of Agriculture, the Secretary of Commerce, the Secretary of Labor, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Administrator of Veterans Affairs, the Director of the Office of Personnel Management, the Director of the Community Services Administration, and the Chairman of the Equal Employment Opportunity Commission.

[*See main edition for text of* (c); *Secs. 2 to 4*]

§ 3002. Definitions

For the purposes of this chapter—

(1) The term "Secretary" means the Secretary of Health, Education, and Welfare, other than for purposes of subchapter IX of this chapter.

[*See main edition for text of* (2) *and* (3)]

(4) The term "nonprofit" as applied to any agency, institution, or organization means an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(5) The term "Indian" means a person who is a member of an Indian tribe.

(6) The term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Public Law 92-203; 85 Stat. 688) [43 U.S.C. 1601 et seq.]) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (B) is located on, or in proximity to, a Federal or State reservation or rancheria.

(7) The term "tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body. In any case in which a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

(As amended Pub. L. 95-478, title V, § 503(a), Oct. 18, 1978, 92 Stat. 1559.)

REFERENCES IN TEXT

The Alaska Native Claims Settlement Act, referred to in par. (6), is Pub. L. 92-203, Dec. 18, 1971, 85 Stat. 688, as amended, which is classified generally to chapter 33 (§ 1601 et seq.) of Title 43, Public Lands. For complete classification of this Act of the Code, see Short Title note set out under section 1601 of Title 43 and Tables.

AMENDMENTS

1978—Par. (1). Pub. L. 95-478, § 503(a)(1), inserted end text ", other than for purposes of subchapter IX of this chapter".

Pars. (4) to (7). Pub. L. 95-478, § 503(a)(2), redesignated par. (4), set out second and enacted by Pub. L. 94-135, § 104(b), as par. (5) and redesignated as pars. (6) and (7) former pars. (5) and (6).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

SUBCHAPTER II—ADMINISTRATION ON AGING

§ 3011. Establishment of Administration; Commissioner on Aging

(a) There is established in the Office of the Secretary an Administration on Aging (hereinafter in this chapter referred to as the "Administration") which shall be headed by a Commissioner on Aging (hereinafter in this chapter referred to as the "Commissioner"). Except for subchapter IX of this chapter, the Administration shall be the principal agency for carrying out this chapter. In the performance of his functions, the Commissioner shall be directly responsible to the Office of the Secretary. The Secretary shall not approve any delegation of the functions of the Commissioner to any other officer not directly responsible to the Commissioner.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 95-478, title V, § 503(b)(1), Oct. 18, 1978, 92 Stat. 1559.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-478 substituted "subchapter IX of this chapter" for "subchapter VI of this chapter and as otherwise specifically provided by the Older Americans Comprehensive Services Amendments of 1973".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3012. Administrative provisions

(a) Duties and functions of Administration

It shall be the duty and function of the Administration to—

(1) serve as the effective and visible advocate for the elderly within the Department of Health, Education, and Welfare and with other departments, agencies, and instrumentalities of the Federal Government by maintaining active review and commenting responsibilities over all Federal policies affecting the elderly;

(2) serve as a clearinghouse for information related to problems of the aged and aging;

(3) assist the Secretary in all matters pertaining to problems of the aged and aging;

(4) administer the grants provided by this chapter;

(5) develop plans, conduct and arrange for research in the field of aging, and assist in the establishment of and carry out programs designed to meet the needs of older individuals for social services, including nutrition, hospitalization, preretirement training, continuing education, low-cost transportation and housing, and health services;

(6) provide technical assistance and consultation to States and political subdivisions thereof with respect to programs for the aged and aging;

(7) prepare, publish, and disseminate educational materials dealing with the welfare of older individuals;

(8) gather statistics in the field of aging which other Federal agencies are not collecting;

(9) stimulate more effective use of existing resources and available services for the aged and aging;

(10) develop basic policies and set priorities with respect to the development and operation of programs and activities conducted under authority of this chapter;

(11) provide for the coordination of Federal programs and activities related to such purposes;

(12) coordinate, and assist in, the planning and development by public (including Federal, State, and local agencies) and nonprofit private organizations of programs for older individuals, with a view to the establishment of a nationwide network of comprehensive, coordinated services and opportunities for such individuals;

(13) convene conferences of such authorities and officials of public (including Federal, State, and local agencies) and nonprofit private organizations concerned with the development and operation of programs for older individuals as the Commissioner deems necessary or proper for the development and implementation of policies related to the purposes of this chapter;

(14) develop and operate programs providing services and opportunities as authorized by this chapter which are not otherwise provided by existing programs for older individuals;

(15) carry on a continuing evaluation of the programs and activities related to the purposes of this chapter, with particular attention to the impact of medicare and medicaid, the Age Discrimination in Employment Act of 1967 [29 U.S.C. 621 et seq.], and the programs of the National Housing Act [12 U.S.C. 1701 et seq.] relating to housing for the elderly and the setting of standards for the licensing of nursing homes, intermediate care homes, and other facilities providing care for older people;

(16) provide information and assistance to private nonprofit organizations for the establishment and operation by them of programs and activities related to the purposes of this chapter; and

(17) develop, in coordination with other agencies, a national plan for meeting the needs for trained personnel in the field of aging, and for training persons for carrying out programs related to the purposes of this chapter, and conduct and provide for the conducting of such training.

(b) Policy alternatives in long-term care

In order to strengthen the involvement of the Administration in the development of policy alternatives in long-term care and to insure that the development of community alternatives is given priority attention, the Commissioner shall—

(1) develop planning linkages with health systems agencies designated under section 300*l*-4 of this title;

(2) participate in all departmental and interdepartmental activities which concern issues of institutional and noninstitutional long-term health care services development; and

(3) review and comment on all departmental regulations and policies regarding community health and social service development for the elderly.

(c) Encouragement by Commissioner of program and activity by voluntary social services group

In executing his duties and functions under this chapter and carrying out the programs and activities provided for by this chapter, the Commissioner, in consultation with the Director of Action, shall take all possible steps to encourage and permit voluntary groups active in social services, including youth organizations active at the high school or college levels, to participate and be involved individually or through representative groups in such programs or activities to the maximum extent feasible, through the performance of advisory or consultative functions, and in other appropriate ways.

(As amended Pub. L. 95–478, title I, § 102(a), title V, § 503(b)(2), (4), Oct. 18, 1978, 92 Stat. 1513, 1559.)

References in Text

The Age Discrimination in Employment Act of 1967, referred to in subsec. (a)(15), is Pub. L. 90-202, Dec. 15, 1967, 81 Stat. 602, as amended, which is classified generally to chapter 14 (§ 621 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 621 of Title 29 and Tables.

The National Housing Act, referred to in subsec. (a)(15), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended, which is classified principally to chapter 13 (§ 1701 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

Amendments

1978—Subsec. (a)(1). Pub. L. 95–478, § 102(a)(1), added par. (1) and redesignated former par. (1) as (2).

Subsec. (a)(2) to (4). Pub. L. 95–478, § 102(a)(1), redesignated former pars. (1) to (3) as (2) to (4). Former par. (4) redesignated (5).

Subsec. (a)(5). Pub. L. 95–478, §§ 102(a)(1), 503(b)(4)(A), redesignated former par. (4) as (5) and substituted "older individuals" for "older persons". Former par. (5) redesignated (6).

Subsec. (a)(6). Pub. L. 95–478, § 102(a)(1), redesignated former par. (5) as (6). Former par. (6) redesignated (7).

Subsec. (a)(7). Pub. L. 95–478, §§ 102(a)(1), 503(b)(4)(A), redesignated former par. (6) as (7) and substituted "older individuals" for "older persons". Former par. (7) redesignated (8).

Subsec. (a)(8) to (11). Pub. L. 95–478, § 102(a)(1), redesignated former pars. (7) to (10) as (8) to (11). Former par. (11) redesignated (12).

Subsec. (a)(12). Pub. L. 95–478, §§ 102(a)(1), 503(b)(4), redesignated former par. (11) as (12) and substituted "older individuals" and "such individuals" for "older persons" and "such persons". Former par. (12) redesignated (13).

Subsec. (a)(13). Pub. L. 95–478, §§ 102(a)(1), 503(b)(4)(A), redesignated former par. (12) as (13) and substituted "older individuals" for "older persons". Former par. (13) redesignated (14).

Subsec. (a)(14). Pub. L. 95–478, § 102(a)(1), redesignated former par. (13) as (14). Former par. (14) redesignated (15).

Subsec. (a)(15). Pub. L. 95–478, §§ 102(a)(1), 503(b)(2), redesignated former par. (14) as (15) and substituted "Age Discrimination in Employment Act of 1967" for "Age Discrimination Act of 1967". Former par. (15) redesignated (16).

Subsec. (a)(16), (17). Pub. L. 95–478, § 102(a)(1), redesignated former pars. (15) and (16) as (16) and (17).

Subsec. (b). Pub. L. 95–478, § 102(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 95–478, § 102(a)(2), redesignated former subsec. (b) as (c).

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95–478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95–478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3013. Federal agency cooperation

(a) The Commissioner, in carrying out the purposes and provisions of this chapter, shall advise, consult, and cooperate with the head of each Federal agency or department proposing or administering programs or services substantially related to the purposes of this chapter, with respect to such programs or services. The head of each Federal agency or department proposing to establish programs and services substantially related to the purposes of this chapter shall consult with the Commissioner prior to the establishment of such programs and services. The head of each Federal agency administering any program substantially related to the purpose of this chapter, particularly administering any program set forth in subsection (b) of this section, shall, to achieve appropriate coordination, consult and cooperate with the Commissioner in carrying out such program.

(b) For the purposes of subsection (a) of this section, programs related to the purpose of this chapter shall include—

(1) the Comprehensive Employment and Training Act of 1973 [29 U.S.C. 801 et seq.],

(2) title II of the Domestic Volunteer Service Act of 1973 [42 U.S.C. 5001 et seq.],

(3) titles XVIII, XIX, and XX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397 et seq.],

(4) sections 1715v and 1715w of title 12,

(5) the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.],

(6) section 1701q of title 12,

(7) title I of the Housing and Community Development Act of 1974 [42 U.S.C. 5301 et seq.],

(8) section 2809(a)(8) of this title,

(9) the community schools program under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et seq.], and

(10) sections 1602, 1604, 1607a, and 1612 of title 49.

(As amended Pub. L. 95-478, title I, § 102(b), Oct. 18, 1978, 92 Stat. 1513.)

REFERENCES IN TEXT

The Comprehensive Employment and Training Act of 1973, referred to in subsec. (b)(1), is Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 839, as amended, now known as the Comprehensive Employment and Training Act, which is classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 29 and Tables.

The Domestic Volunteer Service Act of 1973, referred to in subsec. (b)(2), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, as amended. Title II of the Domestic Volunteer Service Act of 1973 is classified generally to subchapter II (§ 5001 et seq.) of chapter 66 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4951 of this title and Tables.

The Social Security Act, referred to in subsec. (b)(3), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XX (§ 1397 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The United States Housing Act of 1937, referred to in subsec. (b)(5), is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

The Housing and Community Development Act of 1974, referred to in subsec. (b)(7), is Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, as amended. Title I of the Housing and Community Development Act of 1974 is classified principally to chapter 69 (§ 5301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5301 of this title and Tables.

The Elementary and Secondary Education Act of 1965, referred to in subsec. (b)(9), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152, which is classified generally to chapter 47 (§ 2701 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 20 and Tables.

Section 1607a of title 49, referred to in subsec. (b)(10), was repealed by Pub. L. 95-599, title III, § 305(a), Nov. 6, 1978, 92 Stat. 2473.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-478 added subsec. (a) and struck out similar prior provisions stating that "Federal agencies proposing to establish programs substantially related to the purposes of this chapter shall consult with the Administration on Aging prior to the establishment of such services, and Federal agencies administering such programs shall cooperate with the Administration on Aging in carrying out such services".

Subsec. (b). Pub. L. 95-478 added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3026 of this title.

§ 3014. National Information and Resource Clearing House for the Aging

(a) Establishment and operation by Commissioner; functions

The Commissioner is authorized and directed to establish and operate a National Information and Resource Clearing House for the Aging which shall—

(1) collect, analyze, prepare, and disseminate information related to the needs and interests of older individuals, including information related to transportation services for older individuals offered by Federal, State, and local public agencies;

(2) obtain information concerning older individuals from public and private agencies and other organizations serving the needs and interests of older individuals and furnish, upon request, information to such agencies and organizations, including information developed by Federal, State, and local public agencies with respect to programs of such agencies designed to serve the needs and interests of older individuals;

(3) encourage the establishment of State and local information centers and provide technical assistance to such centers, including sources established under section 3024(c)(3) and section 3025(a)(7) of this title, to assist older individuals to have ready access to information; and

(4) carry out a special program for the collection and dissemination of information relevant to consumer interests of older individuals in order that such older individuals may more readily obtain information concerning goods and services needed by them.

(b) Coordination by Commissioner of Federal agency informational activities relevant to older individuals; Clearing House as instrumentality for carrying out functions of Commissioner

The Commissioner shall take whatever action is necessary to achieve coordination of activities carried out or assisted by all departments, agencies, and instrumentalities of the Federal Government with respect to the collection, preparation, and dissemination of information relevant to older individuals. To the extent practicable, the Commissioner shall carry out his functions under this subsection through the National Information and Resource Clearing House for the Aging.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this section, for fiscal years 1979, 1980, and 1981, such sums as may be necessary.

(As amended Pub. L. 95-478, title I, § 102(c), (d), title V, § 503(b)(4)(A), Oct. 18, 1978, 92 Stat. 1514, 1559.)

AMENDMENTS

1978—Subsec. (a)(1) to (4). Pub. L. 95-478, §§ 102(c), 503(b)(4)(A), provided for in par. (1) information related to transportation services for older individuals offered by Federal, State, and local public agencies, and substituted in pars. (1) to (4) "older individuals" for "older persons" wherever appearing.

Subsec. (b). Pub. L. 95-478, § 503(b)(4)(A), substituted "older individuals" for "older persons".

Subsec. (c). Pub. L. 95-478, § 102(d), authorized appropriation of necessary sums for fiscal years 1979, through 1981, and deleted appropriations authorization of necessary sums for fiscal years ending June 30, 1973, through 1976, the period beginning July 1, 1976, and ending Sept. 30, 1976, and fiscal years ending Sept. 30, 1977, and 1978.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3015. Federal Council on the Aging

(a) Establishment; membership; term; representation of interests; qualification

There is established a Federal Council on the Aging to be composed of fifteen members appointed by the President with the advice and consent of the Senate for terms of three years without regard to the provisions of title 5. Members shall be appointed so as to be representative of rural and urban older Americans, national organizations with an interest in aging, business, labor, and the general public. At least five of the members shall themselves be older individuals. No full-time officer or employee of the Federal Government may be appointed as a member of the Council.

[*See main edition for text of* (b)]

(c) Chairman; meetings

The President shall designate the Chairman from among the members appointed to the Council. The Council shall meet at the call of the Chairman but not less often than four times a year.

(d) Duties of Federal Council on the Aging

The Council shall—

(1) advise and assist the President on matters relating to the special needs of older Americans;

(2) assist the Commissioner in making the appraisal of needs required by section 3032 of this title;

(3) review and evaluate, on a continuing basis, Federal policies regarding the aging and programs and other activities affecting the aging conducted or assisted by all Federal departments and agencies for the purpose of appraising their value and their impact on the lives of older Americans;

[*See main edition for text of* (4) *to* (6)]

(e) Staff, information, and other assistance

The Council shall have staff personnel, appointed by the Chairman, to assist it in carrying out its activities. The head of each Federal department and agency shall make available to the Council such information and other assistance as it may require to carry out its activities.

[*See main edition for text of* (*f*)]

(g) Study and evaluation of programs for older Americans

(1) The Council shall undertake a thorough evaluation and study of programs conducted under this chapter.

(2) The study required in this subsection shall include—

(A) an examination of the fundamental purposes of such programs, and the effectiveness of such programs in attaining such purposes;

(B) an analysis of the means to identify accurately the elderly population in greatest need of such programs; and

(C) an analysis of numbers and incidence of low-income and minority participants in such programs.

(3) The study required under this subsection may include—

(A) an exploration of alternative methods for allocating funds under such programs to States, State agencies on aging, and area agencies on aging in an equitable and efficient manner, which will accurately reflect current conditions and insure that such funds reach the areas of greatest current need and are effectively used for such areas;

(B) an analysis of the need for area agencies on aging to provide direct services within the planning and service area; and

(C) an analysis of the number of nonelderly handicapped in need of home delivered meal services.

(h) Authorization of appropriations

There are authorized to be appropriated to carry out the provisions of this section, for fiscal years 1979, 1980, and 1981, such sums as may be necessary.

(i) Repealed. Pub. L. 95-478, title I, § 102(e)(4)(B), Oct. 18, 1978, 92 Stat. 1515

(As amended Pub. L. 95-478, title I, § 102(e), title V, § 503(b)(3), (4)(A), Oct. 18, 1978, 92 Stat. 1514, 1559.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-478, §§ 102(e)(1), 503(b)(4)(A), substituted "rural and urban older Americans" for "older Americans", barred any full-time officer or employee of the Federal Government from being appointed a member of the Council, and substituted "older individuals" for "older persons".

Subsec. (c). Pub. L. 95-478, § 102(e)(2), struck out requirement that the Secretary and the Commissioner on Aging be ex officio members of the Council.

Subsec. (d)(3). Pub. L. 95-478, § 503(b)(3), struck out "and" at end of text.

Subsec. (e). Pub. L. 95-478, § 102(e)(3), substituted: provision for appointment by the Chairman of staff personnel for the Council for prior requirement that the Secretary and the Commissioner make staff available to the Council; and requirement that heads of Federal departments and agencies make information and other assistance available to the Council for prior provision for such availability from the Secretary and the Commissioner.

Subsec. (g). Pub. L. 95-478, § 102(e)(4)(A), added subsec. (g) and struck out former subsec. (g), which had provided that the Council undertake a study of the interrelationships of benefit programs for the elderly operated by Federal, State, and local government agencies and following completion of this study, but no later than Jan. 1, 1976, the President submit to Congress recommendations designed to bring greater uniformity of eligibility standards and to eliminate the negative impact that one program's standards may have on another.

Subsec. (h). Pub. L. 95-478, § 102(e)(4)(B), added subsec. (h) and struck out former subsec. (h), which had provided that the Council undertake a study of the combined impact of all taxes on the elderly and upon completion of the study, but no later than Jan. 1, 1976, the President submit to Congress, and to the Governor and legislatures of the States, the result of this study and any recommendations he deemed necessary.

Subsec. (i). Pub. L. 95-478, § 102(e)(4)(B), struck out subsec. (i), which had provided that the Council undertake a study or studies concerning the effects of the formulae specified in section 3023 of this title for allotment among the States of sums appropriated for area planning and social service programs authorized under subchapter III of this chapter and upon completion of this study, but no later than Jan. 1, 1975, to report the results, together with recommendations for change in the formulae, to the Commissioner, the Secretary of Health, Education, and Welfare, the Committee on Labor and Public Welfare of the Senate, and the Committee on Education and Labor of the House of Representatives.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3016. Authority of Commissioner

(a) Consultative services and technical assistance; short-term training and technical instruction; research and demonstrations; preparation and dissemination of informational materials; staff and technical assistance to Federal Council on Aging

In carrying out the purposes of this chapter, the Commissioner is authorized to:

(1) provide consultative services and technical assistance to public or nonprofit private agencies and organizations;

(2) provide short-term training and technical instruction;

(3) conduct research and demonstrations;

(4) collect, prepare, publish, and disseminate special educational or informational materials, including reports of the projects for which funds are provided under this chapter; and

(5) provide staff and other technical assistance to the Federal Council on the Aging.

(b) Report on legal services programs

The Commissioner shall prepare and submit to the Congress not later than September 30, 1980 a report on the effectiveness of programs conducted under part B of subchapter III of this chapter relating to legal services and an analysis of the need for a separate program of legal services under this chapter and of factors which may prohibit the funding of legal services under this chapter without such a separate program, together with such recommendations, including recommendations for additional legislation, as the Commissioner deems appropriate.

(c) Utilization of services and facilities of Federal and other public or nonprofit agencies; advance or reimbursement payments for such use

In administering his functions under this chapter, the Commissioner may utilize the services and facilities of any agency of the Federal Government and of any other public or nonprofit agency or organization, in accordance with agreements between the Commissioner and the head thereof, and is authorized to pay therefor, in advance or by way of reimbursement, as may be provided in the agreement.

(d) Authorization of appropriations

For the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(As amended Pub. L. 95-478, title I, § 102(f), Oct. 18, 1978, 92 Stat. 1515.)

Prior Provisions

Provisions similar to those comprising subsecs. (a) and (c) of this section were contained in Pub. L. 89-73, title VIII, § 802, formerly title VI, § 602, July 14, 1965, 79 Stat. 226; Pub. L. 90-42, § 5(e), (f), July 1, 1967, 81 Stat. 107, 108; renumbered title VII, § 702, Pub. L. 91-69, § 9, Sept. 17, 1969, 83 Stat. 111; renumbered title VIII, § 802, Pub. L. 92-258, § 1, Mar. 22, 1972, 86 Stat. 88, classified to section 3052 of this title, prior to repeal of such section by Pub. L. 93-29, title II, § 202, May 3, 1973, 87 Stat. 36.

Amendments

1978—Subsecs. (b) to (d). Pub. L. 95-478 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d).

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3017. Evaluation of programs

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Opinions of program and project participants; comparison of effectiveness of related programs

In carrying out evaluations under this section, the Secretary shall, whenever possible, arrange to obtain the opinions of program and project participants about the strengths and weaknesses of the programs and projects, and conduct, where appropriate, evaluations which compare the effectiveness of related programs in achieving common objectives.

(d) Annual summaries and analyses of evaluation; transmittal of contents; accessibility to Congress and public

The Secretary shall annually publish summaries and analyses of the results of evaluative research and evaluation of program and project impact and effectiveness, the full contents of which shall be transmitted to Congress and be accessible to the public.

[*See main edition for text of* (*e*) *to* (*g*)]

(As amended Pub. L. 95-478, title I, § 102(g), Oct. 18, 1978, 92 Stat. 1515.)

Amendments

1978—Subsec. (c). Pub. L. 95-478, § 102(g)(1), required the Secretary to conduct, where appropriate, evaluations which compare the effectiveness of related programs in achieving common objectives.

Subsec. (d). Pub. L. 95-478, § 102(g)(2), required publication of analyses of evaluations and substituted "full contents of which shall be transmitted to Congress and be accessible to the public" for "full contents of which shall be available to Congress and the public".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3018. Annual report to Congress

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3017 of this title.

§ 3020a. Application of other laws; costs of projects under this chapter not treated as income or benefits under other laws

(a) The provisions and requirements of chapter 52A of this title and section 1469a of title 48 shall not apply to the administration of the provisions of this chapter or to the administration of any program or activity under this chapter.

(b) No part of the costs of any project under any subchapter of this chapter may be treated as income or benefits to any eligible individual (other than any wage or salary to such individual) for the purpose of any other program or provision of Federal or State law.

(As amended Pub. L. 95-478, title I, § 102(h), Oct. 18, 1978, 92 Stat. 1515.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-478, § 102(h)(1), (2), designated existing provisions as subsec. (a) and provided for nonapplication of provisions relating to Congressional declaration of policy respecting "Insular Areas".

Subsec. (b). Pub. L. 95-478, § 102(h)(1), added subsec. (b).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3020b. Reduction of paperwork

In order to reduce unnecessary, duplicative, or disruptive demands for information, the Commissioner, in consultation with State agencies designated under section 3025(a)(1) of this title, and other appropriate agencies and organizations, shall continually review and evaluate all requests by the Administration on Aging for information under this chapter and take such action as may be necessary to reduce the paperwork required under this chapter. The Commissioner shall request only such information as the Commissioner deems essential to carry out the purposes and provisions of this chapter.

(Pub. L. 89-73, title II, § 212, as added Pub. L. 95-478, title I, § 102(i), Oct. 18, 1978, 92 Stat. 1516.)

EFFECTIVE DATE

Section effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3020c. Contracting and grant authority

None of the provisions of this chapter shall be construed to prevent a recipient of a grant or a contract from entering into an agreement, subject to the approval of the State agency, with a profitmaking organization, where such organization demonstrates clear superiority with respect to the quality of services covered by such contract to carry out the provisions of this chapter and of the appropriate State plan.

(Pub. L. 89-73, title II, § 213, as added Pub. L. 95-478, title I, § 102(i), Oct. 18, 1978, 92 Stat. 1516.)

EFFECTIVE DATE

Section effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3020d. Surplus property eligibility

Any State or local government agency, and any nonprofit organization or institution, which receives funds appropriated for programs for older individuals under this chapter, under title IV or title XX of the Social Security Act [42 U.S.C. 601 et seq., 1397 et seq.], or under the Economic Opportunity Act of 1964 [42 U.S.C. 2701 et seq.], shall be deemed eligible to receive for such programs, property which is declared surplus to the needs of the Federal Government in accordance with laws applicable to surplus property.

(Pub. L. 89-73, title II, § 214, as added Pub. L. 95-478, title I, § 102(i), Oct. 18, 1978, 92 Stat. 1516.)

REFERENCES IN TEXT

The Social Security Act, referred to in text, is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles IV and XX of the Social Security Act are classified generally to subchapters IV (§ 601 et seq.) and XX (§ 1397 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The Economic Opportunity Act of 1964, referred to in text, is Pub. L. 88-452, Aug. 20, 1964, 78 Stat. 508, as amended, which is classified generally to chapter 34 (§ 2701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of this title and Tables.

EFFECTIVE DATE

Section effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

SUBCHAPTER III—GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1438, 2809, 3015, 3037a, 3057, 3057a, 3057c, 3057g of this title; title 12 section 1701q.

PART A—GENERAL PROVISIONS [NEW]

§ 3021. Purpose; administration; assistance and cooperation of federal agencies and departments

(a) It is the purpose of this subchapter to encourage and assist State and local agencies to concentrate resources in order to develop greater capacity and foster the development of comprehensive and coordinated service systems to serve older individuals by entering into new cooperative arrangements in each State with State and local agencies, and with the providers of social services, including nutrition services and multipurpose senior centers, for the planning for the provision of, and for the provision of, social services, nutrition services, and multipurpose senior centers, in order to—

(1) secure and maintain maximum independence and dignity in a home environment for older individuals capable of self care with appropriate supportive services;

(2) remove individual and social barriers to economic and personal independence for older individuals; and

(3) provide a continuum of care for the vulnerable elderly.

(b)(1) In order to effectively carry out the purpose of this subchapter, the Commissioner shall administer programs under this subchapter through the Administration on Aging.

(2) In carrying out the provisions of this subchapter, the Commissioner may request the technical assistance and cooperation of the Department of Labor, the Community Services Administration, the Department of Housing and Urban Development, the Department of Transportation, and such other agencies and departments of the Federal Government as may be appropriate.

(Pub. L. 89-73, title III, § 301, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1516.)

PRIOR PROVISIONS

A prior section 3021, Pub. L. 89-73, title III, § 301, as added Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 36, which related to the purpose of this subchapter, was omitted in the general revision and reorganization of this subchapter by Pub. L. 95-478.

Another prior section 3021, Pub. L. 89-73, title III, § 301, July 14, 1965, 79 Stat. 220; Pub. L. 90-42, § 2(a), July 1, 1967, 81 Stat. 106; Pub. L. 91-69, § 2(a), Sept. 17, 1969, 83 Stat. 108, which related to a description of activities and authorized appropriations for fiscal years ending June 30, 1966, through 1972, was repealed by Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 36.

EFFECTIVE DATE

Part effective on the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

COORDINATION AND CONSOLIDATION OF SERVICES UNDER CHAPTER

Section 103(a) of Pub. L. 95-478 provided that:

"(a)(1) The Congress finds that—

"(A) approximately 3 percent of the eligible population is presently served under community services programs authorized under the Older Americans Act of 1965 [this chapter], 17 percent of whom are minority group members;

"(B) approximately 1 percent of the eligible population is presently served by the nutrition program authorized under the Older Americans Act of 1965 [this chapter], 21 percent of whom are minority group members;

"(C) there is program fragmentation at the national, State, and local levels which inhibits effective use of existing resources; and

"(D) coordination and consolidation of services provided under the Older Americans Act of 1965 [this chapter] allowing greater local determination to assess the need for services will facilitate achieving the goals of the Older Americans Act of 1965.

"(2) It is the purpose of the amendments made by subsection (b) [amending sections 3021 to 3029 of this title and enacting sections 3030 to 3030g of this title] to combine within a consolidated title, subject to the modifications imposed by the provisions and requirements of the amendments made by subsection (b), the programs authorized by title III, title V, and title VII of the Older Americans Act of 1965 [former subchapters III, V, and VII of this chapter, respectively, as in effect prior to their revision by Pub. L. 95-478] in the fiscal year 1978, and funds appropriated to carry out such consolidated title shall be used solely for the purposes and for the assistance of the same types of programs authorized under the provisions of such titles."

§ 3022. Definitions

For the purpose of this subchapter—

(1) The term "comprehensive and coordinated system" means a system for providing all necessary social services, including nutrition services, in a manner designed to—

(A) facilitate accessibility to, and utilization of, all social services and nutrition services provided within the geographic area served by such system by any public or private agency or organization;

(B) develop and make the most efficient use of social services and nutrition services in meeting the needs of older individuals; and

(C) use available resources efficiently and with a minimum of duplication.

(2) The term "information and referral source" means location where the State or any public or private agency or organization—

(A) maintains current information with respect to the opportunities and services available to older individuals, and develops current lists of older individuals in need of services and opportunities; and

(B) employs a specially trained staff to inform older individuals of the opportunities and services which are available, and to assist such individuals to take advantage of such opportunities and services.

(3) The term "long-term care facility" means any skilled nursing facility, as defined in section 1395x(j) of this title, any intermediate care facility, as defined in section 1396d(c) of this title, any nursing home, as defined in section 1369(e) of this title, and any other similar adult care home.

(4) The term "legal services" means legal advice and representation by an attorney (including, to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney), and includes counseling or representation by a nonlawyer where permitted by law,

to older individuals with economic or social needs.

(5) The term "planning and service area" means an area specified by a State agency under section 3025(a)(1)(E) of this title.

(6) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands and the Northern Mariana Islands.

(7) The term "State agency" means the State agency designated by a State under section 3025(a)(1) of this title.

(8) The term "unit of general purpose local government" means—

(A) a political subdivision of the State whose authority is general and not limited to only one function or combination of related functions; or

(B) an Indian tribal organization.

(Pub. L. 89-73, title III, § 302, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1517.)

PRIOR PROVISIONS

A prior section 3022, Pub. L. 89-73, title III, § 302, as added Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 36, Pub. L. 94-135, title I, § 103, Nov. 28, 1975, 89 Stat. 713, which related to definitions, was omitted in the general revision and reorganization of this subchapter by Pub. L. 95-478.

Another prior section 3022, Pub. L. 89-73, title III, § 302, July 14, 1965, 79 Stat. 221; Pub. L. 90-42, §§ 2(b), 5(g), July 1, 1967, 81 Stat. 107, 108; Pub. L. 91-69, §§ 3(a), 4(d), 6, 10(b), Sept. 17, 1969, 83 Stat. 108, 110, 114, which related to allotments to States, providing in subsec. (a) amount of allotments, subsec. (b) reallotments, and subsec. (c) availability for grant percentage payments, and duration of project support, was repealed by Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 36.

§ 3023. Authorization of appropriations; uses of funds

(a) There are authorized to be appropriated $300,000,000 for fiscal year 1979, $360,000,000 for fiscal year 1980, and $480,000,000 for fiscal year 1981 for the purpose of making grants under part B of this subchapter (relating to social services).

(b)(1) There are authorized to be appropriated $350,000,000 for fiscal year 1979, $375,000,000 for fiscal year 1980, and $400,000,000 for fiscal year 1981 for the purpose of making grants under subpart 1 of part C of this subchapter (relating to congregate nutrition services).

(2) There are authorized to be appropriated $80,000,000 for fiscal year 1979, $100,000,000 for fiscal year 1980, and $120,000,000 for fiscal year 1981 for the purpose of making grants under subpart 2 of part C of this subchapter (relating to home delivered nutrition services).

(c) Grants made under parts B and C of this subchapter may be used for paying part of the cost of—

(1) the administration of area plans by area agencies on aging designated under section 3025(a)(2)(A) of this title, including the preparation of area plans on aging consistent with section 3026 of this title and the evaluation of activities carried out under such plans; and

(2) the development of comprehensive and coordinated systems for social services, congregate and home delivered nutrition services, the development and operation of multipurpose senior centers, and the delivery of legal services.

(Pub. L. 89-73, title III, § 303, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1518.)

PRIOR PROVISIONS

A prior section 3023, Pub. L. 89-73, title III, § 303, as added Pub. L. 93-29, title III, § 301 May 3, 1973, 87 Stat. 37; Pub. L. 94-135, title I, §§ 104(a), (c), (d), 112(b), 114(d), Nov. 28, 1975, 89 Stat. 714, 715, 719, 725, which related to area planning and social service programs, was omitted in the general revision and reorganization of this subchapter by Pub. L. 95-478.

Another prior section 3023, Pub. L. 89-73, title III, § 303, July 14, 1965, 79 Stat. 222; Pub. L. 91-69, §§ 3(b), 4(a), Sept. 17, 1969, 83 Stat. 108, which related to state plans, providing in subsec. (a) for approval by Secretary, contents, notice and hearing prior to disapproval; subsec. (b) noncompliance and cancellation of payments; and subsec. (c) appeals, petitions, record, jurisdiction of courts of appeals, conclusiveness of findings, review by Supreme Court, and stay of administrative action, was repealed by Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 36.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3015, 3024, 3028, 4728 of this title.

§ 3024. Allotment to states

(a) Formula for computation of amount

(1) From the sums appropriated under parts B and C for fiscal years 1979, 1980, and 1981, each State shall be allotted an amount which bears the same ratio to such sums as the population aged 60 or older in such State bears to the population aged 60 or older in all States, except that (A) no State shall be allotted less than one-half of 1 percent of the sum appropriated for the fiscal year for which the determination is made; (B) Guam, the Virgin Islands, and the Trust Territory of the Pacific Islands, shall each be allotted not less than one-fourth of 1 percent of the sum appropriated for the fiscal year for which the determination is made; (C) American Samoa and the Northern Mariana Islands shall each be allotted not less than one-sixteenth of 1 percent of the sum appropriated for the fiscal year for which the determination is made; and (D) no State shall be allotted an amount less than the State received for fiscal year 1978. For the purpose of the exception contained in clause (A) only, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(2) The number of individuals aged 60 or older in any State and in all States shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

(b) Unused funds

Whenever the Commissioner determines that any amount allotted to a State under part B or C for a fiscal year under this section will not be used by such State for carrying out the purpose for which the allotment was made, he shall make such allotment available for carrying out such purpose to one or more other States to the extent he determines that such other States will be able to use such additional amount for carrying out such purpose. Any amount made available to a State from an appropriation for a fiscal year in accordance with the preceding sentence shall, for purposes of this subchapter, be regarded as part of such State's allotment (as determined under subsection (a) of this section) for such year, but shall remain available until the end of the succeeding fiscal year.

(c) Withholding of funds; disbursement

If the Commissioner finds that any State has failed to qualify under the State plan requirements of section 3027 of this title, the Commissioner shall withhold the allotment of funds to such State referred to in subsection (a) of this section. The Commissioner shall disburse the funds so withheld directly to any public or private nonprofit institution or organization, agency, or political subdivision of such State submitting an approved plan under section 3027 of this title, which includes an agreement that any such payment shall be matched in the proportion determined under subsection (d)(1)(B) of this section for such State, by funds for in-kind resources from non-Federal sources.

(d) Costs of administration, social services and nutrition services; payment and determination of non-federal share

(1) From any State's allotment under this section for any fiscal year—

(A) such amount as the State agency determines, but not more than 8.5 percent thereof, shall be available for paying such percentage as the agency determines, but not more than 75 percent, of the cost of administration of area plans; and

(B) the remainder of such allotment shall be available to such State only for paying such percentage as the State agency determines, but not more than 90 percent in fiscal years 1979 and 1980, and 85 percent in fiscal year 1981, of the cost of social services and nutrition services authorized under parts B and C provided in the State as part of a comprehensive and coordinated system in planning and service areas for which there is an area plan approved by the State agency.

(2) The non-Federal share shall be in cash or in kind. In determining the amount of the non-Federal share, the Commissioner may attribute fair market value to services and facilities contributed from non-Federal sources.

(Pub. L. 89-73, title III, § 304, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1519.)

PRIOR PROVISIONS

A prior section 3024, Pub. L. 89-73, title III, § 304, as added Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 38; Pub. L. 94-135, title I, §§ 105, 106(c), Nov. 28, 1975, 89 Stat. 715, 716, which related to the designation of state and area agencies, area plan provisions, and transportation services and funds, was omitted in the general revision and reorganization of this subchapter by Pub. L. 95-478. See sections 3025 and 3026 of this title.

Another prior section 3024, Pub. L. 89-73, title III, § 304, July 14, 1965, 79 Stat. 223; Pub. L. 90-42, § 3, July 1, 1967, 81 Stat. 107; Pub. L. 91-69, § 4(b), Sept. 17, 1969, 83 Stat. 108, which related to planning, coordination, and evaluation and administration of State plans, providing in: subsec. (a) authorization of appropriations, amount of payment, and availability of unexpended funds; subsec. (b) amount of allotment, determination of additional amount, adjustments, minimum amount, and availability of unexpended amount; subsec. (c) reallotment to other States; and subsec. (d) minimum State expenditure of funds, was repealed by Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 36.

Provisions similar to those comprising this section were contained in Pub. L. 89-73, title III, § 303, as added Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 37; Pub. L. 94-135, title I, §§ 104(a), (c), (d), 112(b), 114(d), Nov. 28, 1975, 89 Stat. 714, 715, 719, 725, which was classified to section 3023 of this title prior to repeal of such section by Pub. L. 95-478.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3014, 3023, 3027, 3028, 3029, 3033, 3034, 3057c, of this title.

§ 3025. Designation of state agencies

(a) Duties of designated agency

In order for a State to be eligible to participate in programs of grants to States from allotments under this subchapter—

(1) the State shall, in accordance with regulations of the Commissioner, designate a State agency as the sole State agency to—

(A) develop a State plan to be submitted to the Commissioner for approval under section 3027 of this title;

(B) administer the State plan within such State;

(C) be primarily responsible for the coordination of all State activities related to the purposes of this chapter;

(D) serve as an effective and visible advocate for the elderly by reviewing and commenting upon all State plans, budgets, and policies which affect the elderly and providing technical assistance to any agency, organization, association, or individual representing the needs of the elderly; and

(E) divide the State into distinct areas, in accordance with guidelines issued by the Commissioner, after considering the geographical distribution of individuals aged 60 and older in the State, the incidence of the need for social services, nutrition services, multipurpose senior centers, and legal services, the distribution of older individuals who have low incomes residing in such areas, the distribution of resources available to provide such services or centers, the boundaries of existing areas within the State which were drawn for the planning or administration of social services programs, the location of units of general purpose local government within the State, and any other relevant factors; and

(2) the State agency designated under clause (1) shall—

(A) determine for which planning and service area an area plan will be developed, in accordance with section 3026 of this title, and for each such area designate, after consideration of the views offered by the unit or units of general purpose local government in such area, a public or private nonprofit agency or organization as the area agency on aging for such area;

(B) provide assurances, satisfactory to the Commissioner, that the State agency will take into account, in connection with matters of general policy arising in the development and administration of the State plan for any fiscal year, the views of recipients of social services or nutrition services, or individuals using multipurpose senior centers provided under such plan;

(C) develop a formula, in accordance with guidelines issued by the Commissioner, for the distribution within the State of funds received under this subchapter, taking into account, to the maximum extent feasible, the best available statistics on the geographical distribution of individuals aged 60 and older in the State, and publish such formula for review and comment;

(D) submit its formula developed under subclause (C) to the Commissioner for review and comment; and

(E) provide assurances that preference will be given to providing services to older individuals with the greatest economic or social needs and include proposed methods of carrying out the preference in the State plan.

(b) Planning and service area designated; Indian reservations; redesignation; adjustment of state allotment; review by Commissioner

(1) In carrying out the requirement of clause (1) of subsection (a) of this section, the State may designate as a planning and service area any unit of general purpose local government which has a population of 100,000 or more. In any case in which a unit of general purpose local government makes application to the State agency under the preceding sentence to be designated as a planning and service area, the State agency shall, upon request, provide an opportunity for a hearing to such unit of general purpose local government. A State may designate as a planning and service area under clause (1) of subsection (a) of this section, any region within the State recognized for purposes of areawide planning which includes one or more such units of general purpose local government when the State determines that the designation of such a regional planning and service area is necessary for, and will enhance, the effective administration of the programs authorized by this subchapter. The State may include in any planning and service area designated under clause (1) of subsection (a) of this section such additional areas adjacent to the unit of general purpose local government or regions so designated as the State determines to be necessary for, and will enhance the effective administration of the programs authorized by this subchapter.

(2) The State is encouraged in carrying out the requirement of clause (1) of subsection (a) of this section to include the area covered by the appropriate economic development district involved in any planning and service area designated under such clause, and to include all portions of an Indian reservation within a single planning and service area, if feasible.

(3) The chief executive officer of each State in which a planning and service area crosses State boundaries, or in which an interstate Indian reservation is located, may apply to the Commissioner to request redesignation as an interstate planning and service area comprising the entire metropolitan area or Indian reservation. If the Commissioner approves such an application, he shall adjust the State allotments of the areas within the planning and service area in which the interstate planning and service area is established to reflect the number of older individuals within the area who will be served by an interstate planning and service area not within the State.

(4) Whenever a unit of general purpose local government, a region, a metropolitan area or an Indian reservation is denied designation under the provisions of clause (1) of subsection (a) of this section, such unit of general purpose local government, region, metropolitan area, or Indian reservation may appeal the decision of the State agency to the Commissioner. The Commissioner shall afford such unit, region, metropolitan area, or Indian reservation an opportunity for a hearing. In carrying out the provisions of this paragraph, the Commissioner may approve the decision of the State agency, disapprove the decision of the State agency and require the State agency to designate the unit, region, area, or Indian reservation appealing the decision as a planning and service area, or take such other action as the Commissioner deems appropriate.

(c) Eligible State area agencies; development of area; preferred area agency designees

An area agency on aging designated under subsection (a) of this section shall be—

(1) an established office of aging which is operating within a planning and service area designated under subsection (a) of this section;

(2) any office or agency of a unit of general purpose local government, which is designated for the purpose of serving as an area agency by the chief elected official of such unit;

(3) any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act on behalf of such combination for such purpose; or

(4) any public or nonprofit private agency in a planning and service area which is under the supervision or direction for this purpose of the designated State agency and which can engage in the planning or provision of a broad range of social services, or nutrition services within such planning and service area;

and shall provide assurance, determined adequate by the State agency, that the area agency will have the ability to develop an area plan and to carry out, directly or through contractual or other arrangements, a program in accordance with the plan within the planning and service area. In designating an area agency on aging within the planning and service area or within any unit of general purpose local government designated as a planning and service area the State shall give preference to an established office on aging, unless the State agency finds that no such office within the planning and service area will have the capacity to carry out the area plan.

(Pub. L. 89–73, title III, § 305, as added Pub. L. 95–478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1520.)

PRIOR PROVISIONS

A prior section 3025, Pub. L. 89–73, title III, § 305, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 41; Pub. L. 94–135, title I, §§ 106(a), (b), 114(e), Nov. 28, 1975, 89 Stat. 715, 725, which related to State plans, was omitted in the general revision and reorganization of this subchapter by Pub. L. 95–478. See section 3027 of this title.

Another prior section 3025, Pub. L. 89–73, title III, § 306, formerly § 305, July 14, 1965, 79 Stat. 224, renumbered Pub. L. 91–69, § 5, Sept. 17, 1969, 83 Stat. 110, which related to payments of grants for State and community programs on aging, adjustments, advances or reimbursement, and installments, was repealed by Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 36.

Provisions similar to those comprising this section were contained in Pub. L. 89–73, title III, § 304, as added Pub. L. 93–29, title III, § 301, May 3, 1973, 87 Stat. 38; Pub. L. 94–135, title I, §§ 105, 106(c), Nov. 28, 1975, 89 Stat. 715, 716 which was classified to section 3024 of this title prior to repeal of such section by Pub. L. 95–478.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3014, 3020b, 3022, 3023, 3026, 3027, 3028, 3035c, 3035d, 3056a, 5001, 5012 of this title.

§ 3026. Area plans

(a) Preparation and development by area agency; requirements

Each area agency on aging designated under section 3025(a)(2)(A) of this title shall, in order to be approved by the State agency, prepare and develop an area plan for a planning and service area for a 3-year period with such annual adjustments as may be necessary. Each such plan shall be based upon a uniform format for area plans within the State prepared in accordance with section 3027(a)(1) of this title. Each such plan shall—

(1) provide, through a comprehensive and coordinated system, for social services, nutrition services, and, where appropriate, for the establishment, maintenance, or construction of multipurpose senior centers, within the planning and service area covered by the plan, including determining the extent of need for social services, nutrition services, and multipurpose senior centers in such area (taking into consideration, among other things, the number of older individuals with low incomes residing in such area), evaluating the effectiveness of the use of resources in meeting such need, and entering into agreements with providers of social services, nutrition services, or multipurpose senior centers in such area, for the provision of such services or centers to meet such need;

(2) provide assurances that at least 50 percent of the amount allotted for part B to the planning and service area will be expended for the delivery of—

(A) services associated with access to services (transportation, outreach, and information and referral);

(B) in-home services (homemaker and home health aide, visiting and telephone reassurance, and chore maintenance); and

(C) legal services;

and that some funds will be expended for each such category of services;

(3) designate, where feasible, a focal point for comprehensive service delivery in each community to encourage the maximum collocation and coordination of services for older individuals, and give special consideration to designating multipurpose senior centers as such focal point;

(4) provide for the establishment and maintenance of information and referral services in sufficient numbers to assure that all older individuals within the planning and service area covered by the plan will have reasonably convenient access to such services;

(5)(A) provide assurances that preference will be given to providing services to older individuals with the greatest economic or social needs and include proposed methods of carrying out the preference in the area plan; and

(B) assure the use of outreach efforts that will identify individuals eligible for assistance under this chapter, with special emphasis on rural elderly, and inform such individuals of the availability of such assistance;

(6) provide that the area agency on aging will—

(A) conduct periodic evaluations of activities carried out under the area plan;

(B) furnish appropriate technical assistance to providers of social services, nutrition services, or multipurpose senior centers in the planning and service area covered by the area plan;

(C) take into account in connection with matters of general policy arising in the development and administration of the area plan, the views of recipients of services under such plan;

(D) serve as the advocate and focal point for the elderly within the community by monitoring, evaluating, and commenting upon all policies, programs, hearings, levies, and community actions which will affect the elderly;

(E) where possible, enter into arrangements with organizations providing day care services for children so as to provide opportunities for older individuals to aid or assist on a voluntary basis in the delivery of such services to children;

(F) where possible, enter into arrangements with local educational agencies, institutions of higher education, and nonprofit private organizations, to use services provided for older individuals under the community schools program under the Elementary and Secondary Education Act of 1965 [20 U.S.C. 2701 et seq.];

(G) establish an advisory council consisting of older individuals who are participants or who are eligible to participate in programs assisted under this chapter, representatives of older individuals, local elected officials, and the general public, to advise continuously the area agency on all matters relating to the development of the area plan, the administration of the plan and operations conducted under the plan;

(H) develop and publish methods by which priority of services is determined, particularly with respect to the delivery of services under clause (2); and

(I) establish effective and efficient procedures for coordination between the programs assisted under this subchapter and programs described in section 3013(b) of this title.

(b) Waiver of requirements

(1) Each State, in approving area agency plans under this section, may, for fiscal years 1979 and 1980, waive any particular requirement relating to the delivery of services or the establishment or operation of multipurpose senior centers which such agency cannot meet because of the consolidation authorized by the Comprehensive Older Americans Act Amendments of 1978, except that the State agency may grant such a waiver only if the area agency demonstrates to the State agency that it is taking steps to meet the requirements of this subchapter, but in any event the State agency may not grant a waiver for any requirement of this chapter in effect on September 30, 1978.

(2) Each State, in approving area agency plans under this section, may waive the requirement described in clause (2) of subsection (a) of this section for any category of services described in such clause if the area agency on aging demonstrates to the State agency that services being furnished for such category in the area are sufficient to meet the need for such services in such area. If the State agency grants a waiver under the preceding sentence with respect to any category, then the area agency shall expend under clause (2) of subsection (a) of this section a percentage of the amount allotted for part B to the planning and service area, for the categories with respect to which such waiver does not apply, that is agreed upon by the State agency and the area agency.

(c) Transportation services; funds

(1) Subject to regulations prescribed by the Commissioner, an area agency on aging designated under section 3025(a)(2)(A) of this title or, in areas of a State where no such agency has been designated, the State agency, may enter into agreements with agencies administering programs under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], and titles XIX and XX of the Social Security Act [42 U.S.C. 1396 et seq., 1397 et seq.] for the purpose of developing and implementing plans for meeting the common need for transportation services of individuals receiving benefits under such Acts and older individuals participating in programs authorized by this subchapter.

(2) In accordance with an agreement entered into under paragraph (1), funds appropriated under this subchapter may be used to purchase transportation services for older individuals and may be pooled with funds made available for the provision of transportation services under the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], and titles XIX and XX of the Social Security Act [42 U.S.C. 1396 et seq., 1397 et seq.].

(Pub. L. 89-72, title III, § 306, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1522.)

References in Text

The Elementary and Secondary Education Act of 1965, referred to in subsec. (a)(6)(F), is Pub. L. 89-10, Apr. 11, 1965, 79 Stat. 27, as amended generally by Pub. L. 95-561, Nov. 1, 1978, 92 Stat. 2152, which is classified generally to chapter 47 (§ 2701 et seq.) of Title 20, Education. For complete classification of this Act to the Code, see Short Title note set out under section 2701 of Title 20 and Tables.

The Comprehensive Older Americans Act Amendments of 1978, referred to in subsec. (b)(1), is Pub. L. 95-478, Oct. 18, 1978, 92 Stat. 1513. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 3001 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (c), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Social Security Act, referred to in subsec. (c), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XX of the Social Security Act are classified generally to subchapters XIX (§ 1396 et seq.) and XX (§ 1397 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

Prior Provisions

A prior section 3026, Pub. L. 89-73, title III, § 306, as added Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 43, and amended Pub. L. 94-135, title I, § 107, Nov. 28, 1975, 89 Stat. 716, which related to the planning, coordination, evaluation, and administration of State plans, was omitted in the general revision and reorganization of this subchapter by Pub. L. 95-478. See section 3028 of this title.

Provisions similar to those comprising this section were contained in Pub. L. 89-73, title III, § 304, as added Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 38, and amended Pub. L. 94-135, title I, §§ 105, 106(c), Nov. 28, 1975, 89 Stat. 715, 716, which was classified to section 3024 of this title prior to repeal of such section by Pub. L. 95-478.

Section Referred to in Other Sections

This section is referred to in sections 3023, 3025, 3027 of this title.

§ 3027. State plans

(a) Criteria for eligibility; contents

Except as provided in section 3029(a) of this title, each State, in order to be eligible for grants from its allotment under this subchapter for any fiscal year, shall submit to the Commissioner a State plan for a 3-year period, with such annual revisions as are necessary, which meets such criteria as the Commissioner may by regulation prescribe. Each such plan shall—

(1) contain assurances that the State plan will be based upon area plans developed by area agencies on aging within the State designated under section 3025(a)(2)(A) of this title and that the State will prepare and distribute a uniform format for use by area agencies in developing area plans under section 3026 of this title;

(2) provide that each area agency on aging designated under section 3025(a)(2)(A) of this title will develop and submit to the State agency for approval an area plan which complies with the provisions of section 3026 of this title;

(3)(A) provide that the State agency will evaluate the need for social services (including legal services), nutrition services, and multipurpose senior centers within the State and determine the extent to which existing public or private programs meet such need; and

(B) provide assurances that the State agency will spend in each fiscal year, for services to older individuals residing in rural areas in the State assisted under this subchapter, an amount equal to not less than 105 percent of the amount expended for such services (including amounts expended under subchapter V and subchapter VII of this chapter) in fiscal year 1978;

(4) provide for the use of such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Commissioner shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods) as are necessary for the proper and efficient administration of the plan, and, where necessary, provide for the reorganization and reassignment of functions to assure such efficient administration;

(5) provide that the State agency will afford an opportunity for a hearing upon request to any area agency on aging submitting a plan under this subchapter, to any provider of a service under such a plan, or to any applicant to provide a service under such a plan;

(6) provide that the State agency will make such reports, in such form, and containing such information, as the Commissioner may require, and comply with such requirements as the Commissioner may impose to insure the correctness of such reports;

(7) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this subchapter to the State, including any such funds paid to the recipients of a grant or contract;

(8) provide that the State agency will conduct periodic evaluations of activities and projects carried out under the State plan;

(9) provide for establishing and maintaining information and referral services in sufficient numbers to assure that all older individuals in the State who are not furnished adequate information and referral services under section 3026(a)(4) of this title will have reasonably convenient access to such services;

(10) provide that no social services, including nutrition services, will be directly provided by the State agency or an area agency on aging, except where, in the judgment of the State agency, provision of such services by the State agency or an area agency on aging is necessary to assure an adequate supply of such services;

(11) provide that subject to the requirements of merit employment systems of State and local governments, preference shall be given to individuals aged 60 or older for any staff positions (full time or part time) in State and area agencies for which such individuals qualify;

(12) provide assurances that the State agency will—

(A) establish and operate, either directly or by contract or other arrangement with any public agency or other appropriate private nonprofit organization which is not responsible for licensing or certifying long-term care services in the State or which is not an association (or an affiliate of such an association) of long-term care facilities (including any other residential facility for older individuals), a long-term care ombudsman program which will—

(i) investigate and resolve complaints made by or on behalf of older individuals who are residents of long-term care facilities relating to administrative action which may adversely affect the health, safety, welfare, and rights of such residents;

(ii) monitor the development and implementation of Federal, State, and local laws, regulations, and policies with respect to long-term care facilities in that State;

(iii) provide information as appropriate to public agencies regarding the problems of older individuals residing in long-term care facilities;

(iv) provide for training volunteers and promote the development of citizen organizations to participate in the ombudsman program; and

(v) carry out such other activities as the Commissioner deems appropriate;

(B) establish procedures for appropriate access by the ombudsman to long-term care facilities and patients' records, including procedures to protect the confidentiality of such records and ensure that the identity of any complainant or resident will not be disclosed without the written consent of such complainant or resident, or upon court order;

(C) establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of such data to the agency of the State responsible for licensing or certifying long-term care facilities in the State and to the Commissioner on a regular basis; and

(D) establish procedures to assure that any files maintained by the ombudsman program shall be disclosed only at the discretion of the ombudsman having authority over the disposition of such files, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed by such ombudsman unless—

(i) such complainant or resident, or his legal representative, consents in writing to such disclosure; or

(ii) such disclosure is required by court order;

(13) provide with respect to nutrition services that—

(A) each project providing nutrition services will be available to individuals aged 60 or older, and to their spouses;

(B) each project will provide meals in a congregate setting, except that each such project may provide home delivered meals based upon a determination of need made by the recipient of a grant or contract entered into under this subchapter;

(C)(i) each project will permit recipients of grants or contracts to charge participating individuals for meals furnished in accordance with guidelines established by the Commissioner, taking into consideration the income ranges of eligible individuals in local communities and other sources of income of the recipients of a grant or contract; and

(ii) such charges will be used to increase the number of meals served by the project involved;

(D) a site for such services and for comprehensive social services is furnished in as close proximity to the majority of eligible individuals' residences as feasible, with particular attention upon a multipurpose senior center, a school, a church, or other appropriate community facility, preferably within walking distance where possible, and where appropriate, transportation to such site is furnished or home delivered meals are furnished to eligible individuals who are homebound;

(E) each project will establish outreach activities which assure that the maximum number of eligible individuals may have an opportunity to participate;

(F) each project may establish and administer the nutrition project with the advice of persons competent in the field of service in which the nutrition project is being provided, older individuals who will participate in the program, and of persons who are knowledgeable with regard to the needs of older individuals;

(G) each project will provide special menus, where feasible and appropriate, to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of eligible individuals;

(H) each area agency will give consideration, where feasible, in the furnishing of home delivered meals to the use of organizations which (i) have demonstrated an ability to provide home delivered meals efficiently and reasonably; and (ii) furnish assurances to the area agency that such an organization will maintain efforts to solicit voluntary support and that funds made available under this subchapter to the organization will not be used to supplant funds from non-Federal sources; and

(I) each State agency may, only for fiscal years 1979 and 1980, use not to exceed 20 percent of the amounts allotted under part C to the State for supportive services, including recreational activities, informational services, health and welfare counseling, and referral services, directly related to the delivery of congregate or home delivered meals, except that the Commissioner may approve an application from a State to use not to exceed 50 percent of its amount allotted under part C in areas with unusually high supportive services costs;

(14) provide, with respect to the acquisition (in fee simple or by lease for 10 years or more), alteration, or renovation of existing facilities (or the construction of new facilities in any area in which there are no suitable structures available, as determined by the State agency, after full consideration of the recommendations made by area agencies, to be a focal point for the delivery of services assisted under this subchapter) to serve as multipurpose senior centers, that—

(A) the plan contains or is supported by reasonable assurances that (i) for not less than 10 years after acquisition, or not less than 20 years after the completion of construction, the facility will be used for the purpose for which it is to be acquired or constructed, unless for unusual circumstances the Commissioner waives the requirement of this division; (ii) sufficient funds will be available to meet the non-Federal share of the cost of acquisition or construction of the facility; (iii) sufficient funds will be available when acquisition or construction is completed, for effective use of the facility for the purpose for which it is being acquired or constructed; and (iv) the facility will not be used and is not intended to be used for sectarian instruction or as a place for religious worship;

(B) the plan contains or is supported by reasonable assurances that, in the case of purchase or construction, there are no existing facilities in the community suitable for leasing as a multipurpose senior center;

(C) the plans and specifications for the facility are in accordance with regulations relating to minimum standards of construction, promulgated with particular emphasis on securing compliance with the requirements of the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968 [42 U.S.C. 4151 et seq.];

(D) the plan contains or is supported by adequate assurance that any laborer or mechanic employed by any contractor or subcontractor in the performance of work on the facility will be paid wages at rates not less than those prevailing for similar work in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a-5; commonly known as the Davis-Bacon Act), and the Secretary of Labor shall have, with respect to the labor standards specified in this clause, the authority and functions set forth in reorganization plan numbered 14 of

1950 (15 F.R. 3176; 64 Stat. 1267), and section 276c of title 40; and

(E) the plan contains assurances that the State agency will consult with the Secretary of Housing and Urban Development with respect to the technical adequacy of any proposed alteration or renovation;

(15) provide that with respect to legal services—

(A) the plan contains assurances that area agencies on aging will (i) enter into contracts with providers of legal services which can demonstrate the experience or capacity to deliver legal services; (ii) include in any such contract provisions to assure that any recipient of funds under division (i) will be subject to specific restrictions and regulations promulgated under the Legal Services Corporation Act [42 U.S.C. 2996 et seq.] (other than restrictions and regulations governing eligibility for legal assistance under such Act and governing membership of local governing boards) as determined appropriate by the Commissioner; and (iii) attempt to involve the private bar in legal services activities authorized under this subchapter, including groups within the private bar furnishing services to older individuals on a pro bono and reduced fee basis;

(B) the plan contains assurances that no legal services will be furnished unless the grantee—

(i) is a recipient of funds under the Legal Services Corporation Act; or

(ii) administers a program designed to provide legal services to all older individuals with social or economic need and has agreed to coordinate its services with existing Legal Services Corporation projects in the area in order to concentrate the use of funds provided under this subchapter on individuals with the greatest such need but who are not eligible for legal assistance under the Legal Services Corporation Act;

and the area agency makes a finding after assessment, pursuant to standards for service promulgated by the Commissioner, that any grantee selected is the entity best able to provide the particular services;

(C) the State agency will provide for the coordination of the furnishing of legal services to older individuals within the State, and provide advice and technical assistance in the provision of legal services to older individuals within the State and support the furnishing of training and technical assistance for legal services for older individuals; and

(D) the plan contains assurances, to the extent practicable, that legal services furnished under the plan will be in addition to any legal services for older individuals being furnished with funds from sources other than this chapter and that reasonable efforts will be made to maintain existing levels of legal services for older individuals; and

(16) provide that the State agency, from funds allotted under section 3024(a) of this title for part B will use an amount equal to an amount not less than 1 percent of such allotment or $20,000, whichever is greater, for the purpose of carrying out the provisions of clause (12), except that (A) the requirement of this clause shall not apply in any fiscal year in which a State spends from State or local sources an amount equal to the amount required to be spent by this clause; and (B) the provisions of this clause shall not apply to American Samoa, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(b) Approval by Commissioner; waiver of requirements

(1) The Commissioner shall approve any State plan which he finds fulfills the requirements of subsection (a) of this section.

(2) The Commissioner, in approving any State plan under this section may, for the fiscal years 1979 and 1980, waive any particular requirement relating to the delivery of services or the establishment or operation of multipurpose senior centers which the State agency cannot meet because of the consolidation authorized by the Comprehensive Older Americans Act Amendments of 1978 or because meeting such requirement would reduce or jeopardize the quality of services under this chapter, except that the Commissioner may grant such a waiver only if the State agency demonstrates that it is taking steps to meet the requirements of this subchapter, but in any event the Commissioner may not grant a waiver for any requirement of this chapter in effect on September 30, 1978. The Commissioner may not disapprove any State plan under paragraph (1) solely on the ground that a State requested a waiver under the preceding sentence.

(3) The Commissioner, in approving any State plan under this section, may waive the requirement described in clause (3)(B) of subsection (a) of this section if the State agency demonstrates to the Commissioner that the service needs of older individuals residing in rural areas in the State are being met, or that the number of older individuals residing in such rural areas is not sufficient to require the State agency to comply with the requirement described in clause (3)(B) of subsection (a) of this section.

(c) Notice and hearing prior to disapproval

The Commissioner shall not make a final determination disapproving any State plan, or any modification thereof, or make a final determination that a State is ineligible under section 3025 of this title, without first affording the State reasonable notice and opportunity for a hearing.

(d) Discontinuance of payments; disbursement of withheld funds to agencies with approved plans; matching funds

Whenever the Commissioner, after reasonable notice and opportunity for a hearing to the State agency, finds that—

(1) the State is not eligible under section 3025 of this title,

(2) the State plan has been so changed that it no longer complies substantially with the provisions of subsection (a) of this section, or

(3) in the administration of the plan there is a failure to comply substantially with any such provision of subsection (a) of this section,

the Commissioner shall notify such State agency that no further payments from its allotments under section 3024 of this title and section 3028 of this title will be made to the State (or, in his discretion, that further payments to the State will be limited to projects under or portions of the State plan not affected by such failure), until he is satisfied that there will no longer be any failure to comply. Until he is so satisfied, no further payments shall be made to such State from its allotments under section 3024 of this title and section 3028 of this title (or payments shall be limited to projects under or portions of the State plan not affected by such failure). The Commissioner shall, in accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency or political subdivision of such State submitting an approved plan in accordance with the provisions of this section. Any such payment shall be matched in the proportions specified in section 3024 of this title.

(e) Appeal

(1) A State which is dissatisfied with a final action of the Commissioner under subsection (b), (c), or (d) of this section may appeal to the United States court of appeals for the circuit in which the State is located, by filing a petition with such court within 30 days after such final action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by him for such purpose. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28.

(2) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Commissioner may modify or set aside his order. The findings of the Commissioner as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner shall, within 30 days, file in the court the record of those further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Commissioner shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(3) The commencement of proceedings under this subsection shall not, unless so specifically ordered by the court, operate as a stay of the Commissioner's action.

(Pub. L. 89-73, title III, § 307, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1524.)

REFERENCES IN TEXT

Subchapter V and subchapter VII of this chapter, referred to in subsec. (a)(3)(B), were repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

The Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968, referred to in subsec. (a)(14)(C), is Pub. L. 90-480, Aug. 12, 1968, 82 Stat. 718, as amended, which is classified generally to chapter 51 (§ 4151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4151 of this title and Tables.

The Act of March 3, 1931 (40 U.S.C. 276a—276a-5; commonly known as the Davis-Bacon Act), referred to in subsec. (a)(14)(D), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Reorganization plan numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), referred to in subsec. (a)(14)(D), is set out in the Appendix to Title 5, Government Organization and Employees.

The Legal Services Corporation Act, referred to in subsec. (a)(15), is title X of Pub. L. 88-452, as added Pub. L. 93-355, § 2, July 25, 1974, 88 Stat. 378, as amended, which is classified generally to subchapter X (§ 2996 et seq.) of chapter 34 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2996 of this title and Tables.

The Comprehensive Older Americans Act Amendments of 1978, referred to in subsec. (b)(2), is Pub. L. 95-478, Oct. 18, 1978, 92 Stat. 1513. For complete classification of this Act to the Code, see Short Title of 1978 Amendment note set out under section 3001 of this title and Tables.

PRIOR PROVISIONS

A prior section 3027, Pub. L. 89-73, title III, § 307, as added Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 44, which related to the payment of grants or contracts, was omitted in the general revision and reorganization of this subchapter by Pub. L. 95-478. See section 3029 of this title.

Provisions similar to those comprising this section were contained in Pub. L. 89-73, title III, § 305, as added Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 41; Pub. L. 94-135, Title I, §§ 106(a), (b), 114(e), Nov. 28, 1975, 89 Stat. 715, 725, which was classified to section 3025 of this title, prior to repeal of such section by Pub. L. 95-478.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3023, 3024, 3025, 3026, 3028, 3029, 3030d, 3030e, 3030f, 3035d, 3057c of this title.

§ 3028. Cost of administration of state plans

(a) Activities constituting administration; use of excess funds to supplement cost of administration of area plans; election to pay costs from sums received for the administration of area plans

(1) Amounts appropriated under section 3023 of this title may be used to make grants to States for paying such percentages as each State agency determines, but not more than 75 percent, of the cost of the administration of its State plan, including the preparation of the State plan, the evaluation of activities carried out under such plan, the collection of data and the carrying out of analyses related to the need for social services, nutrition services, and multipurpose senior centers within the State, and

dissemination of information so obtained, the provision of short-term training to personnel of public or nonprofit private agencies and organizations engaged in the operation of programs authorized by this chapter, and the carrying out of demonstration projects of statewide significance relating to the initiation, expansion, or improvement of services assisted under this subchapter.

(2) Any sums received by a State under this section for part of the cost of the administration of its State plan which the State determines is not needed for such purpose may be used by the State to supplement the amount available under section 3024(d)(1)(A) of this title to cover part of the cost of the administration of area plans.

(3) Any State which has designated a single planning and service area under section 3025(a)(1)(E) of this title covering all, or substantially all, of the older individuals in such State, as determined by the Commissioner, may elect to pay part of the costs of the administration of State and area plans either out of sums received under this section of out of sums made available for the administration of area plans under section 3024(d)(1)(A) of this title, but shall not pay such costs out of sums received or allotted under both such sections.

(b) Formula for computation of allotment; application for additional funds; approval of application by Commissioner; limitation on amount of additional funds; transfer of funds

(1) From the sums appropriated for any fiscal year under section 3023 of this title for carrying out the purposes of this section, each State shall be allotted an amount which bears the same ratio to such sums as the population aged 60 or older in such State bears to the population aged 60 or older in all States, except that (A) no State shall be allotted less than one-half of 1 percent of the sum appropriated for the fiscal year for which the determination is made, or $300,000, whichever is greater: and (B) Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands shall be each allotted no less than one-fourth of 1 percent of the sum appropriated for the fiscal year for which the determination is made, or $75,000, whichever is greater. For the purpose of the exception contained in clause (A), the term "State" does not include Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(2)(A) Any State which desires to receive amounts, in addition to amounts allotted to such State under paragraph (1), to be used in the administration of its State plan in accordance with subsection (a) of this section may transmit an application to the Commissioner in accordance with this paragraph. Any such application shall be transmitted in such form, and according to such procedures, as the Commissioner may require, except that such application may not be made as part of, or as an amendment to, the State plan.

(B) The Commissioner may approve any application transmitted by a State under subparagraph (A) if the Commissioner determines, based upon a particularized showing of need, that—

(i) the State will be unable to fully and effectively administer its State plan and to carry out programs and projects authorized by this subchapter unless such additional amounts are made available by the Commissioner;

(ii) the State is making full and effective use of its allotment under paragraph (1) and of the personnel of the State agency and area agencies designated under section 3025(a)(2)(A) of this title in the administration of its State plan in accordance with subsection (a) of this section; and

(iii) the State agency and area agencies of such State designated under section 3025 of this title are carrying out, on a full-time basis, programs and activities which are in furtherance of the purposes of this chapter.

(C) The Commissioner may approve that portion of the amount requested by a State in its application under subparagraph (A) which he determines has been justified in such application.

(D) Amounts which any State may receive in any fiscal year under this paragraph may not exceed three-fourths of 1 percent of the sum of the amounts allotted under section 3024(a) of this title to such State to carry out the State plan for such fiscal year.

(E) No application by a State under subparagraph (A) shall be approved unless it contains assurances that no amounts received by the State under this paragraph will be used to hire any individual to fill a job opening created by the action of the State in laying off or terminating the employment of any regular employee not supported under this chapter in anticipation of filling the vacancy so created by hiring an employee to be supported through use of amounts received under this paragraph.

(3) Each State shall be entitled to an allotment under this section for any fiscal year in an amount which is not less than the amount of the allotment to which such State was entitled under paragraph (1) for the fiscal year ending June 30, 1975.

(4) The number of individuals aged 60 or older in any State and in all States shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

(5) Notwithstanding any other provision of this subchapter, with respect to funds received under section 3023(b)(1) and (2) of this title, a State may elect in its plan under section 3027(a)(13) regarding part C of this subchapter, to transfer a portion of the funds appropriated between subpart 1 and subpart 2 of part C, for use as the State considers appropriate to meet the needs of the area served. The Commissioner shall approve any such transfer unless he determines that such transfer is not consistent with the purposes of this chapter.

(c) Availability of funds under this section to provide services under parts B and C

The amounts of any State's allotment under subsection (b) of this section for any fiscal year which the Commissioner determines will not be required for that year for the purposes described in subsection (a)(1) of this section shall be available to provide services under part B or part C, or both, in the State.

(Pub. L. 89-73, title III, § 308, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1530.)

Prior Provisions

A prior section 3028, Pub. L. 89-73, title III, § 308, as added Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 44; Pub. L. 94-135, title I, §§ 108, 112(c), Nov. 28, 1975, 89 Stat. 717, 719, which related to model projects, was omitted in the general revision and reorganization of this subchapter by Pub. L. 95-478.

Provisions similar to those comprising this section were contained in Pub. L. 89-73, title III, § 306, as added Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 43; Pub. L. 94-135, title I, § 107, Nov. 28, 1975, 89 Stat. 716, which was classified to section 3026 of this title prior to repeal of such section by Pub. L. 95-478.

Section Referred to in Other Sections

This section is referred to in sections 3017, 3027, 3029 of this title.

§ 3029. Payments of grants or contracts

(a) Advances or reimbursement; installments; assistance in development of state plan

Payments of grants or contracts under this subchapter may be made (after necessary adjustments resulting from previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Commissioner may determine. From a State's allotment for a fiscal year which is available under section 3028 of this title the Commissioner may pay to a State which does not have a State plan approved under section 3027 of this title such amounts as he deems appropriate for the purpose of assisting such State in developing a State plan.

(b) Matching funds; percentage limitation

(1) For each fiscal year, not less than 25 percent of the non-Federal share of the total expenditures under the State plan which is required by section 3024(d) of this title shall be met from funds from State or local public sources.

(2) Funds required to meet the non-Federal share required by section 3024(d)(1)(B) of this title, in amounts exceeding the non-Federal share required prior to fiscal year 1981, shall be met from State sources.

(c) Reduction of state allotment

A State's allotment under section 3024 of this title for a fiscal year shall be reduced by the percentage (if any) by which its expenditures for such year from State sources under its State plan approved under section 3027 of this title are less than its expenditures from such sources for the preceding fiscal year.

(Pub. L. 89-73, title III, § 309, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1532.)

Prior Provisions

A prior section 3029, Pub. L. 89-73, title III, § 309, as added Pub. L. 93-351, § 3, July 12, 1974, 88 Stat. 357, which related to transportation projects, was omitted in the general revision and reorganization of this subchapter by Pub. L. 95-478. See section 3026 of this title.

Provisions similar to those comprising this section were contained in Pub. L. 89-73, title III, § 307, as added Pub. L. 93-29, title III, § 301, May 3, 1973, 87 Stat. 44, which was classified to section 3027 of this title prior to repeal of such section by Pub. L. 95-478.

Section Referred to in Other Sections

This section is referred to in section 3027 of this title.

§ 3030. Disaster relief reimbursements

(a) Application; limitations

(1) The Commissioner may provide reimbursements to any State, upon application for such reimbursement, for funds such State makes available to area agencies in such State for the delivery of social services during any major disaster declared by the President in accordance with the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.].

(2) Total payments to all States under paragraph (1) in any fiscal year shall not exceed 5 percent of the total amount appropriated and available for carrying out the purposes of section 3035b of this title.

(b) Setting aside of funds by Commissioner

(1) At the beginning of each fiscal year the Commissioner shall set aside, for payment to States under subsection (a) of this section, an amount equal to 5 percent of the total amount appropriated and available for carrying out the purposes of section 3035b of this title.

(2) Amounts set aside under paragraph (1) which are not obligated by the end of the third quarter of any fiscal year shall be made available for carrying out the purposes of section 3035b of this title.

(c) Effect on other laws

Nothing in this section shall be construed to prohibit expenditures by States for disaster relief for older individuals in excess of amounts reimbursable under this section, by using funds made available to them under other sections of this chapter or under other provisions of Federal or State law, or from private sources.

(Pub. L. 89-73, title III, § 310, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1533.)

References in Text

The Disaster Relief Act of 1974, referred to in subsec. (a)(1), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

Effective Date

Section effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3030a. Availability of surplus commodities

(a) Donation of products; amount of assistance

(1) Agricultural commodities and products purchased by the Secretary of Agriculture

under section 612c of title 7, shall be donated to a recipient of a grant or contract to be used for providing nutrition services in accordance with the provisions of this subchapter.

(2) The Commodity Credit Corporation shall dispose of food commodities under section 1431 of title 7 by donating them to a recipient of a grant or contract to be used for providing nutrition services in accordance with the provisions of this subchapter.

(3) Dairy products purchased by the Secretary of Agriculture under section 1446a-1 of title 7 shall be used to meet the requirements of programs providing nutrition services in accordance with the provisions of this subchapter.

(4) In donating commodities under this subsection, the Secretary of Agriculture shall maintain an annually programmed level of assistance of not less than 15 cents per meal during fiscal year 1976, 25 cents per meal during fiscal year 1977 and fiscal year 1978, and 30 cents per meal during the three succeeding fiscal years. The amount specified in this paragraph shall be adjusted on an annual basis for each fiscal year after June 30, 1975, to reflect changes in the series for food away from home of the Consumer Price Index published by the Bureau of Labor Statistics of the Department of Labor. Such adjustment shall be computed to the nearest one-fourth cent. Among the commodities delivered under this subsection, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates. The Secretary of Agriculture, in consultation with the Commissioner, is authorized to prescribe the terms and conditions respecting the donating of commodities under this subsection.

(b) High protein foods, meat and meat alternatives; authorization of appropriations

(1) During each of the fiscal years ending before October 1, 1981, the Secretary of Agriculture shall purchase high protein foods, meat, and meat alternates on the open market, at prices not in excess of market prices, out of funds appropriated under this section, as determined under paragraph (3), for distribution to recipients of grants or contracts to be used for providing nutrition services in accordance with the provisions of this subchapter. High protein foods, meat, and meat alternates purchased by the Secretary of Agriculture under this subsection shall be grown and produced in the United States.

(2) High protein foods, meat, and meat alternates donated under this subsection shall not be considered donated commodities for purposes of meeting the requirement of subsection (a)(4) of this section with respect to the annually programmed level of assistance under subsection (a) of this section.

(3) There are authorized to be appropriated such sums as may be necessary in order to carry out the program established by paragraph (1).

(c) Cash payments in lieu of food commodities

(1) Notwithstanding any other provision of law, a State may, for purposes of the programs authorized by this chapter, elect to receive cash payments in lieu of donated foods for all or any portion of its project. In any case in which a State makes such an election, the Secretary of Agriculture shall make cash payments to such State in an amount equivalent in value to the donated foods which the State otherwise would have received if such State had retained its commodity distribution.

(2) When such payments are made, the State agency shall promptly and equitably disburse any cash it receives in lieu of commodities to recipients of grants or contracts. Such disbursements shall only be used by such recipients of grants or contracts to purchase United States agricultural commodities and other foods for their nutrition projects.

(3) Nothing in this subsection shall be construed to authorize the Secretary of Agriculture to require any State to elect to receive cash payments under this subsection.

(Pub. L. 89-73, title III, § 311, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1533.)

EFFECTIVE DATE

Section effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3030b. Recapture of payments made for multipurpose senior centers

If, within 10 years after acquisition, or within 20 years after the completion of construction, of any facility for which funds have been paid under this subchapter—

(1) the owner of the facility ceases to be a public or nonprofit private agency or organization; or

(2) the facility ceases to be used for the purposes for which it was acquired (unless the Commissioner determines, in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to do so);

the United States shall be entitled to recover from the applicant or other owner of the facility an amount which bears to the then value of the facility (or so much thereof as constituted an approved project or projects) the same ratio as the amount of such Federal funds bore to the cost of the facility financed with the aid of such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated.

(Pub. L. 89-73, title III, § 312, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1534.)

EFFECTIVE DATE

Section effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3030c. Audit

The Commissioner and the Comptroller General of the United States or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to a grant or contract received under this subchapter.

(Pub. L. 89-73, title III, § 313, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1535.)

EFFECTIVE DATE

Section effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

PART B—SOCIAL SERVICES [NEW]

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3016, 3023, 3024, 3026, 3028, 3031 of this title.

§ 3030d. Grants for social services

(a) The Commissioner shall carry out a program for making grants to States under State plans approved under section 3027 of this title for any of the following social services:

(1) health, continuing education, welfare, informational, recreational, homemaker, counseling, or referral services;

(2) transportation services to facilitate access to social services or nutrition services, or both;

(3) services designed to encourage and assist older individuals to use the facilities and services available to them;

(4) services designed to assist older individuals to obtain adequate housing, including residential repair and renovation projects designed to enable older individuals to maintain their homes in conformity with minimum housing standards or to adapt homes to meet the needs of older individuals suffering from physical disabilities;

(5) services designed to assist older individuals in avoiding institutionalization, including preinstitution evaluation and screening and home health services, homemaker services, shopping services, escort services, reader services, letter writing services, and other similar services designed to assist such individuals to continue living independently in a home environment;

(6) services designed to provide legal services and other counseling services and assistance, including tax counseling and assistance and financial counseling, to older individuals;

(7) services designed to enable older individuals to attain and maintain physical and mental well-being through programs of regular physical activity and exercise;

(8) services designed to provide health screening to detect or prevent illness, or both, that occur most frequently in older individuals;

(9) services designed to provide preretirement and second career counseling for older individuals;

(10) services of an ombudsman at the State level to receive, investigate, and act on complaints by older individuals who are residents of long-term care facilities and to advocate the well-being of such individuals;

(11) services which are designed to meet the unique needs of older individuals who are disabled; or

(12) any other services;

if such services meet standards prescribed by the Commissioner and are necessary for the general welfare of older individuals.

(b)(1) The Commissioner shall carry out a program for making grants to States under State plans approved under section 3027 of this title for the acquisition, alteration, or renovation of existing facilities, including mobile units, and, where appropriate, construction of facilities to serve as multipurpose senior centers which shall be community facilities for the organization and provision of a broad spectrum of services, including provision of health, social, nutritional, and educational services and provision of facilities for recreational activities for older individuals.

(2) Funds made available to a State under this part may be used, for the purpose of assisting in the operation of multipurpose senior centers, to meet all or part of the costs of compensating professional and technical personnel required for the operation of multipurpose senior centers.

(Pub. L. 89-73, title III, § 321, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1535.)

EFFECTIVE DATE

Part effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

PART C—NUTRITION SERVICES [NEW]

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 3023, 3024, 3027, 3028, 3031, 3057c of this title.

SUBPART I—CONGREGATE NUTRITION SERVICES [NEW]

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 3023, 3028 of this title.

§ 3030e. Grants for establishment and operation of nutrition projects

The Commissioner shall carry out a program for making grants to States under State plans approved under section 3027 of this title for the establishment and operation of nutrition projects—

(1) which, 5 or more days a week, provide at least one hot or other appropriate meal per day and any additional meals which the recipient of a grant or contract under this subpart may elect to provide, each of which assures a minimum of one-third of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council;

(2) which shall be provided in congregate settings; and

(3) which may include nutrition education services and other appropriate nutrition services for older individuals.

(Pub. L. 89-73, title III, § 331, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1536.)

EFFECTIVE DATE

Subpart effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

NUTRITION PROJECTS FOR ELDERLY UNDER PRIOR PROVISIONS, QUALIFIED UNDER SUCCESSOR PROVISIONS, ELIGIBLE FOR FUNDS UNDER SUCH PROVISIONS; DISCONTINUANCE OF PAYMENTS FOR INEFFECTIVE ACTIVITIES

Operation of Predecessor projects under successor provisions, see section 501(b) of Pub. L. 95-478, set out as a note under section 3045 of this title.

SUBPART II—HOME DELIVERED NUTRITION SERVICES [NEW]

SUBPART REFERRED TO IN OTHER SECTIONS

This subpart is referred to in sections 3023, 3028 of this title.

§ 3030f. Grants for establishment and operation of nutrition projects for older individuals

The Commissioner shall carry out a program for making grants to States under State plans approved under section 3027 of this title for the establishment and operation of nutrition projects for older individuals which, 5 or more days a week, provide at least one home delivered hot, cold, frozen, dried, canned, or supplemental foods (with a satisfactory storage life) meal per day and any additional meals which the recipient of a grant or contract under this subpart may elect to provide, each of which assures a minimum of one-third of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council.

(Pub. L. 89-73, title III, § 336, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1536.)

EFFECTIVE DATE

Subpart effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3030g of this title.

§ 3030g. Efficiency and quality criteria

The Commissioner, in consultation with organizations of and for the aged, blind, and disabled, and with representatives from the American Dietetic Association, the Association of Area Agencies on Aging, the National Association of Title VII Project Directors, the National Association of Meals Programs, Incorporated, and any other appropriate group, shall develop minimum criteria of efficiency and quality for the furnishing of home delivered meal services for projects described in section 3030f of this title. The criteria required by this section shall take into account the ability of established home delivered meals programs to continue such services without major alteration in the furnishing of such services.

(Pub. L. 89-73, title III, § 337, as added Pub. L. 95-478, title I, § 103(b), Oct. 18, 1978, 92 Stat. 1536.)

SUBCHAPTER IV—TRAINING, RESEARCH, AND DISCRETIONARY PROJECTS AND PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3017 of this title.

PART A—TRAINING

§ 3031. Statement of purpose

(a) The purpose of this part is to develop and implement a national manpower policy for the field of aging. Such a policy shall reflect the present and future needs for training personnel, including personnel involved in advocacy and leadership, in all programs serving the elderly recognizing the unique health, transportation, and housing problems of the elderly, the continual growth of the elderly population of the United States, and the high incidence of disabilities within such population. The national manpower policy established under this part shall require that training programs shall give priority to training personnel responsible for carrying out projects relating to multipurpose senior centers under part B of subchapter III of this chapter and for carrying out programs under part C of subchapter III of this chapter.

(b) The policy required by this subchapter shall be developed and implemented by the Commissioner in cooperation with other departments and agencies of the Federal Government, including the Public Health Service, the Health Care Financing Administration, the Social Security Administration, the National Institutes of Health, and in particular the National Institute on Aging, the Administration for Public Services, the Rehabilitation Services Administration, the Veterans' Administration, the Department of Labor, the Department of Housing and Urban Development, and the Department of Transportation, State employment agencies, State and area agencies on aging, and other appropriate agencies.

(As amended Pub. L. 95-478, title I, § 104(a)(1), Oct. 18, 1978, 92 Stat. 1537.)

AMENDMENTS

1978—Pub. L. 95-478 substituted subsecs. (a) and (b) relating to development and implementation of a national manpower policy for the field of aging and development and implementation of such policy in cooperation with certain departments and agencies of the Federal Government for prior statement of policy to improve the quality of service and to help meet critical shortages of trained personnel for programs in the field of aging through (1) information, (2) training and retraining, (3) attraction of greater number of qualified persons, and (4) personnel training programs responsive to the need for trained personnel in the field of aging.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3032, 3036 of this title.

§ 3032. Appraising personnel needs in the field of aging

(a) The Commissioner shall, at such times as he deems appropriate and in cooperation with representatives referred to in section 3031(b) of this title, assess the Nation's existing and future personnel needs in the field of aging, including as part of such assessment, the needs for personnel in both institutional and non-institutional long-term care settings, and evaluate all programs, including institutional and non-institutional long-term care programs, serving the elderly at all levels of government recognizing the continual growth of the elderly population. The assessment required by this section shall be conducted in accordance with the national manpower policy developed under section 3031 of this title.

(b) The assessment required by this section shall be submitted biennially to the Congress. Each such report shall indicate the impact of the assessment on the national manpower policy and plans for the future.

(As amended Pub. L. 95-478, title I, § 104(a)(2), Oct. 18, 1978, 92 Stat. 1537.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-478 substituted requirement that the Commissioner, at such times as he deems appropriate and in cooperation with certain representatives listed in section 3031(b) of this title, assess the Nation's personnel needs in the field of aging, including institutional and non-institutional long-term care programs, and evaluate the programs, the assessment to be conducted in accordance with national manpower policy developed under section 3031 of this title for prior provisions for Commissioner's assessment, from time to time, of the Nation's needs in the field of aging and cooperation with certain agencies, including the Department of Labor, the Veterans' Administration, the Office of Education, the Federal Council on the Aging, the National Foundation on the Arts and the Humanities, State educational agencies, other State and local public agencies and offices dealing with problems of the aging, State employment security agencies, and other appropriate public and private agencies, now covered in section 3031(b) of this title.

Subsec. (b). Pub. L. 95-478 substituted requirement of a biennial report to Congress indicating the impact of the assessment on the national manpower policy and plans for the future for prior requirement of inclusion as a part of the annual report to Congress a report on the professions dealing with the problems of the aging and covering the state of the professions and the trends with respect to future complexion of programs throughout the Nation and the funds and the needs for well-educated personnel to staff the programs and the Commissioner's plans concerning the allocation of Federal assistance in relation to plans and programs of other Federal agencies.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3033. Attracting qualified persons to the field of aging

In accordance with the requirements set forth in the national manpower policy, the Commissioner may make grants to State agencies referred to in section 3024 of this title, State or local educational agencies, institutions of higher education as defined in section 1141(a) of title 20, or other public or nonprofit private agencies, organizations, or institutions, and he may enter into contracts with any agency, institution, or organization for the purpose of—

[*See main edition for text of (1) to (3)*]

(4) preparing and disseminating materials, including audio-visual materials and printed materials, for use in recruitment and training of persons employed or preparing for employment in carrying out programs related to the field of aging.

(As amended Pub. L. 95-478, title I, § 104(a)(3), Oct. 18, 1978, 92 Stat. 1537.)

AMENDMENTS

1978—Pub. L. 95-478 inserted introductory text "In accordance with the requirements set forth in the national manpower policy" and substituted in cl. (4) "field of aging" for "purposes of this chapter".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3034. Training programs for personnel in the field of aging

(a) Grants or contracts; scope of assistance

In accordance with the requirements set forth in the national manpower policy, the Commissioner may make grants to any public or nonprofit private agency, organization, or institution or with State agencies referred to in section 3024 of this title, or contracts with any agency, organization, or institution, to assist them in training persons who are employed or preparing for employment in the field of aging—

(1) to coordinate the training efforts of all programs serving the elderly at the Federal, State, and local levels recognizing the continual growth of the elderly population,

(2) to assist in paying the costs, in whole or in part, of short-term and inservice training courses, workshops, institutes and other activities designed to improve the capabilities of participants to provide services to older individuals and to administer programs related to the field of aging.

(3) to assist in paying the costs, in whole or in part, of post-secondary education courses of training or study related to the purposes of this chapter, including the payment of stipends to students enrolled in such courses,

(4) for establishing and maintaining fellowships to train persons to be supervisors or trainers of persons employed or preparing for employment in fields related to the purposes of this chapter,

(5) for seminars, conferences, symposiums, and workshops in the field of aging, including the conduct of conferences and other meetings for the purposes of facilitating exchange of information and stimulating new approaches with respect to activities related to the purposes of this chapter,

(6) to assess future national personnel needs, including the need for training of advocates, with respect to the elderly with special emphasis on the needs of elderly minority group individuals and the need for the training of minority group individuals to meet such needs,

(7) to assist in paying the costs, in whole or in part, of special courses of training designed to meet the needs of service providers in rural areas,

(8) for the improvement of programs for preparing personnel for careers in the field of aging, including design, development and evaluation of exemplary training programs, introduction of high quality and more effective curricula and curriculum materials, and

(9) the provision of increased opportunities for practical experience.

(b) Payments; stipends; allowances to institution

The Commissioner may include in the terms of any contract or grant under this part provisions authorizing the payment, to persons participating in training programs supported under this part, of such stipends (including allowances for subsistence and other expenses for such persons and their dependents) as he determines to be consistent with prevailing practices under comparable federally-supported programs. Where the Commissioner provides for the use of funds under this section for fellowships, he shall (in addition to stipends for the recipients) pay to colleges or universities in which the fellowship is being pursued such amounts as the Commissioner shall determine to be consistent with prevailing practices under comparable federally-supported programs.

(c) Legal assistance

The Commissioner may make grants under subsection (a) of this section to assist in (1) the training of lawyers and paraprofessional persons who will (A) provide legal (including tax and financial) counseling and services to older individuals; or (B) monitor the administration of any program by any public or private nonprofit institution, organization, or agency, or any State or political subdivision of a State, designed to provide assistance or services to older individuals, including nursing home programs and other similar programs; and (2) the training of persons employed by or associated with public or private nonprofit agencies or organizations, including a State or political subdivision of a State, who will identify legal problems affecting older individuals, develop solutions for such problems, and mobilize the resources of the community to respond to the legal needs of older individuals.

(As amended Pub. L. 95-478, title I, § 104(a)(4), title V, § 503(c), Oct. 18, 1978, 92 Stat. 1538, 1559.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-478, § 104(a)(4)(A), inserted introductory text "In accordance with the requirements set forth in the national manpower policy" and substituted "the field of aging" for "fields related to the purposes of this chapter".

Subsec. (a)(1). Pub. L. 95-478, § 104(a)(4)(C), added par. (1). Former par. (1) redesignated (2).

Subsec. (a)(2). Pub. L. 95-478, §§ 104(a)(4)(B), (C), 503(c)(3), redesignated former par. (1) as (2), and in par. (2) as so redesignated, substituted "field of aging" for "purposes of this chapter" and "older individuals" for "older persons". Former par. (2) redesignated (3).

Subsec. (a)(3) to (5). Pub. L. 95-478, § 104(a)(4)(C), (D), redesignated former pars. (2) to (4) as (3) to (5). Former par. (5) redesignated first (6) and then (8).

Subsec. (a)(6). Pub. L. 95-478, § 104(a)(4)(C), (D), added par. (6). Former par. (6) redesignated first (7) and then (9).

Subsec. (a)(7). Pub. L. 95-478, § 104(a)(4)(D), added par. (7). Former par. (7), originally (6), first redesignated (7) and then (9).

Subsec. (a)(8). Pub. L. 95-478, §§ 104(a)(4)(C), (D), 503(c)(1), redesignated former par. (5) first as (6) and then (8) and in par. (8) as so redesignated, substituted "curriculum materials" for "curricula materials".

Subsec. (a)(9). Pub. L. 95-478, § 104(a)(4)(C), (D), redesignated former par. (6) first (7) and then (9).

Subsec. (b). Pub. L. 95-478, § 503(c)(2), substituted "federally-supported" for "federally supported" in two places.

Subsec. (c). Pub. L. 95-478, § 503(c)(3), substituted "older individuals" for "older persons" wherever appearing.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

PART B—RESEARCH AND DEVELOPMENT PROJECTS

§ 3035. Grants and contracts

(a) Description of activities

To support research efforts related to the implementation of this chapter together with areas of concern relating to the living conditions of the elderly, the Commissioner may make grants to any public or nonprofit private agency, organization, or institution and contracts with any agency, organization, or institution or with any individual for the purpose of—

(1) studying current patterns and conditions of living of older individuals and identifying factors which are beneficial or detrimental to the wholesome and meaningful living of such persons;

(2) developing or demonstrating new approaches, techniques, and methods (including the use of multipurpose centers) which hold promise of substantial contribution toward wholesome and meaningful living for older individuals;

(3) developing or demonstrating approaches, methods, and techniques for achieving or improving coordination of community services for older individuals;

(4) evaluating these approaches, techniques, and methods, as well as others which may assist older individuals to enjoy wholesome and meaningful lives and to continue to contribute to the strength and welfare of our Nation;

[*See main edition for text of* (5) *and* (6)]

(b) Studies; revision of transportation programs

In accordance with the purposes of this part, the Commissioner shall make grants to any public agency or nonprofit private organization or institution and contracts with any agency, organization, or institution or with an individual for the purpose of—

(1) conducting a study related to the problems experienced by State and area agencies on aging and other service providers in operating transportation services, with particular emphasis on the difficulties of continually rising insurance costs and restrictions being placed upon the operation of such services by insurance underwriters;

(2) revising existing Federal transportation programs for older individuals to—

(A) provide more coordinated and comprehensive services to such individuals;

(B) eliminate unnecessary duplication among such programs;

(C) eliminate disparities in eligibility requirements among Federal transportation programs for older individuals; and

(D) study the possibility of transferring to a single administrative unit the responsibility for the administration of all Federal transportation programs for older individuals; and

(3) conducting a study related to the differences in unit costs, service delivery, and access between rural areas and urban areas for services assisted under this chapter and the special needs of the elderly residing in rural areas.

(c) Results of study; submission to Congress; availability of study

Upon completion of the studies described in subsection (b) of this section, but not later than 2 years after October 18, 1978, the Commissioner shall submit to the Congress and make available through the National Information and Resource Clearing House for the Aging the results of the studies, together with such recommendations as he deems necessary.

(As amended Pub. L. 95-478, title I, § 104(b)(1), (2), title V, § 503(c)(3), Oct. 18, 1978, 92 Stat. 1538, 1559.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-478, §§ 104(b)(1), 503(c)(3), designated existing provisions as subsec. (a), inserted the initial text stating the purpose to support research efforts related to the implementation of this chapter together with areas of concern relating to the living conditions of the elderly, and substituted in pars. (1) to (4) "older individuals" for "older persons".

Subsecs. (b), (c). Pub. L. 95-478, § 104(b)(2), added subsecs. (b) and (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3035a. Repealed. Pub. L. 95-478, title I, § 104(b)(3), Oct. 18, 1978, 92 Stat. 1539

Section, Pub. L. 89-73, title IV, § 412, as added Pub. L. 93-29, title IV, § 401, May 3, 1973, 87 Stat. 47, provided that the Commissioner, after consultation with the Secretary of Transportation and the Secretary of Housing and Urban Development, conduct a comprehensive study of the transportation problems of older Americans, and conduct research and demonstration projects in connection with this study designed to demonstrate feasible solutions to these transportation problems, and not later than Jan. 1, 1975, report to the Secretary, to the President, and to Congress his findings and recommendations, including a plan for implementation of improved transportation services for older Americans and recommendations for additional legislation, and administrative and other measures designed to provide solutions.

EFFECTIVE DATE OF REPEAL

Section repealed effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

PART C—DISCRETIONARY PROJECTS AND PROGRAMS [NEW]

§ 3035b. Demonstration projects

(a) Grants and contracts

The Commissioner may, after consultation with the State agency in the State involved, make grants to any public agency or nonprofit private organization or enter into contracts with any agency or organization within such State for paying part or all of the cost of developing or operating nationwide, statewide, regional, metropolitan area, county, city, or community model projects which will demonstrate methods to improve or expand social services or nutrition services or otherwise promote the well-being of older individuals. The Commissioner shall give special consideration to the funding of rural area agencies on aging to conduct model projects devoted to the special needs of the rural elderly. Such projects shall include alternative health care delivery systems, advocacy and outreach programs, and transportation services.

(b) Housing assistance; continuing education; preretirement education information; special services; rural areas; other considerations

In making grants and contracts under this section, the Commissioner shall give special consideration to projects designed to—

(1) assist in meeting the special housing needs of older individuals by—

(A) providing financial assistance to such individuals, who own their own homes, necessary to enable them to make the repairs or renovations to their homes, which are necessary for them to meet minimum standards;

(B) studying and demonstrating methods of adapting existing housing, or construction of new housing, to meet the needs of older individuals suffering from physical disabilities; and

(C) demonstrating alternative methods of relieving older individuals of the burden of real property taxes on their homes;

(2) provide continuing education to older individuals designed to enable them to lead more productive lives by broadening the educational, cultural, or social awareness of such older individuals, emphasizing, where possible, free tuition arrangements with colleges and universities;

(3) provide preretirement education information, and relevant services (including the training of personnel to carry out such pro-

grams and the conducting of research with respect to the development and operation of such programs) to individuals planning retirement;

(4) provide services to assist in meeting the particular needs of physically and mentally impaired older individuals, including special transportation and escort services, homemaker, home health and shopping services, reader services, letter writing services, and other services designed to assist such individuals in leading more independent lives;

(5) meet the special needs of, and improve the delivery of services to, older individuals who are not receiving adequate services under other provisions of this chapter, with emphasis on the needs of low-income, minority, Indian, and limited English-speaking individuals and the rural elderly;

(6) assist older individuals to remain within their communities and out of institutions and to maintain their independent living, in their own residences or in a family living arrangement, by—

(A) providing financial assistance for the establishment and operation of senior ambulatory care day centers (providing a planned schedule of health, therapeutic, education, nutrition, recreational, rehabilitation, and social services at least 24 hours per week, transportation arrangements at low or no cost for participants to and from the center, a mid-day meal, outreach and public information programs, and opportunities for maximum participation of senior participants and senior volunteers in the planning and operation of the center); and

(B) maintaining or initiating arrangements (or providing reasonable assurances that such arrangements will be maintained or initiated) with any agency of the State involved which administers or supervises the administration of a State plan approved under titles XIX and XX of the Social Security Act [42 U.S.C. 1396 et seq., 1397 et seq.], and with other appropriate social services agencies receiving, or reimbursed through, Federal financial assistance, for the payment of all or a part of the center's costs in providing services to eligible individuals;

(7) meet the special needs of older individuals residing in rural areas; or

(8) develop or improve methods of coordinating all available social services for the homebound elderly, blind, and disabled by establishing demonstration projects in 10 States, in accordance with subsection (c) of this section.

(c) Procedures; report to Congress; authorization of appropriations

(1) The Commissioner shall consult with the Commissioner of the Rehabilitation Services Administration, the Commissioner of the Social Security Administration, and the Surgeon General of the Public Health Service, to develop procedures for—

(A) identifying elderly, blind, and disabled individuals who need social services;

(B) compiling a list in each community of all services available to the elderly, blind, and disabled; and

(C) establishing an information and referral service within the appropriate community agency to—

(i) inform those in need of the availability of such services; and

(ii) coordinate the delivery of such services to the elderly, blind, and disabled.

The Commissioner shall establish procedures for administering demonstration projects under subsection (b)(8) of this section no later than 6 months after the effective date of this subsection. The Commissioner shall report to the Congress with respect to the results and findings of the demonstration projects at the end of fiscal year 1979. In such report, the Commissioner shall make such recommendation, based upon the findings, as may be appropriate to improve the delivery of social services to such elderly, blind, and disabled individuals.

(2)(A) There are authorized to be appropriated for fiscal years 1979, 1980, and 1981, such sums as may be necessary for the purpose of implementing the demonstration projects under subsection (b)(8) of this section.

(B) For the purpose of carrying out this subsection, there are authorized to be appropriated such sums as may be necessary for fiscal year 1979.

(Pub. L. 89-73, title IV, § 421, as added Pub. L. 95-478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1539.)

References in Text

The Social Security Act, referred to in subsec. (b)(6)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XIX and XX of the Social Security Act are classified generally to subchapters XIX (§ 1396 et seq.) and XX (§ 1397 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

The effective date of this subsection, referred to in provision following subsec. (c)(1)(C)(ii), is the effective date of section 104(c)(1)(C) of Pub. L. 95-478, which enacted this section, which was effective at the close of Sept. 30, 1978.

Prior Provisions

A prior section 421 of Pub. L. 89-73, title IV, as added Pub. L. 93-29, title IV, § 401, May 3, 1973, 87 Stat. 48, and renumbered Pub. L. 89-73, § 441 by Pub. L. 95-478, title I, § 104(c)(1), Oct. 18, 1978, 92 Stat. 1539, which related to applications for grants for establishment or support of multidisciplinary centers of gerontology and gerontology centers of special emphasis, is classified to section 3036 of this title.

Effective Date

Part effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

Section Referred to in Other Sections

This section is referred to in section 3030 of this title.

§ 3035c. Special projects in comprehensive long-term care

(a) Grants for extended services and manpower training programs

(1) The Commissioner may make grants to selected State agencies designated under section 3025(a)(1) of this title, and, in consultation with State agencies, selected area agencies on aging designated under section 3025(a)(2)(A) of this title, institutions of higher education, and other public agencies and private nonprofit organizations, associations, and groups to support the development of comprehensive, coordinated systems of community long-term care for older individuals, with special emphasis upon—

(A) services designed to support alternatives to institutional living; and

(B) the assessment of need, the development of a plan of care, and the referral of individuals, in the delivery of long-term care services, including non-institutional and institutional services, where appropriate.

(2) A grant under this section may be made to pay part or all of the estimated cost of a program (including start-up cost) for a period of not more than 3 years, except that no funds may be used to pay for direct services which are eligible for reimbursement under title XVIII, title XIX, or title XX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq., 1397 et seq.].

(3) A grant made under this section shall be used for the development of programs which provide a full continuum of services. Such services may include—

(A) adult day [1] health;

(B) monitoring and evaluation of service effectiveness;

(C) supported living in public and private nonprofit housing;

(D) family respite services;

(E) preventive health services;

(F) home health, homemaker, and other rehabilitative and maintenance in-home services;

(G) geriatric health maintenance organizations; and

(H) other services which the Commissioner determines are appropriate, which were previously unavailable to the individuals to be served and which, at a minimum, provide for identification and assessment of the long-term care needs of older individuals, referral of such individuals to the appropriate services, and follow-up and evaluation of the continued appropriateness of such services with provision for re-referral as appropriate.

(4) A grant under this section may be used to encourage the development of manpower training programs designed to further the purposes described in paragraph (3).

(b) Preference of applicants; program evaluation procedures

(1) In making grants to States under this section preference shall be given to applicants which demonstrate that—

(A) adequate State standards have been developed to ensure the quality of services provided;

(B) the State has made a commitment to carry out the program assisted under this section with the State agency responsible for the administration of title XIX of the Social Security Act [42 U.S.C. 1396 et seq.] or title XX of the Social Security Act [42 U.S.C. 1397 et seq.], or both such agencies;

(C) the State will develop plans to finance the comprehensive program assisted under this section; and

(D) the State agency has a plan for statewide or designated regions of the State containing provisions designed to maximize access to older individuals for long-term care services.

(2) In awarding grants to agencies and organizations under this section, preference shall be given to applicants that—

(A) possess the capability to establish community-based long-term care programs; and

(B) demonstrate that a need exists for the establishment of such programs in the area to be served.

(3) Agencies and organizations assisted under this section shall establish procedures for evaluating the program assisted under this section, with respect to the benefits accruing to persons receiving assistance, the feasibility of the administrative model used for comprehensive coordination of services including coordination with other local programs, and the comparative costs and quality of services provided, and shall submit such evaluation to the Commissioner on a periodic basis.

(c) Report to Congress

The Secretary shall involve appropriate Federal departments and agencies in carrying out the provisions of this section in order to assure coordination at the Federal level and to avoid duplication and shall report to the Congress annually on the impact of grants made, on the experiences of grantees in meeting the requirements of this section, and on the comparative benefits and costs of projects assisted under this section.

(d) Urban and rural area programs; equitable national distribution

Sums appropriated to carry out this section shall, to the extent feasible, be used to support programs equitably distributed throughout the Nation between urban and rural areas.

(Pub. L. 89-73, title IV, § 422, as added Pub. L. 95-478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1541.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsecs. (a)(2) and (b)(1)(B), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII, XIX, and XX of the Social Security Act are classified generally to subchapters XVIII (§ 1395 et seq.), XIX (§ 1396 et seq.), and XX (§ 1397 et seq.) of chapter 7 of this title, respectively. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

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[1] So in original. Probably should be "day care".

§ 3035d. Special demonstration projects on legal services for older Americans

(a) Grants and contracts

The Commissioner may make grants to and enter into contracts with public and private nonprofit agencies or organizations in order to—

(1) support legal research, technical assistance, training, information dissemination, and other support activities to agencies, organizations, institutions, and private law firms that are providing, developing, or supporting pro bono or reduced-fee legal services to older individuals; and

(2) support demonstration projects to expand or improve the delivery of legal services to older individuals with social or economic need.

(b) State plan legal services requirements; assurances

Any grants or contracts entered into under subsection (a)(2) of this section shall contain assurances that the requirements of section 3027(a)(15) of this title are met.

(c) Reservation of appropriated funds

From the sums appropriated under section 3037 of this title for each fiscal year, not less than $5,000,000 shall be reserved to carry out the provisions of this section.

(Pub. L. 89-73, title IV, § 423, as added Pub. L. 95-478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1542.)

§ 3035e. National impact demonstrations; limitation of funds

(a) The Commissioner may carry out directly or through grants or contracts—

(1) innovation and development projects and activities of national significance which show promise of having substantial impact on the expansion or improvement of social services, nutrition services, or multipurpose senior centers or otherwise promoting the well-being of older individuals; and

(2) dissemination of information activities related to such programs.

(b) An amount not to exceed 15 percent of any sums appropriated under section 3037 of this title may be used for carrying out this section.

(Pub. L. 89-73, title IV, § 424, as added Pub. L. 95-478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1543.)

§ 3035f. Utility and home heating cost demonstration projects

The Secretary may, after consultation with the appropriate State agency designated under section 3025(a)(1) of this title, make grants to pay for part or all of the costs of developing model projects which show promise of relieving older individuals of the excessive burdens of high utility service and home heating costs. Any such project shall give special consideration to projects under which a business concern engaged in providing home heating oil to the public, or a public utility, provides home heating oil or utility services to low-income older individuals at a cost which is substantially lower than providing home heating oil or utility services to other individuals.

(Pub. L. 89-73, title IV, § 425, as added Pub. L. 95-478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1543.)

PART D—MORTGAGE INSURANCE AND INTEREST GRANTS FOR MULTIPURPOSE SENIOR CENTERS

[NEW]

§ 3035g. Mortgage insurance authorization

(a) Statement of purpose

It is the purpose of this part to assist and encourage the provision of urgently needed facilities for programs for the elderly.

(b) Definitions

For the purpose of this part the terms "mortgage", "mortgagor", "mortgagee", "maturity date", and "State" shall have the meanings respectively set forth in section 207 of the National Housing Act [12 U.S.C. 1713].

(c) Authority of Secretary

The Secretary of Health, Education, and Welfare is authorized to insure any mortgage (including advances on such mortgage during acquisition, alteration, renovation, or construction) in accordance with the provisions of this section upon such terms and conditions as he may prescribe and make commitments for insurance of such mortgage prior to the date of its execution or disbursement thereon.

(d) Insurance for new multipurpose senior center; conditions

In order to carry out the purpose of this section, the Secretary is authorized to insure any mortgage which covers a new multipurpose senior center, including equipment to be used in its operation, subject to the following conditions:

(1) The mortgage shall be executed by a mortgagor, approved by the Secretary, who demonstrates ability successfully to operate one or more programs for the elderly. The Secretary may in his discretion require any such mortgagor to be regulated or restricted as to minimum charges and methods of financing, and in addition thereto, if the mortgagor is a corporate entity, as to capital structure and rate of return. As an aid to the regulation or restriction of any mortgagor with respect to any of the foregoing matters, the Secretary may make such contracts with and acquire for not to exceed $100 such stock interest in such mortgagor as he may deem necessary. Any stock or interest so purchased shall be paid for out of the Multipurpose Senior Center Insurance Fund, and shall be redeemed by the mortgagor at par upon the termination of all obligations of the Secretary under the insurance.

(2) The mortgage shall involve a principal obligation in an amount not to exceed $250,000 and not to exceed 90 percent of the estimated replacement cost of the property or project; including equipment to be used in the operation of the multipurpose senior center, when the proposed improvements are completed and the equipment is installed.

(3) The mortgage shall—

(A) provide for complete amortization by periodic payments within such term as the Secretary shall prescribe, and

(B) bear interest (exclusive of premium charges for insurance and service charges, if any) at not to exceed such per centum per annum on the principal obligation outstanding at any time as the Secretary finds necessary to meet the mortgage market.

(4) The Secretary shall not insure any mortgage under this section unless he has determined that the center to be covered by the mortgage will be in compliance with minimum standards to be prescribed by the Secretary.

(5) In the plans for such multipurpose senior center, due consideration shall be given to excellence of architecture and design, and to the inclusion of works of art (not representing more than 1 percent of the cost of the project).

(e) Mortgage insurance premium and, appraisal and inspection charges

The Secretary shall fix and collect premium charges for the insurance of mortgages under this section which shall be payable annually in advance by the mortgagee, either in cash or in debentures of the Multipurpose Senior Center Insurance Fund issued at par plus accrued interest. In the case of any mortgage such charge shall not be less than an amount equivalent to one-fourth of 1 percent per annum nor more than an amount equivalent to 1 percent per annum of the amount of the principal obligation of the mortgage outstanding at any one time, without taking into account delinquent payments or prepayments. In addition to the premium charge provided for in this subsection, the Secretary is authorized to charge and collect such amounts as he may deem reasonable for the appraisal of a property or project during acquisition, alteration, or renovation; but such charges for appraisal and inspection shall not aggregate more than 1 percent of the original principal face amount of the mortgage.

(f) Liens; terms and conditions of release

The Secretary may consent to the release of a part or parts of the mortgaged property or project from the lien of any mortgage insured under this section upon such terms and conditions as he may prescribe.

(g) Functions, powers, and duties of Secretary

(1) The Secretary shall have the same functions, powers, and duties (insofar as applicable) with respect to the insurance of mortgages under this section as the Secretary of Housing and Urban Development has with respect to the insurance of mortgages under title II of the National Housing Act [12 U.S.C. 1707 et seq.].

(2) The provisions of subsections (e), (g), (h), (i), (j), (k), (l), and (n) of section 207 of the National Housing Act [12 U.S.C. 1713] shall apply to mortgages insured under this section; except that, for the purposes of their application with respect to such mortgages, all references in such provisions to the General Insurance Fund shall be deemed to refer to the Multipurpose Senior Center Insurance Fund, and all references in such provisions to "Secretary" shall be deemed to refer to the Secretary of Health, Education, and Welfare.

(h) Multipurpose Senior Center Revolving Insurance Fund; creation; general operation expenses; credits in the Treasury; investments; open market purchases and cancellation of debentures; fund credits; charges against fund; capital appropriations authorization

(1) There is hereby created a Multipurpose Senior Center Insurance Fund which shall be used by the Secretary as a revolving fund for carrying out all the insurance provisions of this section. All mortgages insured under this section shall be insured under and be the obligation of the Multipurpose Senior Center Insurance Fund.

(2) The general expenses of the operations of the Department of Health, Education, and Welfare relating to mortgages insured under this section may be charged to the Multipurpose Senior Center Insurance Fund.

(3) Moneys in the Multipurpose Senior Center Insurance Fund not needed for the current operations of the Department of Health, Education, and Welfare with respect to mortgages insured under this section shall be deposited with the Treasurer of the United States to the credit of such fund, or invested in bonds or other obligations of, or in bonds or other obligations guaranteed as to principal and interest by, the United States. The Secretary may, with the approval of the Secretary of the Treasury, purchase in the open market debentures issued as obligations of the Multipurpose Senior Center Insurance Fund. Such purchases shall be made at a price which will provide an investment yield of not less than the yield obtainable from other investments authorized by this section. Debentures so purchased shall be canceled and not reissued.

(4) Premium charges, adjusted premium charges, and appraisal and other fees received on account of the insurance of any mortgage under this section, the receipts derived from property covered by such mortgages and from any claims, debts, contracts, property, and security assigned to the Secretary in connection therewith, and all earnings as the assets of the fund, shall be credited to the Multipurpose Senior Center Insurance Fund. The principal of, and interest paid and to be paid on, debentures which are the obligation of such fund, cash insurance payments and adjustments, and expenses incurred in the handling, management, renovation, and disposal of properties acquired or constructed in connection with mortgages insured under this section, shall be charged to such fund.

(5) There are authorized to be appropriated to provide initial capital for the Multipurpose Senior Center Insurance Fund, and to assure the soundness of such fund thereafter, such sums as may be necessary.

(Pub. L. 89-73, title IV, § 431, as added Pub. L. 95-478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1543.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (g)(1), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the National Housing Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

PRIOR PROVISIONS

A prior section 431 of Pub. L. 89-73, title IV, as added Pub. L. 93-29, title IV, § 401, May 3, 1973, 87 Stat. 49, and amended Pub. L. 94-135, title I, § 112(d), Nov. 28, 1975, 89 Stat. 720, and renumbered Pub. L. 89-73, § 451 by Pub. L. 95-478, title I, § 104(c)(1), Oct. 18, 1978, 92 Stat. 1539, which related to authorization of appropriations and transfer of funds, is classified to section 3037 of this title.

CHANGE OF NAME

The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE

Part effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3035h. Annual interest grants

(a) Authority of Secretary

To assist nonprofit private agencies to reduce the cost of borrowing from other sources for the acquisition, alteration, renovation, or construction of facilities for multipurpose senior centers, the Secretary may make annual interest grants to such agencies.

(b) Period limitation; guarantees; amount

Annual interest grants under this section with respect to any facility shall be made over a fixed period not exceeding forty years, and provision for such grants shall be embodied in a contract guaranteeing their payment over such period. Each such grant shall be in an amount not greater than the difference between (1) the average annual debt service which would be required to be paid, during the life of the loan, on the amount borrowed from other sources for the acquisition, alteration, renovation, or construction of such facilities, and (2) the average annual debt service which the institution would have been required to pay, during the life of the loan, with respect to such amounts if the applicable interest rate were 3 percent per annum, except that the amount on which such grant is based shall be approved by the Secretary.

(c) Authorization of appropriations; aggregate amount limitation

(1) There are hereby authorized to be appropriated to the Secretary such sums as may be necessary for payment of annual interest grants in accordance with this section.

(2) Contracts for annual interest grants under this section shall not be entered into in an aggregate amount greater than is authorized in appropriation Acts.

(d) State limitation

Not more than 12½ per centum of the funds provided for in this section for grants may be used within any one State.

(Pub. L. 89-73, title IV, § 432, as added Pub. L. 95-478, title I, § 104(c)(1)(C), Oct. 18, 1978, 92 Stat. 1545.)

PRIOR PROVISIONS

A prior section 432 of Pub. L. 89-73, title IV, as added Pub. L. 93-29, title IV, § 401, May 3, 1973, 87 Stat. 49, and amended Pub. L. 94-135, title I, § 114(f), Nov. 28, 1975, 89 Stat. 725, and renumbered Pub. L. 89-73, § 452 by Pub. L. 95-478, title I, § 104(c)(1), Oct. 18, 1978, 92 Stat. 1539, which related to payments of grants, is classified to section 3037a of this title.

PART E—MULTIDISCIPLINARY CENTERS OF GERONTOLOGY

§ 3036. Applications for grants for establishment or support of multidisciplinary centers of gerontology and gerontology centers of special emphasis; terms and conditions

The Commissioner may make grants to public and private nonprofit agencies, organizations, and institutions for the purpose of establishing or supporting multidisciplinary centers of gerontology, and gerontology centers of special emphasis (including health, income maintenance, housing, service delivery and utilization, preretirement and retirement, and long-term care and alternatives). A grant may be made under this section only if the application therefor—

(1) provides satisfactory assurance that the applicant will expend the full amount of the grant to establish or support a multidisciplinary center of gerontology which shall—

(A) recruit and train personnel at the professional and subprofessional levels in accordance with the national manpower policy as described in section 3031 of this title,

[*See main edition for text of* (*B*) *to* (*G*)]

(2) provides for such fiscal control and fund accounting procedures as may be necessary to assure proper disbursement of and accounting for funds paid to the applicant under this section;

(3) provides for making such reports, in such form and containing such information, as the Commissioner may require to carry out his functions under this section, and for keeping such records and for affording such access thereto as the Commissioner may find necessary to assure the correctness and verification of such reports; and

(4) provides for making biennial reports to the Commissioner summarizing the training, research, and special demonstration efforts of the centers which shall then be made available through the National Information and Resource Clearing House for the Aging, where appropriate.

(Pub. L. 89-73, title IV, § 441, formerly § 421, as added Pub. L. 93-29, title IV, § 401, May 3, 1973, 87 Stat. 48, and renumbered and amended Pub. L. 95-478, title I, § 104(c)(1)(B), (d), Oct. 18, 1978, 92 Stat. 1539, 1546.)

AMENDMENTS

1978—Pub. L. 95-478, § 104(d)(1), in provision preceding par. (1), authorized grants for gerontology centers of special emphasis (including health, income maintenance, housing, service delivery and utilization, preretirement and retirement, and long-term care and alternatives).

Par. (1)(A). Pub. L. 95-478, § 104(d)(2), required personnel recruitment and training to be in accordance with the national manpower policy described in section 3031 of this title.

Par. (4). Pub. L. 95-478, § 104(d)(3), added par. (4).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

PART F—AUTHORIZATION OF APPROPRIATIONS

§ 3037. Authorization of appropriations; transfer of funds; specific uses authorization

(a) Except as otherwise specifically provided in this subchapter, there are authorized to be appropriated to carry out the provisions of this subchapter such sums as may be necessary for each fiscal year ending prior to October 1, 1981.

(b) No funds appropriated under this section—

(1) may be transferred to any office or other authority of the Department of Health, Education, and Welfare which is not directly responsible to the Commissioner; or

(2) may be used for any research program or activity which is not specifically authorized by this subchapter.

(Pub. L. 89-73, title IV, § 451, formerly § 431, as added Pub. L. 93-29, title IV, § 401, May 3, 1973, 87 Stat. 49; amended Pub. L. 94-135, title I, § 112(d), Nov. 28, 1975, 89 Stat. 720, and renumbered and amended Pub. L. 95-478, title I, § 104(c)(1)(B), (e)(1), Oct. 18, 1978, 92 Stat. 1539, 1546.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-478 designated existing provisions as subsec. (a), and in subsec. (a) as so designated, substituted appropriations authorization of necessary sums for each fiscal year ending prior to Oct. 1, 1981, for appropriations authorization of necessary sums for fiscal years ending June 30, 1973, through 1976, the period beginning July 1, 1976, and ending Sept. 30, 1976, and fiscal years ending Sept. 30, 1977, and 1978.

Subsec. (b). Pub. L. 95-478 added subsec. (b).

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3035d, 3035e of this title.

§ 3037a. Payments of grants

[*See main edition for text of* (a) *and* (b)]

(c) Multicategorical areas of need

The Commissioner may make multicategorical grants or contracts under any or all sections of this subchapter by making grants or contracts for the purpose of supporting extensive research and demonstration of particular areas of need.

(d) Consultations with State agency

The Commissioner shall make no grant or contract under this subchapter in any State which has established or designated a State agency for purposes of subchapter III of this chapter unless the Commissioner has consulted with such State agency regarding such grant or contract.

(Pub. L. 89-73, title IV, § 452, formerly § 432, as added Pub. L. 93-29, title IV, § 401, May 3, 1973, 87 Stat. 49; amended Pub. L. 94-135, title I, § 114(f), Nov. 28, 1975, 89 Stat. 725, and renumbered and amended Pub. L. 95-478, title I, § 104(c)(1)(B), (e)(2), Oct. 18, 1978, 92 Stat. 1539, 1547.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-478 added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95-478 redesignated former subsec. (c) as (d).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

SUBCHAPTER V—MULTIPURPOSE SENIOR CENTERS

PART A—ACQUISITION, ALTERATION, OR RENOVATION OF MULTIPURPOSE SENIOR CENTERS

§§ 3041 to 3041f. Repealed. Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558

Section 3041, Pub. L. 89-73, title V, § 501, as added Pub. L. 93-29, title V, § 501, May 3, 1973, 87 Stat. 50, related to provisions for grants or contracts. See sections 3028 and 3030d(b)(1) of this title.

Section 3041a, Pub. L. 89-73, title V, § 502, as added Pub. L. 93-29, title V, § 501, May 3, 1973, 87 Stat. 50, related to requirements for approval of applications, preferred areas, and agency cooperation.

Section 3041b, Pub. L. 89-73, title V § 503, as added Pub. L. 93-29, title V, § 501, May 3, 1973, 87 Stat. 51, provided for payments, reservation from appropriations amount of grant or contract, amendments, advances, reimbursement, and installments.

Section 3041c, Pub. L. 89-73, title V, § 504, as added Pub. L. 93-29, title V, § 501, May 3, 1973, 87 Stat. 51, provided for recapture of payments. See section 3030b of this title.

Section 3041d, Pub. L. 89-73, title V, § 505, as added Pub. L. 93-29, title V, § 501, May 3, 1973, 87 Stat. 51, and amended Pub. L. 94-135, title I, § 112(e), Nov. 28, 1975, 89 Stat. 720, provided for authorization of appropriations. See section 3023 of this title.

Section 3041e, Pub. L. 89-73, title V, § 506, as added Pub. L. 93-29, title V, § 501, May 3, 1973, 87 Stat. 51, related to mortgage insurance for Multipurpose Senior Centers. See section 3035g of this title.

Section 3041f, Pub. L. 89-73, title V, § 507, as added Pub. L. 93-29, title V, § 501, May 3, 1973, 87 Stat. 54, and amended Pub. L. 94-135, title I, § 114(g), Nov. 28, 1975, 89 Stat. 725, related to annual interest grants. See section 3035h of this title.

EFFECTIVE DATE OF REPEAL

Section 501(a) of Pub. L. 95-478 provided in part for repeal of sections 3041 to 3041f of this title effective at the close of Sept. 30, 1978.

PART B—INITIAL STAFFING OF MULTIPURPOSE SENIOR CENTERS

§ 3042. Repealed. Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558

Section, Pub. L. 89-73, title V, § 511, as added Pub. L. 93-29, Title V, § 501, May 3, 1973, 87 Stat. 54, related to personnel staffing grant program. See section 3030d(b)(2) of this title.

EFFECTIVE DATE OF REPEAL

Section 501(a) of Pub. L. 94-478 provided in part that repeal of this section is effective at the close of Sept. 30, 1978.

SUBCHAPTER VII—NUTRITION PROGRAM FOR THE ELDERLY

§§ 3045 to 3045i. Repealed. Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558

Section 3045, Pub. L. 89-73, title VII, § 701, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 88, stated Congressional findings and declaration of policy.

Section 3045a, Pub. L. 89-73, title VII, § 702, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 89, and amended Pub. L. 93-29, title VII, § 704(c), May 3, 1973, 87 Stat. 57; Pub. L. 93-644, § 9(a), Jan. 4, 1975, 88 Stat. 2310, related to administration of the program. See section 3021(b) of this title.

Section 3045b, Pub. L. 89-73, title VII, § 703, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 90, and amended Pub. L. 93-29, title VII, § 704(c), May 3, 1973, 87 Stat. 57; Pub. L. 94-135, title I, § 114(i), (j), Nov. 28, 1975, 89 Stat. 726, related to allotment of funds. See section 3024 of this title.

Section 3045c, Pub. L. 89-73, title VII, § 704, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 91, and amended Pub. L. 93-29, title VII, § 704(c), May 3, 1973, 87 Stat. 57, related to payment of grants. See section 3029(a) of this title.

Section 3045d, Pub. L. 89-73, title VII, § 705, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 91, and amended Pub. L. 93-29, title VII, §§ 702-704, May 3, 1973, 87 Stat. 56, 57; Pub. L. 94-135, title I, § 114(k)-(n), Nov. 28, 1975, 89 Stat. 726, related to provisions for State plans. See section 3027 of this title.

Section 3045e, Pub. L. 89-73, title VII, § 706, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 93, and amended Pub. L. 93-29, title VII, § 704(c), May 3, 1973, 87 Stat. 57; Pub. L. 94-135, title I, § 114(o), (p), Nov. 28, 1975, 89 Stat. 726, related to nutrition and other program requirements. See sections 3027(a)(13) and 3030c of this title.

Section 3045f, Pub. L. 89-73, title VII, § 707, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 94, and amended Pub. L. 93-29, title VII, § 701, May 3, 1973, 87 Stat. 56; Pub. L. 93-351, § 5, July 12, 1974, 88 Stat. 358; Pub. L. 94-135, title I, § 111(a)-(d), (f), Nov. 28, 1975, 89 Stat. 718, 719; Pub. L. 95-65, § 2, July 11, 1977, 91 Stat. 269, related to surplus commodities. See section 3030a of this title.

Section 3045g, Pub. L. 89-73, title VII, § 708, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 94, and amended Pub. L. 93-351, § 1, July 12, 1974, 88 Stat. 357; Pub. L. 94-135, title I, §§ 111(e), 112(f), Nov. 28, 1975, 89 Stat. 719, 720, provided for authorization of appropriations. See section 3023 of this title.

Section 3045h, Pub. L. 89-73, title VII, § 709, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 95, concerned with relationship to other laws. See section 3020a(b) of this title.

Section 3045i, Pub. L. 89-73, title VII, § 710, as added Pub. L. 92-258, § 2, Mar. 22, 1972, 86 Stat. 95, related to agreements with profitmaking organizations. See section 3020c of this title.

EFFECTIVE DATE OF REPEAL

Section 501(a) of Pub. L. 95-478 provided in part that repeal of sections 3045 to 3045i is effective at the close of Sept. 30, 1978.

NUTRITION PROJECTS FOR ELDERLY UNDER PRIOR PROVISIONS, QUALIFIED UNDER SUCCESSOR PROVISIONS, ELIGIBLE FOR FUNDS UNDER SUCH PROVISIONS; DISCONTINUANCE OF PAYMENTS FOR INEFFECTIVE ACTIVITIES

Pub. L. 95-478, title V, § 501(b), Oct. 18, 1978, 92 Stat. 1558, provided that: "Any project receiving funds under title VII of the Older Americans Act of 1965 [section 3045 et seq. of this title], as in effect on the day before the effective date of this Act [the close of Sept. 30, 1978], shall continue to receive funds under part C of title III of such Act, as amended by this Act [section 3030e et seq. of this title], if such project meets the requirements and criteria established in such title III, as amended by this Act [sections 3021 et seq. of this title], except that a State, pursuant to regulations prescribed by the Commissioner on Aging, shall not discontinue the payment of such funds to a project unless such State, after a hearing (if requested by the person responsible for administering such project), determines that such project has not carried out activities supported by such funds with demonstrated effectiveness."

SUBCHAPTER IX—COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1474, 2809, 3002, 3011, 6873 of this title.

§ 3056. Older American Community Service Employment Program

[*See main edition for text of* (*a*)]

(b) Authority of Secretary; execution of agreements with terms and conditions for furthering purposes and goals of program; regulations for execution of subchapter provisions

[*See main edition for text of* (*1*) *and* (*2*)]

(3) The Secretary shall develop alternatives for innovative work modes and provide technical assistance in creating job opportunities through work sharing and other experimental methods to prime sponsors, labor organizations, groups representing business and industry and workers as well as to individual employers, where appropriate.

(4) The Secretary may enter into an agreement with the Administrator of the Environmental Protection Agency to establish a Senior Environmental Employment Corps.

[*See main edition for text of* (*c*)]

(d) Project and program distribution review; notice and opportunity for hearing

(1) Whenever a national organization or other program sponsor conducts a project within a State such organization or program sponsor shall submit to the State agency on aging a description of such project to be conducted in the State, including the location of the project, 30 days prior to undertaking the project, for review and comment according to guidelines the Secretary shall issue to assure efficient and effective coordination of programs under this subchapter.

(2) The Secretary shall review on his own initiative or at the request of any public or private

nonprofit agency or organization, or an agency of the State government, the distribution of programs under this title within the State including the distribution between urban and rural areas within the State. For each proposed reallocation of programs within a State, the Secretary shall give notice and opportunity for a hearing on the record by all interested individuals and make a written determination of his findings and decision.

(e) Transitional employment; costs

The Secretary, in addition to any other authority contained in this subchapter, may enter into agreements designed to assure the transition of individuals employed in public service jobs under this subchapter to employment opportunities with private business concerns. The Secretary, from amounts reserved under section 3056d(a)(1)(B) of this title in any fiscal year, may pay all of the costs of any agreement entered into under the provisions of this subsection.

(Pub. L. 89-73, title V, § 502, formerly title IX, § 902, as added Pub. L. 94-135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 720, and renumbered and amended Pub. L. 95-478, title I, § 105(a), (b), Oct. 18, 1978, 92 Stat. 1547.)

PRIOR PROVISIONS

A prior section 502 of Pub. L. 89-73, title V, as added Pub. L. 93-29, title V, § 501, May 3, 1973, 87 Stat. 50, which related to requirements for approval of applications, preferred areas, and agency application and which was classified to section 3041a of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

AMENDMENTS

1978—Subsec. (b)(3), (4). Pub. L. 95-478, § 105(b)(1), added pars. (3) and (4).

Subsecs. (d), (e). Pub. L. 95-478, § 105(b)(2), added subsecs. (d) and (e).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

EXISTING PROJECTS; COMPLETION

Section 501(a) of Pub. L. 95-478, in part, authorized the Commissioner on Aging to complete projects undertaken under former sections 3041 et seq. and 3045 et seq. of this title or under this subchapter, before the close of Sept. 30, 1978, and unfinished on such date, with funds obligated but unexpended on such date.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056d of this title.

§ 3056a. Administration of community service projects

(a) Consideration of needs of localities, employment situation and skills of eligible participants, and potential projects and number and percentage of eligible individuals in local population

In order to effectively carry out the provisions of this subchapter, the Secretary shall, through the Commissioner of the Administration on Aging, consult with the State agency on aging designated under section 3025(a)(1) of this title and the appropriate area agencies on aging established under section 3025(a)(2) of this title with regard to—

(1) the localities in which community service projects of the type authorized by this subchapter are most needed;

(2) consideration of the employment situations and the type of skills possessed by available local individuals who are eligible to participate; and

(3) potential projects and the number and percentage of eligible individuals in the local population.

[*See main edition for text of* (b) *to* (e)]

(f) Senior Environmental Employment Corps and energy conservation projects

In carrying out the provisions of this subchapter, the Secretary may fund and expand projects concerning the Senior Environmental Employment Corps and energy conservation from sums appropriated under section 3056f of this title for such fiscal year.

(Pub. L. 89-73, title V, § 503, formerly title IX, § 903, as added Pub. L. 94-135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 722, and renumbered and amended Pub. L. 95-478, title I, § 105(a), (c)(1), (3), Oct. 18, 1978, 92 Stat. 1547, 1548.)

REFERENCES IN TEXT

The Comprehensive Employment and Training Act of 1973, referred to in subsec. (b), is Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 839, as amended, now known as the Comprehensive Employment and Training Act, which is classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 29 and Tables.

PRIOR PROVISIONS

A prior section 503 of Pub. L. 89-73, title V, as added Pub. L. 93-29, title V, § 501, May 3, 1973, 87 Stat. 51, which provided for payments, reservation from appropriations amount of grant or contract, amendments, advances, reimbursement, and installments and which was classified to section 3041b of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-478, § 105(c)(1), substituted reference to section "3025" for "3024" in two instances.

Subsec. (f). Pub. L. 95-478, § 105(c)(3), added subsec. (f).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3056b. Participants without status of Federal employees; contractual requirement of workmen's compensation

[*See main edition for text of* (a)]

(b) No contract shall be entered into under this subchapter with a contractor who is, or whose employees are, under State law, exempted from operation of the State workmen's compensation law, generally applicable to employees, unless the contractor shall undertake to provide either through insurance by a recognized carrier, or by self-insurance, as authorized by State law, that the persons employed under the contract shall enjoy workmen's compensation coverage equal to that provided by law for covered employment.

(Pub. L. 89-73, title V, § 504, formerly title IX, § 904, as added Pub. L. 94-135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 723, and renumbered and amended Pub. L. 95-478, title I, § 105(a), title V, § 503(d), Oct. 18, 1978, 92 Stat. 1547, 1559.)

PRIOR PROVISIONS

A prior section 504 of Pub. L. 89-73, title V, as added Pub. L. 93-29, title V, § 501, May 3, 1973, 87 Stat. 51, which provided for recapture of payments and which was classified to section 3041c of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-478 deleted the comma preceding "shall enjoy".

§ 3056c. Interagency cooperation

[*See main edition for text of* (*a*) *and* (*b*)]

(c) In administering projects under this subchapter concerning the Senior Environmental Employment Corps and energy conservation, the Secretary shall consult with the Administrator of the Environmental Protection Agency and the Secretary of Energy and shall enter into an agreement with the Administrator and the Secretary of Energy to coordinate programs conducted by them with such projects.

(Pub. L. 89-73, title V, § 505, formerly title IX, § 905, as added Pub. L. 94-135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 723, and renumbered and amended Pub. L. 95-478, title I, § 105(a), (d), Oct. 18, 1978, 92 Stat. 1547, 1548.)

PRIOR PROVISIONS

A prior section 505 of Pub. L. 89-73, title V, as added Pub. L. 93-29, title V, § 501, May 3, 1973, 87 Stat. 51, and amended Pub. L. 94-135, title I, § 112(e), Nov. 28, 1975, 89 Stat. 720, which provided for authorization of appropriation and which was classified to section 3041d of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-478 added subsec. (c).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3056d. National grants or contracts and State allotments for projects

(a) National activities based on level of activities in fiscal year 1978: preference in awards, equitable distribution of aggregate activities; transitional employment funds; State allotments: allotment formula, allotment percentage; number of persons aged fifty-five or over; per capita income

(1)(A) Subject to the provisions of paragraph (2), from sums appropriated under this subchapter for each fiscal year, the Secretary shall first reserve such sums as may be necessary for national grants or contracts with public agencies and public or private nonprofit organizations to maintain the level of activities carried on under such grants or contracts at least at the level of such activities supported under this subchapter and under any other provision of Federal law relating to community service employment programs for older Americans in fiscal year 1978. Preference in awarding such grants or contracts shall be given to national organizations of proven ability in providing employment services to older persons under this program and similar programs. The Secretary, in awarding grants and contracts under this section, shall, to the extent feasible, assure an equitable distribution of activities under such grants and contracts, in the aggregate, among the States, taking into account the needs of underserved States.

(B) From sums appropriated under this subchapter for each fiscal year after September 30, 1978, the Secretary may reserve an amount not to exceed one per centum of the amount appropriated in excess of the amount appropriated for fiscal year 1978 for the purpose of entering into agreements under section 3056(e) of this title, relating to improved transition to private employment.

(2) For each fiscal year in which the sums appropriated under this subchapter exceed the amount appropriated for fiscal year 1978, the Secretary shall reserve not more than 45 per centum of such excess amount for the purpose described in paragraph (1). The remainder of such excess shall be alloted pursuant to paragraph (3).

(3) The Secretary shall allot for projects within each State the remainder of the sums appropriated for any fiscal year under section 3056f of this title so that each State will receive an amount which bears the same ratio to such remainder as the product of the number of persons aged fifty-five or over in the State and the allotment percentage of such State bears to the sum of the corresponding product for all States, except that (A) no State shall be allotted less than one-half of 1 per centum of the remainder of the sums appropriated for the fiscal year for which the determination is made, or $100,000, whichever is greater, and (B) Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands shall each be allotted an amount which is not less than one-fourth of 1 per centum of the remainder of the sums appropriated for the fiscal year for which the determination is made, or $50,000, whichever is greater. For the purpose of the exception contained in this paragraph

the term "State" does not include Guam, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(4) For the purpose of this subsection—

(A) the allotment percentage of each State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that (i) the allotment percentage shall in no case be more than 75 per centum or less than 33⅓ per centum, and (ii) the allotment percentage for the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands shall be 75 per centum;

(B) the number of persons aged fifty-five or over in any State and in all States, and the per capita income in any State and in all States, shall be determined by the Secretary on the basis of the most satisfactory data available to him; and

(C) for the purpose of determining the allotment percentage, the term "United States" means the fifty States and the District of Columbia.

[*See main edition for text of* (b) *and* (c)]

(Pub. L. 89-73, title V, § 506, formerly title IX, § 906, as added Pub. L. 94-135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 723, and renumbered and amended Pub. L. 95-478, title I, § 105(a), (e), Oct. 18, 1978, 92 Stat. 1547, 1548.)

PRIOR PROVISIONS

A Prior section 506 of Pub. L. 89-73, title V, as added Pub. L. 93-29, title V, § 501, May 3, 1973, 87 Stat. 51, which related to mortgage insurance for Multipurpose Senior Centers and which was classified to section 3041e of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-478, § 105(e)(1), designated existing provisions as subpar. (A), and in subpar. (A) as so designated, inserted introductory text "Subject to the provisions of paragraph (2)" and substituted "fiscal year 1978" for "the fiscal year ending June 30, 1975", and added subpar. (B).

Subsec. (a)(2) to (4). Pub. L. 95-478, § 105(e)(2), added par. (2) and redesignated former pars. (2) and (3) as (3) and (4).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056 of this title.

§ 3056e. Definitions

As used in this subchapter—

[*See main edition for text of* (1)]

(2) the term "eligible individual" means an individual who is fifty-five years old or over, who has a low income (including any such individual whose income is not more than 125 per centum of the poverty guidelines established by the Bureau of Labor Statistics), and who has or would have difficulty in securing employment, except that, pursuant to regulations prescribed by the Secretary, any such individual who is sixty years old or over shall have priority for the work opportunities provided for under this subchapter;

[*See main edition for text of* (3) *and* (4)]

(Pub. L. 89-73, title V, § 507, formerly title IX, § 907, as added Pub. L. 94-135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 724, and renumbered and amended Pub. L. 95-478, title I, § 105(a), (f), Oct. 18, 1978, 92 Stat. 1547, 1548.)

PRIOR PROVISIONS

A prior section 507 of Pub. L. 89-73, title V, as added Pub. L. 93-29, title V, § 501, May 3, 1973, 87 Stat. 51, and amended Pub. L. 94-135, title I, § 114(g), Nov. 28, 1975, 89 Stat. 725, which related to annual interest grants and which was classified to section 3041f of this title, was repealed by Pub. L. 95-478, title V, § 501(a), Oct. 18, 1978, 92 Stat. 1558.

AMENDMENTS

1978—Par. (2). Pub. L. 95-478 inserted parenthetical text following "low income" reading "(including any such individual whose income is not more than 125 per centum of the poverty guidelines established by the Bureau of Labor Statistics)".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3056f. Authorization of appropriations

There are authorized to be appropriated to carry out this subchapter $100,000,000 for the fiscal year ending June 30, 1976, $37,500,000 for the period beginning July 1, 1976, and ending September 30, 1976, $150,000,000 for the fiscal year ending September 30, 1977, $200,000,000 for the fiscal year ending September 30, 1978, $350,000,000 for the fiscal year ending September 30, 1979, $400,000,000 for the fiscal year September 30, 1980, and $450,000,000 for the fiscal year ending September 30, 1981.

(Pub. L. 89-73, title V, § 508, formerly title IX, § 908, as added Pub. L. 94-135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 725, and renumbered and amended Pub. L. 95-478, title I, § 105(a), (g), Oct. 18, 1978, 92 Stat. 1547, 1548.)

AMENDMENTS

1978—Pub. L. 95-478 authorized appropriations of $350,000,000; $400,000,000; and $450,000,000 for fiscal years ending Sept. 30, 1979, through 1981.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3056a of this title.

SUBCHAPTER X—GRANTS FOR INDIAN TRIBES [NEW]

§ 3057. Statement of purpose

It is the purpose of this subchapter to promote the delivery of social services, including nutritional services, for Indians that are comparable to services provided under subchapter III of this chapter.

(Pub. L. 89-73, title VI, § 601, as added Pub. L. 95-478, title I, § 106, Oct. 18, 1978, 92 Stat. 1548.)

PRIOR PROVISIONS

A prior section 601 of Pub. L. 89-73, title VI, as added Pub. L. 91-69, § 9, Sept. 17, 1969, 83 Stat. 111, and amended Pub. L. 93-29, title VI, § 601, May 3, 1973, 87 Stat. 55, which related to grants and contracts for volunteer service projects and which was classified to section 3044 of this title, was repealed by Pub. L. 93-113, title VI, § 604(a), Oct. 1, 1973, 87 Stat. 417.

EFFECTIVE DATE

Subchapter effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 3057a. Eligibility for assistance; definitions

(a) A tribal organization of an Indian tribe is eligible for assistance under this subchapter only if—

(1) the tribal organization represents at least 75 individuals who have attained 60 years of age or older;

(2) the tribal organization demonstrates the ability to deliver social services, including nutritional services; and

(3) individuals to be served by the tribal organization will not receive for the year for which application under this subchapter is made, services under subchapter III of this chapter.

(b) The terms "Indian tribe" and "tribal organization" for the purposes of this title are defined as in section 450b of title 25.

(Pub. L. 89-73, title VI, § 602, as added Pub. L. 95-478, title I, § 106, Oct. 18, 1978, 92 Stat. 1549.)

§ 3057b. Authority of Commissioner

The Commissioner may make grants to eligible tribal organizations to pay all of the costs for delivery of social services and nutritional services for Indians who are aged 60 and older.

(Pub. L. 89-73, title VI, § 603, as added Pub. L. 95-478, title I, § 106, Oct. 18, 1978, 92 Stat. 1549.)

PRIOR PROVISIONS

A prior section 603 of Pub. L. 89-73, title VI, as added Pub. L. 91-69, § 9, Sept. 17, 1969, 83 Stat. 112, and amended Pub. L. 93-29, title VI, § 602, May 3, 1973, 87 Stat. 55, which related to authorization of appropriations and which was classified to section 3044a of this title, was repealed by Pub. L. 93-113, title VI, § 604(a), Oct. 1, 1973, 87 Stat. 417.

§ 3057c. Applications

(a) Approval criteria; provisions and assurances

No grant may be made under this subchapter unless the eligible tribal organization submits an application to the Commissioner which meets such criteria as the Commissioner may by regulation prescribe. Each such application shall—

(1) provide that the eligible tribal organization will evaluate the need for social and nutritional services among older Indians to be represented by the tribal organization;

(2) provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) provide that the tribal organization will make such reports in such form and containing such information, as the Commissioner may reasonably require, and comply with such requirements as the Commissioner may impose to assure the correctness of such reports;

(4) provide that a nonprofit private organization selected by the tribal organization will conduct periodic evaluation of activities and projects carried out under the application;

(5) establish objectives consistent with the purposes of this subchapter toward which activities under the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the tribal organization proposes to overcome such obstacles;

(6) provide for establishing and maintaining information and referral services to assure that older Indians to be served by the assistance made available under this subchapter will have reasonably convenient access to such services;

(7) provide a preference for Indians aged 60 and older for full- or part-time staff positions wherever feasible;

(8) provide assurances that either directly or by way of grant or contract with appropriate entities nutritional services will be delivered to older Indians represented by the tribal organization substantially in compliance with the provisions of part C of subchapter III of this chapter;

(9) contain assurances that the provisions of sections 3027(a)(14)(A)(i) and (iii), 3027(a)(14)(B), and 3027(a)(14)(C) of this title will be complied with whenever the application contains provisions for the acquisition, alteration, or renovation of facilities to serve as multipurpose senior centers;

(10) provide assurances that either directly or by way of grant or contract with appropriate entities legal and ombudsman services will be made available to older Indians represented by the tribal organization substantially in compliance with the provisions of subchapter III of this chapter relating to the furnishing of similar services; and

(11) provide satisfactory assurance that fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this subchapter to

the tribal organization, including any funds paid by the tribal organization to a recipient of a grant or contract.

(b) Population statistics development

For the purpose of any application submitted under this subchapter, the tribal organization may develop its own population statistics, with certification from the Bureau of Indian Affairs, in order to establish eligibility.

(c) Approval by Commissioner

The Commissioner shall approve any application which complies with the provisions of subsection (a) of this section.

(d) Reallotment of withheld State allotments

Whenever the Commissioner approves an application under this subchapter he shall withhold from the allotment of the appropriate State made under section 3024 of this title an amount attributable to the Indians to be served under the application who were also counted for the purpose of allotments under subchapter III of this chapter. The Commissioner shall reallot sums withheld under this subsection in accordance with the provisions of section 3024(b) of this title.

(e) Disapproval by Commissioner

Whenever the Commissioner determines not to approve an application submitted under subsection (a) of this section he shall—

(1) state his objections in writing to the tribal organization within 60 days after such decision;

(2) provide to the extent practicable technical assistance to the tribal organization to overcome his stated objections; and

(3) provide the tribal organization with a hearing, under such rules and regulations as he may prescribe.

(f) Funds per year; other sources prohibition

Whenever the Commissioner approves an application of a tribal organization under this title, funds shall be awarded for not less than 12 months, during which time such tribal organization may not receive funds under subchapter III of this chapter.

(Pub. L. 89-73, title VI, § 604, as added Pub. L. 95-478, title I, § 106, Oct. 18, 1978, 92 Stat. 1549.)

§ 3057d. Administrative regulations

(a) Consultations

In establishing regulations for the purpose of this subchapter the Commissioner shall consult with the Secretary of the Interior.

(b) Issuance

The Commissioner shall prescribe final regulations for the administration of this subchapter not later than 90 days after October 18, 1978.

(Pub. L. 89-73, title VI, § 605, as added Pub. L. 95-478, title I, § 106, Oct. 18, 1978, 92 Stat. 1551.)

§ 3057e. Surplus educational facilities

(a) Multipurpose senior centers

Notwithstanding any other provision of law, the Secretary of the Interior through the Bureau of Indian Affairs shall make available surplus Indian educational facilities to tribal organizations, and nonprofit organizations with tribal approval, for use as multipurpose senior centers. Such centers may be altered so as to provide extended care facilities, community center facilities, nutritional services, child care services, and other social services.

(b) Applications; submission; contents

Each eligible tribal organization desiring to take advantage of such surplus facilities shall submit an application to the Secretary of the Interior at such time and in such manner, and containing or accompanied by such information, as the Secretary of the Interior determines to be necessary to carry out the provisions of this section.

(Pub. L. 89-73, title VI, § 606, as added Pub. L. 95-478, title I, § 106, Oct. 18, 1978, 92 Stat. 1551.)

Section Referred to in Other Sections

This section is referred to in section 3057g of this title.

§ 3057f. Payments

Payments may be made under this subchapter (after necessary adjustments, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement in such installments and on such conditions, as the Commissioner may determine.

(Pub. L. 89-73, title VI, § 607, as added Pub. L. 95-478, title I, § 106, Oct. 18, 1978, 92 Stat. 1551.)

§ 3057g. Authorization of appropriations

(a) Except as provided in subsection (c) of this section, there are authorized to be appropriated such sums as may be necessary for fiscal years 1979, 1980, and 1981, to carry out the provisions of this subchapter.

(b) For any fiscal year in which less than $5,000,000 is appropriated under subsection (a) of this section tribal organizations are authorized to receive assistance in accordance with the provisions of subchapter III of this chapter.

(c) There are authorized to be appropriated such sums as may be necessary for fiscal years 1979, 1980, and 1981, to carry out the provisions of section 3057e of this title.

(Pub. L. 89-73, title VI, § 608, as added Pub. L. 95-478, title I, § 106, Oct. 18, 1978, 92 Stat. 1551.)

CHAPTER 37—COMMUNITY FACILITIES AND ADVANCE LAND ACQUISITION

§ 3102. Grants for basic water and sewer facilities

Section Referred to in Other Sections

This section is referred to in sections 1453a, 3107, 3108, 3338, 3914, 4519, 5153, 5316 of this title; title 33 section 1281a.

§ 3103. Grants for neighborhood facilities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1453a, 3107, 3108, 4519, 5316 of this title.

CHAPTER 38—PUBLIC WORKS AND ECONOMIC DEVELOPMENT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2825, 3123, 3142a, 5153 of this title; title 15 section 636; title 19 section 2373; title 23 section 143; title 43 section 1601.

§ 3121. Congressional findings and statement of purpose

WHITE HOUSE CONFERENCE ON BALANCED NATIONAL GROWTH AND ECONOMIC DEVELOPMENT

Title II of Pub. L. 94-487, as amended by Pub. L. 95-31, title II, §§ 201, 202, May 23, 1977, 91 Stat. 170, provided that:

"SEC. 201. (a) The President of the United States is authorized and requested to call a White House Conference on Balanced National Growth and Economic Development within eighteen months of the date of enactment of this Act [Oct. 12, 1976] in order to develop recommendations for further action toward balanced national growth and economic development, and to take account of present conditions and trends as set forth in the report accompanying this Act [see Short Title of 1976 Amendment note above]. Such conference shall be planned and conducted under the direction of the domestic council with the cooperation and assistance of such other Federal departments and agencies, including the regional commissions established under the Appalachian Regional Development Act [section 1 et seq. of the Appendix to Title 40, Public Buildings, Property, and Works] and title V of the Public Works and Economic Development Act [subchapter V of this chapter].

[*See main edition for text of* (b) *and* (c)]

"SEC. 202. In administering this title, the President shall—

"(1) request the cooperation and assistance of such other Federal departments and agencies as may be appropriate;

"(2) give all reasonable assistance, including financial assistance, to the States to enable them to organize and conduct conferences on balanced growth and economic development;

"(3) prepare and make available background materials for the use of delegates to the White House Conference on Balanced National Growth and Economic Development as they may deem necessary;

"(4) prepare and distribute interim reports of the White House Conference on Balanced National Growth and Economic Development as may be appropriate;

"(5) engage such personnel as may be necessary without regard to the provisions of title 5, United States Code, governing appointments in the competitive civil service, and without regard to chapter 51 and chapter 53 of such title;

"(6) accept and use gifts or bequests of services, moneys and property; and

"(7) use appropriated funds and act as may be necessary and appropriate without regard to the provisions of section 551 of title 31, United States Code, section 34 of title 40, United States Code, and section 5 of title 41, United States Code.

[*See main edition for text of secs. 203 and 204*]

SUBCHAPTER I—GRANTS FOR PUBLIC WORKS AND DEVELOPMENT FACILITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2985a, 3153, 3195, 3196, 3214 of this title.

§ 3132. Grants for operation of health projects; amounts for first and second fiscal years of operation; efficient management practices of facilities as prerequisite

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER II—LOANS, LOAN GUARANTEES, AND ECONOMIC DEVELOPMENT REVOLVING FUND

§ 3141. Public works and development facility loans

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3142, 3143, 3171, 3211, 3220, 3221, 3222, 3223 of this title; title 15 section 636; title 29 section 886.

§ 3142. Business loans and loan guarantees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2985a, 3131, 3141, 3142-1, 3143, 3161, 3162, 3171, 3211, 3220, 3221, 3222, 3223, 5318 of this title; title 29 section 886.

SUBCHAPTER IV—AREA AND DISTRICT ELIGIBILITY

PART B—ECONOMIC DEVELOPMENT DISTRICTS

§ 3171. District eligibility

REFERENCES IN TEXT

The Appalachian Regional Development Act of 1965, referred to in subsec. (h), is Pub. L. 89-4, Mar. 9, 1965, 79 Stat. 5, as amended, which was classified generally to § 1 et seq. of Title 40, App., Public Buildings, Property, and Works, and was terminated, with the exception of section 201 of such Act, on Oct. 1, 1979, pursuant to section 405 of the Act.

TERMINATION OF APPALACHIAN REGIONAL COMMISSION

The Appalachian Regional Commission, which was established by section 101 of the Appalachian Regional Development Act of 1965, Pub. L. 89-4, title I, Mar. 9, 1965, 79 Stat. 6, set out as section 101 of Title 40, App., Public Buildings, Property, and Works, was terminated on Oct. 1, 1979, pursuant to section 405 of the Act.

SUBCHAPTER V—REGIONAL ACTION PLANNING COMMISSIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3171, 3232, 7265 of this title; title 7 section 178a.

§ 3182. Regional commissions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3246c of this title; title 5 section 5334.

§ 3186. Administrative powers of regional commissions; headquarters of Federal cochairman

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3188 of this title; title 5 section 5334.

§ 3195. Health and nutrition demonstration projects

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 3196. Vocational and technical education demonstration projects

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER VIII—ECONOMIC RECOVERY FOR DISASTER AREAS

§ 3232. Disaster recovery planning

REFERENCES IN TEXT

The Appalachian Regional Development Act of 1965, referred to in subsec. (a)(3), (4) is Pub. L. 89-4, Mar. 9, 1965, 79 Stat. 5, as amended, which was classified generally to § 1 et seq. of Title 40, App., Public Buildings, Property, and Works, and was terminated, with the exception of section 201 of such Act, on Oct. 1, 1979, pursuant to section 405 of the Act.

TERMINATION OF APPALACHIAN REGIONAL COMMISSION

The Appalachian Regional Commission, which was established by section 101 of the Appalachian Regional Development Act of 1965, Pub. L. 89-4, title I, Mar. 9, 1965, 79 Stat. 6, set out as section 101 of Title 40, App., Public Buildings, Property, and Works, was terminated on Oct. 1, 1979, pursuant to section 405 of the Act.

SUBCHAPTER IX—SPECIAL ECONOMIC DEVELOPMENT AND ADJUSTMENT ASSISTANCE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3153 of this title.

SUBCHAPTER X—JOB OPPORTUNITIES PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 29 section 871.

§ 3246a. Definitions

REFERENCES IN TEXT

Section 844 of title 29, referred to in text, was eliminated in the general amendment of the Comprehensive Employment and Training Act of 1973 by Pub. L. 95-524, Oct. 27, 1978, 92 Stat. 1912. See section 802(2) of Title 29, Labor.

§ 3246c. Program review

REFERENCES IN TEXT

Section 101 of the Appalachian Regional Development Act of 1965, referred to in subsec. (a), is section 101 of Pub. L. 89-4, Mar. 9, 1965, 79 Stat. 5, which was set out as section 101 of Title 40 App., Public Buildings, Property, and Works, and was terminated on Oct. 1, 1979, pursuant to section 405 of Title 40 App.

CHAPTER 41—DEMONSTRATION CITIES AND METROPOLITAN DEVELOPMENT PROGRAM

SUBCHAPTER I—COMPREHENSIVE CITY DEMONSTRATION PROGRAMS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 4637, 5306, 5316 of this title.

SUBCHAPTER II—PLANNED AREAWIDE DEVELOPMENT

§ 3337. Consultations and certifications

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER IV—MISCELLANEOUS PROVISIONS

§ 3371. Assistance for housing in Alaska

(a) Loans and grants; authorization; purposes

The Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") may make loans and grants on the basis of need to the regional native housing authorities duly constituted under the laws of the State of Alaska for the purpose of providing planning assistance, housing rehabilitation, and maintaining an adequate administrative structure in conjunction with the provision of housing and related facilities for Alaska residents.

(b) Amount of grants

Grants under this section shall not exceed 75 per centum of the aggregate cost of the housing and related facilities to be constructed under an approved program, except that the Secretary may make a grant in excess of such limitation in any case, after consultation with State officials.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 95-557, title IX, § 904, Oct. 31, 1978, 92 Stat. 2125.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-557, § 904(a), generally revised subsec. (a) to require that the Department of Housing and Urban Development make loans and grants, on the basis of need, to regional Alaska Native housing authorities for certain planning, administrative, and other expenses in conjunction with the provision of housing and related facilities for Alaska residents.

Subsec. (b). Pub. L. 95-557, § 904(b), added "except that the Secretary may make a grant in excess of such limitation in any case, after consultation with State officials".

CHAPTER 43—DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
3510. Transferred.
3513. Working capital fund; establishment; amount; use; reimbursement [New].
3513a. Working capital fund; availability for centralized personnel data collection and reporting and common regional administrative support services [New].
3513b. Working capital fund; availability for common personnel support services [New].
3514. Special account for grants of Department; reports [New].

SUBCHAPTER I—GENERAL PROVISIONS

§ 3501. Establishment of Department; effective date

Emergency Preparedness Functions

For assignment of certain emergency preparedness functions to the Secretary of Health and Human Services see Parts 1, 11, and 30 of Ex. Ord. No. 11490, Oct. 28, 1969, 34 F.R. 17567, set out as a note under section 2251 of Title 50, Appendix, War and National Defense.

§ 3501a. Additional Assistant Secretaries

Change of Name

The Department and Assistant Secretaries of Health, Education, and Welfare were redesignated the Department and Assistant Secretaries of Health and Human Services by section 3508 of Title 20, Education.

§ 3502. Assistant Secretary for Administration; appointment and duties

Change of Name

The Department, Assistant Secretary for Administration, and the Secretary of Health, Education, and Welfare were redesignated the Department, Assistant Secretary for Administration, and the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 3502a. Administrator of Social and Rehabilitation Service; appointment and confirmation

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 3504. General Counsel; appointment

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 3505. Seal

Change of Name

The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

§ 3505a. Office of Population Affairs; establishment; Deputy Assistant Secretary for Population Affairs; appointment; staff and consultants

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

Section Referred to in Other Sections

This section is referred to in title 20 section 3062.

§ 3505b. Functions and duties of Deputy Assistant Secretary for Population Affairs

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§§ 3505d, 3506

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 3507. Transfer of personnel and household goods; delegation of Secretary's authority

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 3509. Annual report on advisory councils

(a) Submission to Congress; contents

Not later than March 31 of each calendar year after 1970, the Secretary of the Department of Health, Education, and Welfare shall submit a report on the activities of advisory councils (established or organized pursuant to any applicable statute of the Public Health Service Act, as amended [42 U.S.C. 201 et seq.], or the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, as amended [42 U.S.C. 2689 et seq., 6000 et seq.]) to the Committee on Labor and Human Resources of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives. Such report shall contain, at least, a list of all such advisory councils, the names and occupations of their members, a description of the function of each advisory council, and a statement of the dates of the meetings of each advisory council.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended S. Res. 30, Mar. 7, 1979.)

References in Text

The Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963, as amended, referred to in subsec. (a), is Pub. L. 88-164, Oct. 31, 1963, 77 Stat. 282, as amended, which is classified principally to subchapter III (§ 2689 et seq.) of chapter 33 and chapter 75 (§ 6000 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6000 of this title and Tables.

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

The name of the Committee on Human Resources of the Senate was changed to the Committee on Labor and Human Resources effective Mar. 7, 1979, by Senate Resolution 30, 96th Congress. See, also, Rule XXV of the Standing Rules of the Senate adopted Nov. 14, 1979.

§ 3510. Transferred

Codification

Section, Pub. L. 91-667, title II, § 200, Jan. 11, 1971, 84 Stat. 2015, was transferred to section 3513a of this title.

§§ 3511, 3512

Change of Name

The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

§ 3513. Working capital fund; establishment; amount; use; reimbursement

There is established a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of (1) a central reproduction service; (2) a central visual exhibit service; (3) a central supply service for supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department; (4) a central tabulating service; (5) telephone, mail, and messenger services; (6) a central accounting and payroll service; and (7) a central laborers' service: *Provided*, That any stocks of supplies and equipment on hand or on order shall be used to capitalize such fund: *Provided further*, That such fund shall be reimbursed in advance from funds available to bureaus, offices, and agencies for which such centralized services are performed at rates which will return in full all expenses of operation, including reserves for accrued annual leave and depreciation of equipment.

(July 5, 1952, ch. 575, title II, § 201, 66 Stat. 369; 1953 Reorg. Plan No. 1, §§ 5, 8, eff. Apr. 11, 1953, 18 F.R. 2053, 67 Stat. 631; Sept. 2, 1960, Pub. L. 86-703, title II, § 201, 74 Stat. 773.)

Codification

Section was enacted as a part of title II of act July 5, 1952, popularly known as the Federal Security Agency Appropriation Act, 1953.

Section was formerly classified to section 905 of this title.

Amendments

1960—Pub. L. 86-703 made the fund available for the maintenance and operation of a central visual exhibit service, telephone, mail and messenger services, a central accounting and payroll service, and a central laborers' service.

Transfer of Functions

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

All functions of the Federal Security Administrator were transferred to the Secretary of Health, Education, and Welfare and all agencies of the Federal Security Agency were transferred to the Department of Health, Education, and Welfare by section 5 of Reorg. No. 1 of 1953, set out as a note under section 202 of this title. The Federal Security Agency and the office of Administrator were abolished by section 8 of Reorg. Plan No. 1 of 1953.

§ 3513a. Working capital fund; availability for centralized personnel data collection and reporting and common regional administrative support services

The Working Capital Fund of the Department of Health, Education, and Welfare shall on and after January 11, 1971, be available for expenses necessary for centralized personnel data collection and reporting and common regional administrative support services.

(Pub. L. 91-667, title II, § 200, Jan. 11, 1971, 84 Stat. 2015.)

Codification

Section was enacted as a part of section 200 of title II of Pub. L. 91-667, popularly known as the Department of Health, Education, and Welfare Appropriation Act, 1971.

Section was formerly classified to section 3510 of this title.

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 3513b. Working capital fund; availability for common personnel support services

The Working Capital Fund of the Department of Health, Education, and Welfare shall on and after August 10, 1971, be available for expenses necessary for common personnel support services in the Washington area.

(Pub. L. 92-80, title II, § 200, Aug. 10, 1971, 85 Stat. 297.)

Codification

Section was enacted as a part of section 200 of title II of Pub. L. 92-80, popularly known as the Department of Health, Education, and Welfare Appropriation Act, 1972.

Section was formerly classified to section 905a of this title.

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 3514. Special account for grants of Department; reports

There is hereby established on the books of the Treasury an account or accounts without fiscal year limitation. There shall be deposited in such account, to the extent provided by the Secretary of Health, Education, and Welfare or his designee, all or part of any grant awarded by the Secretary or any other officer or employee of the Department of Health, Education, and Welfare. Payments of any such grant shall from time to time be made to the grantee from such account or accounts, subject to such limitations relating to fund accumulation as the Secretary may prescribe, to the extent needed to carry out the purposes of any such grant. Such reports as the Secretary or other officer awarding the grant may find necessary to assure expenditure of funds for the purpose of and in accordance with the terms and conditions of the grant shall be made to the Secretary or such officer by any such grantee.

(Pub. L. 89-105, § 6, Aug. 4, 1965, 79 Stat. 430.)

CODIFICATION

Section was formerly classified to section 553 of Title 31, Money and Finance.

CHANGE OF NAME

The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER II—OFFICE OF INSPECTOR GENERAL

§ 3521. Establishment of Office

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 3522. Officers

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Assistant Inspector General for Auditing and Assistant Inspector General for Investigations

The Inspector General shall, in accordance with applicable laws and regulations governing the civil service—

(1) appoint an Assistant Inspector General for Auditing who shall have the responsibility for supervising the performance of the functions, powers, and duties transferred by section 3526(a)(1) of this title, and

(2) appoint an Assistant Inspector General for Investigations who shall have the responsibility for supervising the performance of the functions, powers, and duties transferred by section 3526(a)(2) of this title.

(As amended Pub. L. 95-452, § 10(c), Oct. 12, 1978, 92 Stat. 1109.)

AMENDMENTS

1978—Subsec. (e)(1). Pub. L. 95-452 substituted reference, in the original, to "section 206(a)(1)" for reference to "section 6(a)(1)", which for purposes of codification had already been translated as section 3526(a)(1) of this title, requiring no change in text.

Subsec. (e)(2). Pub. L. 95-452 substituted reference, in the original, to "section 206(a)(2)" for reference to "section 6(a)(2)", which for purposes of codification had already been translated as section 3526(a)(2), requiring no change in text.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-452 effective Oct. 1, 1978, see section 12 of Pub. L. 95-452 set out in the Appendix to Title 5, Government Organization and Employees.

§ 3524. Reports

(a) Annual report; contents

The Inspector General shall, not later than March 31 of each year, submit a report to the Secretary and to the Congress summarizing the activities of the Office during the preceding calendar year. Such report shall include, but need not be limited to—

[*See main edition for text of* (*1*) *to* (*4*)]

Such report also shall include a detailed description of the cases referred by the Department of Health, Education, and Welfare to the Department of Justice during the period covered by the report, an evaluation of the performance of the Department of Justice in the investigation and prosecution of criminal violations relating to fraud in the programs of health insurance and medical assistance provided under titles XVIII and XIX of the Social Security Act [42 U.S.C. 1395 et seq., 1396 et seq.], and any recommendations with respect to improving the performance of such activities by the Department of Justice. Promptly, after the Inspector General submits such a report to Congress, the Attorney General shall report to Congress concerning the details of the disposition of the cases referred to the Department of Justice and described in the Inspector General's report.

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended Pub. L. 95-142, § 4(c), Oct. 25, 1977, 91 Stat. 1183.)

REFERENCES IN TEXT

The Social Security Act, referred to in subsec. (a), is act Aug. 14, 1935, ch. 531, 49 Stat. 620, as amended. Titles XVIII and XIX of such Act are classified generally to subchapters XVIII (§ 1395 et seq.) and XIX (§ 1396 et seq.), respectively, of chapter 7 of this title. For complete classification of this Act to the Code, see section 1305 of this title and Tables.

AMENDMENTS

1977—Subsec. (a), Pub. L. 95-142 added provisions requiring the annual report to contain information respecting cases referred by the Department to the Department of Justice during the covered period, including an evaluation, etc., of the performance of the Department of Justice.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 3527. Definitions

CHANGE OF NAME

The Secretary and Department of Health, Education, and Welfare were redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

CHAPTER 44—DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Sec.
3540. Prototype housing costs; annual publication [New].
3541. Paperwork reduction [New].
  (a) Declaration of policy.
  (b) Uniform legal and other forms for use by agencies in housing programs.
  (c) Coordination and reports by Director of the Office of Management and Budget.

§ 3533. Officers of Department

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Special Assistant for Indian and Alaska Native Programs; report to Congress

(1) There shall be in the Department a Special Assistant for Indian and Alaska Native Pro-

grams, who shall be responsible for coordinating all programs of the Department relating to Indian and Alaska Native housing and community development. The Special Assistant for Indian and Alaska Native Programs shall be designated by the Secretary not later than 60 days after October 12, 1977.

(2) The Secretary shall, not later than December 1 of each year, submit to Congress an annual report which shall include—

(A) a description of his actions during the current year and a projection of his activities during the succeeding years;

(B) estimates of the cost of the projected activities for succeeding fiscal years;

(C) a statistical report on the conditions of Indian and Alaska Native housing; and

(D) recommendations for such legislative, administrative, and other actions, as he deems appropriate.

(As amended Pub. L. 95-128, title IX, § 901, Oct. 12, 1977, 91 Stat. 1148.)

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-128 added subsec. (d).

OFFICE OF INSPECTOR GENERAL

All the functions, powers, and duties of the Office of Inspector General in the Department of Housing and Urban Development were transferred to the Office of Inspector General in the Department of Housing and Urban Development, as established by Pub. L. 95-452, § 2, Oct. 12, 1978, 92 Stat. 1101, set out in the Appendix to Title 5, Government Organization and Employees. See section 9(a)(1)(C) of Pub. L. 95-452 set out in Appendix to Title 5.

§ 3533a. Federal Insurance Administrator; establishment of position

There is hereby established in the Federal Emergency Management Agency the position of Federal Insurance Administrator.

(As amended Pub. L. 96-153, title VI, § 603(a), Dec. 21, 1979, 93 Stat. 1138.)

CODIFICATION

Section was not enacted as part of the Department of Housing and Urban Development Act which comprises this chapter.

AMENDMENTS

1979—Pub. L. 96-153 substituted "Federal Emergency Management Agency" for "Department of Housing and Urban Development".

§ 3535. Administrative provisions

[*See main edition for text of* (*a*) *to* (*m*)]

(n) Day care center for children of employees of the Department; establishment; fees and charges

Notwithstanding any other provision of law, the Secretary is authorized by contract or otherwise to establish, equip, and operate a day care center facility or facilities, or to assist in establishing, equipping, and operating interagency day care facilities for the purpose of serving children who are members of households of employees of the Department. The Secretary is authorized to establish or provide for the establishment of appropriate fees and charges to be chargeable against the Department of Housing and Urban Development employees or others who are beneficiaries of services provided by any such day care center. In addition, limited start-up costs may be provided by the Secretary in an amount limited to 3 per centum of the first year's operating budget, but not to exceed $3,500.

(*o*) Agenda of rules or regulations under development or review; transmittal to Congress

(1) Notwithstanding any other provision of law, the Secretary shall transmit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives an agenda of all rules or regulations which are under development or review by the Department. Such an agenda shall be transmitted to such Committees within 30 days of October 31, 1978, and at least semi-annually thereafter.

(2)(A) Any rule or regulation which is on any agenda submitted under paragraph (1) may not be published for comment prior to or during the first period of 15 calendar days of continuous session of Congress which occurs after the date on which such agenda was transmitted. If within such period, either Committee notifies the Secretary in writing that it intends to review any rule or regulation or portion thereof which appears on the agenda, the Secretary shall submit to both Committees a copy of any such rule or regulation, in the form it is intended to be proposed, at least 15 calendar days of continuous session prior to its being published for comment in the Federal Register.

(B) Any rule or regulation which has not been published for comment before October 31, 1978, and which does not appear on an agenda submitted under paragraph (1) shall be submitted to both such Committees at least 15 calendar days of continuous session of Congress prior to its being published for comment.

(3) No rule or regulation may become effective until after the first period of 20 calendar days of continuous session of Congress which occurs after the day on which such rule or regulation is published as final. If within such 20-day period, either Committee has reported out or been discharged from further consideration of a joint resolution of disapproval or other legislation which is intended to modify or invalidate the rule or regulation or any portion thereof, the rule or regulation or portion thereof so addressed shall not become effective for a period of 90 calendar days from the date of Committee action or discharge unless the House to which such Committee reports has rejected such resolution or legislation, in which case the rule or regulation may go into effect only after the expiration of the 20 calendar days described in the first sentence of this paragraph if the other House does not have such a resolution or legislation pending or adopted, and if the requirements of section 553 of title 5 are met.

(4) The provisions of paragraphs (2) and (3) may be waived upon the written request of the Secretary, if agreed to by the Chairmen and Ranking Minority Members of both Committees.

(5) Congressional inaction on any rule or regulation shall not be deemed an expression of approval of the rule or regulation involved.

(6) For purposes of this subsection—

(A) continuity of session is broken only by an adjournment of Congress sine die;

(B) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of calendar days of continuous session of Congress; and

(C) the term "rule or regulation" does not include the setting of interest rates pursuant to section 3 of Public Law 90-301.

(p) Cost-benefit analysis of field reorganizations; requirements, contents, etc.

A plan for the reorganization of any regional, area, insuring, or other field office of the Department of Housing and Urban Development may take effect only upon the expiration of 90 days after publication in the Federal Register of a cost-benefit analysis of the effect of the plan on each office involved. Such cost-benefit analysis shall include, but not be limited to—

(1) an estimate of cost savings supported by background information detailing the source and substantiating the amount of the savings;

(2) an estimate of the additional cost which will result from the reorganization;

(3) a study of the impact on the local economy; and

(4) an estimate of the effect of the reorganization on the availability, accessibility, and quality of services provided for recipients of those services,

where any of the above factors cannot be quantified, the Secretary shall provide a statement on the nature and extent of those factors in the cost-benefit analysis.

(As amended Pub. L. 95-557, title III, §§ 316, 324, title IX, § 908, Oct. 31, 1978, 92 Stat. 2099, 2103, 2129.)

REFERENCES IN TEXT

Section 3 of Pub. L. 90-301, referred to in subsec. (o)(6)(C), is section 3 of Pub. L. 90-301, May 7, 1968, 82 Stat. 113, which enacted section 1709-1 of Title 12, Banks and Banking, and amended sections 1713, 1715e, 1715v, and 1715y of Title 12.

CODIFICATION

Pub. L. 90-248, title VIII, § 808(b)(2), Apr. 11, 1968, 82 Stat. 84, cited in the credit of this section in the main edition should be "Pub. L. 90-284, title VIII, § 808(b)(2), Apr. 11, 1968, 82 Stat. 84".

AMENDMENTS

1978—Subsec. (n). Pub. L. 95-557, § 316 added "or facilities, or to assist in establishing, equipping, and operating interagency day care facilities" following "a day care center facility", substituted "any such day care center" for "such a day care center" and added provision relating to limited start-up costs in an amount limited to 3 per centum of the first year's operating budget, but not to exceed $3,500.

Subsec. (*o*). Pub. L. 95-557, § 324, added subsec. (*o*).

Subsec. (p). Pub. L. 95-557, § 908, added subsec. (p).

§ 3538. Rescheduling and refinancing of federal loans

CODIFICATION

Section was not enacted as part of the Department of Housing and Urban Development Act which comprises this chapter.

§ 3539. Housing and Urban Development Disaster Assistance Fund

CODIFICATION

Section was not enacted as part of the Department of Housing and Urban Development Act which comprises this chapter.

§ 3540. Prototype housing costs; annual publication

(a) Beginning in calendar year 1979, the Secretary of Housing and Urban Development shall prepare and publish annually prototype housing costs for one- to four-family dwelling units for each housing market area in the United States, as determined by the Secretary. Prototype housing costs for an area shall be determined on the basis of the Secretary's identification and estimate of reasonable construction and other costs (including reasonable allowances for the cost of land and site improvements) for that area of various types and sizes of new one- to four-family dwelling units designed for various segments of the housing market of the area, as determined by the Secretary. In determining prototype housing costs, the Secretary is authorized to take into account the need for durability required for economic maintenance of housing, the need for amenities suitable to assure a safe and healthy family life and neighborhood environment, the application of good design and quality in architecture, and the need for maximum conservation of energy, as well as the advice and recommendations of local housing producers.

(b) The Secretary is authorized to take such action as may be necessary to develop, aggregate, and evaluate data and other information required for the timely development, implementation, and maintenance of the prototype housing cost system referred to in subsection (a) of this section.

(Pub. L. 95-128, title IX, § 904, Oct. 12, 1977, 91 Stat. 1149.)

CODIFICATION

Section was not enacted as part of the Department of Housing and Urban Development Act which comprises this chapter.

§ 3541. Paperwork reduction

(a) Declaration of policy

The Congress finds and declares—

(1) that various departments, agencies, and instrumentalities of the Federal Government with responsibilities involving housing and housing finance programs, require, approve, use or otherwise employ a variety of different forms as residential mortgages (or deeds of trust or similar security instruments) as notes secured by those mortgages, and for applications, appraisals and other purposes, and that such duplication of forms constitutes a paperwork burden that adds to the costs imposed on the Nation's homeowners and home buyers;

(2) that unnecessary paperwork impairs the effectiveness of Federal housing and housing finance programs;

(3) that both single-family and multi-family programs are affected; and

(4) that simplification of paperwork imposed by Federal housing and housing finance programs would contribute to achieving the Nation's housing goals by reducing housing costs.

(b) Uniform legal and other forms for use by agencies in housing programs

(1) Not later than October 1, 1980, the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Administrator of Veterans' Affairs shall, consistent with provisions of law governing the conduct of housing programs, employ in their respective programs—

(A) uniform single-family and multi-family note and mortgage forms;

(B) a uniform application form for mortgage approval and commitment for mortgage insurance;

(C) a uniform form for computation of the monthly net effective income of applicants;

(D) a uniform property appraisal form;

(E) a uniform settlement statement which shall satisfy the requirements of the Real Estate Settlement Procedures Act [12 U.S.C. 2601 et seq.]; and

(F) such other consolidated or simplified forms, particularly those which solicit identical or nearly identical information from the same persons in the conduct of two or more such programs, the consolidation or simplification of which the Secretaries of Housing and Urban Development and Agriculture and the Administrator of Veterans' Affairs mutually agree would contribute to a reduction in the paperwork and regulatory burden of such programs.

(2) The Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Administrator of Veterans' Affairs shall, consistent with provisions of law governing their respective programs, provide by regulation for the elimination of forms which solicit information which is already available from other available sources through indexing or other means of identifying such forms.

(3) Each agency referred to in subsection (b) of this section may employ riders, addenda, or similar forms of modification agreements to adapt such uniform forms to its respective programs and policies, consistent with the goals of minimizing the use and extent of such modification agreements and maximizing the suitability of such forms for the use of all participants, public and private.

(c) Coordination and reports by Director of the Office of Management and Budget

The Director of the Office of Management and Budget shall coordinate and monitor the development and implementation by Federal departments and agencies of the efforts required by subsection (b) of this section and shall report to the Congress on such development and implementation and with respect to any provisions of law which unnecessarily prevent such departments and agencies from carrying out the provisions of this section as part of each report required under Public Law 93-556. Such report shall include an estimate of the reduction of the level of paperwork burden hours of the affected agencies as allocated by the Office of Management and Budget.

(Pub. L. 95-557, title IX, § 905, Oct. 31, 1978, 92 Stat. 2126; Pub. L. 96-153, title III, § 328, Dec. 21, 1979, 93 Stat. 1121.)

REFERENCES IN TEXT

The Real Estate Settlement Procedures Act, referred to in subsec. (b)(1)(E), probably means the Real Estate Settlement Procedures Act of 1974, Pub. L. 93-533, Dec. 22, 1974, 88 Stat. 1724, as amended, which is classified principally to chapter 27 (§ 2601 et seq.) of Title 12, Banks and Banking. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 12 and Tables.

Pub. L. 93-556, referred to in subsec. (c), is Pub. L. 93-556, Dec. 27, 1974, 88 Stat. 1789, which is set out as a note under section 3501 of Title 44, Public Printing and Documents.

CODIFICATION

Section was not enacted as part of the Department of Housing and Urban Development Act which comprises this chapter.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-153 reenacted subsec. (a) without change.

Subsec. (b). Pub. L. 96-153 substituted, in provision preceding par. (1)(A), "Not later than October 1, 1980, the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Administrator of Veterans' Affairs shall, consistent with provisions of law governing the conduct of housing programs," for "Insofar as it is practicable and to the extent that such action would result in a reduction in paperwork and regulatory burden, the Department of Housing and Urban Development and the Veterans' Administration shall", inserted reference to Secretary of Agriculture in par. (1)(F), added par. (2), redesignated former par. (2) as (3), and struck out former par. (3), which authorized the President to require the Farmers Home Administration and Administrator of the Farmers Home Administration to comply with the requirements of this section if such compliance would contribute to a reduction in the paperwork and regulatory burden of housing and housing finance programs administered by that agency.

Subsec. (c). Pub. L. 96-153 added provision requiring the reports to include an estimate of the reduction of the level of paperwork burden hours of the affected agencies as allocated by the Office of Management and Budget.

CHAPTER 45—FAIR HOUSING

SUBCHAPTER I—GENERALLY

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 6727 of this title; title 23 section 117; title 31 section 1242; title 49 sections 1604, 1716.

§ 3602. Definitions

As used in this subchapter—

[*See main edition for text of* (*a*) *to* (*c*)]

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under title 11, receivers, and fiduciaries.

[*See main edition for text of* (*e*) *to* (*g*)]

(As amended Pub. L. 95-598, title III, § 331, Nov. 6, 1978, 92 Stat. 2679.)

AMENDMENTS

1978—Subsec. (d). Pub. L. 95-598 substituted "trustees in cases under title 11" for "trustees in bankruptcy".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-598 effective Oct. 1, 1979, see section 402(a) of Pub. L. 95-598, set out as an Effective Date note preceding section 101 of Title 11, Bankruptcy.

§ 3608. Administration

(a) Authority and responsibility

The authority and responsibility for administering this Act shall be in the Secretary of Housing and Urban Development.

(b) Assistant Secretary

The Department of Housing and Urban Development shall be provided an additional Assistant Secretary.

(c) Delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review

The Secretary may delegate any of his functions, duties, and powers to employees of the Department of Housing and Urban Development or to boards of such employees, including functions, duties, and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting, or otherwise acting as to any work, business, or matter under this subchapter. The person to whom such delegations are made with respect to hearing functions, duties, and powers shall be appointed and shall serve in the Department of Housing and Urban Development in compliance with sections 3105, 3344, 5372, and 7521 of title 5. Insofar as possible, conciliation meetings shall be held in the cities or other localities where the discriminatory housing practices allegedly occurred. The Secretary shall by rule prescribe such rights of appeal from the decisions of his administrative law judges to other administrative law judges or to other officers in the Department, to boards of officers or to himself, as shall be appropriate and in accordance with law.

(d) Cooperation of Secretary and executive departments and agencies in administration of housing and urban development programs and activities to further fair housing purposes

All executive departments and agencies shall administer their programs and activities relating to housing and urban development in a manner affirmatively to further the purposes of this subchapter and shall cooperate with the Secretary to further such purposes.

(e) Functions of Secretary

The Secretary of Housing and Urban Development shall—

(1) make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban, and rural, throughout the United States;

(2) publish and disseminate reports, recommendations, and information derived from such studies;

(3) cooperate with and render technical assistance to Federal, State, local, and other public or private agencies, organizations, and institutions which are formulating or carrying on programs to prevent or eliminate discriminatory housing practices;

(4) cooperate with and render such technical and other assistance to the Community Relations Service as may be appropriate to further its activities in preventing or eliminating discriminatory housing practices; and

(5) administer the programs and activities relating to housing and urban development in a manner affirmatively to further the policies of this subchapter.

(Pub. L. 90-284, title VIII, § 808, Apr. 11, 1968, 82 Stat. 84, 85, amended Pub. L. 95-251, § 3, Mar. 27, 1978, 92 Stat. 184; Pub. L. 95-454, title VIII, § 801(a)(3)(J), Oct. 13, 1978, 92 Stat. 1222.)

CODIFICATION

The second sentence of subsec. (b) has been omitted as it amended sections 3533(a) and 3535(c) of this title.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-251 substituted "administrative law judges" for "hearing examiners".

Pub. L. 95-454 substituted "5372" for "5362".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective on the first day of the first applicable pay period beginning on or after the 90th day after Oct. 13, 1978, see section 801(a)(4)(A) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of Title 5, Government Organization and Employees.

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  (d) Obligation by Administrator of Law Enforcement Assistance Administration of previously appropriated unused or reversionary funds or presently appropriated funds for continuation of projects or purposes of this chapter.
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CODIFICATION

Title I of the Omnibus Crime Control and Safe Streets Act of 1968, comprising this chapter, was originally enacted by Pub. L. 90-351, June 19, 1968, 82 Stat. 197, and amended by Pub. L. 91-644, Jan. 2, 1971, 84 Stat. 1880; Pub. L. 93-83, Aug. 6, 1973, 87 Stat. 197; Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109; Pub. L. 94-237, Mar. 19, 1976, 90 Stat. 241; Pub. L. 94-273, Apr. 21, 1976, 90 Stat. 375; Pub. L. 94-430, Sept. 29, 1976, 90 Stat. 1346; Pub. L. 94-503, Oct. 15, 1976, 90 Stat. 2407; Pub. L. 95-115, Oct. 3, 1977, 91 Stat. 1048. Such title is shown herein, however, as having been added by Pub. L. 96-157, Dec. 27, 1979, 93 Stat. 1167, without reference to such intervening amendments because of the extensive revision of the title's provisions by Pub. L. 96-157.

§ 3701. Congressional findings, declaration of policy, and statement of purpose

The Congress finds and declares that the high incidence of crime in the United States is detrimental to the general welfare of the Nation and its citizens, and that criminal justice efforts must be better coordinated, intensified, and made more effective and equitable at all levels of government.

Congress further finds that juvenile delinquency constitutes a growing threat to the national welfare requiring immediate and comprehensive action by the Federal Government to reduce and prevent delinquency by developing and implementing effective programs to improve the quality of juvenile justice in the United States.

Congress further finds that there is an urgent need to encourage basic and applied research, to gather and disseminate accurate and comprehensive justice statistics, and to evaluate methods of preventing and reducing crime.

Congress further finds that although crime is essentially a local problem that must be dealt with by State and local governments, the financial and technical resources of the Federal Government should be made available to support such State and local efforts.

Congress further finds that the future welfare of the Nation and the well-being of its citizens depend on the establishment and maintenance of viable and effective justice systems which require: (1) systematic and sustained action by Federal, State, and local governments; (2) greater continuity in the scope and level of Federal assistance; and (3) continuing efforts at all levels of government to streamline programs and upgrade the functioning of agencies responsible for planning, implementing and evaluating efforts to improve justice systems.

It is therefore the declared policy of the Congress to aid State and local governments in strengthening and improving their systems of criminal justice by providing financial and technical assistance with maximum certainty and minimum delay. It is the purpose of this chapter to (1) authorize funds for the benefit of

States and units of local government to be used to strengthen their criminal justice system; (2) develop and fund new methods and programs to enhance the effectiveness of criminal justice agencies; (3) support the development of city, county, and statewide priorities and programs to meet the problems confronting the justice system; (4) reduce court congestion and trial delay; (5) support community anticrime efforts; (6) improve and modernize the correctional system; (7) encourage the undertaking of innovative projects of recognized importance and effectiveness; (8) encourage the development of basic and applied research directed toward the improvement of civil and criminal justice systems and new methods for the prevention and reduction of crime and the detection, apprehension, and rehabilitation of criminals; (9) encourage the collection and analysis of statistical information concerning crime, juvenile delinquency, civil disputes, and the operation of justice systems; and (10) support manpower development and training efforts. It is further the policy of the Congress that the Federal assistance made available under this chapter not be utilized to reduce the amount of State and local financial support for criminal justice activities below the level of such support prior to the availability of such assistance.

(Pub. L. 90-351, title I, § 100, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1169.)

REFERENCES IN TEXT

"This chapter", referred to in text, was in the original "this title" meaning title I of Pub. L. 90-351, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1167, which enacted this chapter, amended sections 5314 and 5315 of Title 5, Government Organization and Employees, section 1761 of Title 18, Crimes and Criminal Procedure, and section 35 of Title 41, Public Contracts, and enacted provisions set out as a note under section 1761 of Title 18. For complete classification of this Act to the Code, see Short Title of 1979 Amendment note set out below and Tables.

PRIOR PROVISIONS

A prior section 3701, Pub. L. 90-351, title I, § 100, June 19, 1968, 82 Stat. 197; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 197; Pub. L. 93-415, title V, § 541, Sept. 7, 1974, 88 Stat. 1142; Pub. L. 94-503, title I, § 101, Oct. 15, 1976, 90 Stat. 2407, which set out the Congressional findings, declaration of policy, and statement of purpose in enacting this chapter, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

SHORT TITLE OF 1979 AMENDMENT.

Section 1 of Pub. L. 96-157 provided: "That this Act [enacting this chapter, amending sections 5314 and 5315 of Title 5, Government Organization and Employees, section 1761 of Title 18, Crimes and Criminal Procedure, and section 35 of Title 41, Public Contracts, and enacting provisions set out as a note under section 1761 of Title 18] may be cited as the 'Justice System Improvement Act of 1979'."

SHORT TITLE OF 1976 AMENDMENTS

Section 1 of Pub. L. 94-503, Oct. 15, 1976, 90 Stat. 2407, provided: "That this Act [enacting sections 3726 and 3739 of this title, amending sections 3701, 3711, 3721, 3723, 3724, 3725, 3731, 3732, 3733, 3734, 3736, 3737, 3738, 3742, 3750b, 3750d, 3751, 3755, 3757, 3763, 3766, 3767, 3768, 3769, 3781, 5633, 5635, and 5671 of this title, and sections 5108, 5315, and 5316 of Title 5, Government Organization and Employees, repealing section 3760 of this title, and enacting provisions set out as notes under sections 509 and 532 of Title 28, Judiciary and Judicial Procedure] may be cited as the 'Crime Control Act of 1976'."

Pub. L. 94-430, § 1, Sept. 29, 1976, 90 Stat. 1346, provided: "That this Act [which enacted sections 3796 to 3796c of this title, amended section 3768 of this title, and enacted provisions set out as notes under section 3796 of this title] may be cited as the 'Public Safety Officers' Benefits Act of 1976'."

SHORT TITLE OF 1973 AMENDMENT

Section 1 of Pub. L. 93-83, Aug. 6, 1973, 87 Stat. 197, provided: "That this Act [which enacted sections 3738, 3770, and 3771 of this title, reenacted sections 3334(a), 3734, 3735, 3745, 3750, 3750a, 3751 to 3755, 3757 to 3759, 3761 to 3765, and 3792 of this title and section 5314(55) of Title 5, Government Organization and Employees, renumbered former section 3748 as 3747 and repealed former section 3747 of this title, and amended sections 3701, 3711, 3721 to 3725, 3731 to 3733, 3736, 3737, 3741 to 3744, 3746, 3750b to 3750d, 3756, 3760, 3766 to 3769, 3781, 3791, 3793, and 3795 of this title, sections 5108(c)(10), 5315(90), and 5316(133) of Title 5, and section 484(n) of Title 40, Public Buildings, Property, and Works] may be cited as the 'Crime Control Act of 1973'."

SHORT TITLE OF 1970 AMENDMENT

Pub. L. 91-644, § 1, Jan. 2, 1971, 84 Stat. 1880, provided: "That this Act [which enacted sections 3747, 3748, 3750 to 3750d, 3791 to 3793, and 3795 of this title and sections 351 and 1752 of Title 18, Crimes and Criminal Procedure, amended sections 3711, 3723, 3724, 3731, 3733, 3735, 3736, 3746, 3756, 3763 to 3765, 3767 to 3769, and 3781 of this title, sections 5108 and 5313 to 5316 of Title 5, Government Organization and Employees, and sections 924, 3056, and 3731 of title 18, enacted provisions set out as notes under section 3731 of title 18, amended provisions set out as notes under section 2510 of title 18, and repealed provisions set out as notes under section 2510 of title 18] may be cited as the 'Omnibus Crime Control Act of 1970'."

SHORT TITLE

Section 1 of Pub. L. 90-351, June 19, 1968, 82 Stat. 197, provided: "That this Act [which enacted this chapter, sections 5315(90), 5316(126), and 7313 of Title 5, Government Organization and Employees, sections 921 to 928 (chapter 44), 2510 to 2520 (chapter 119), 3103a, 3501, and 3502 of Title 18, Crimes and Criminal Procedure, and Appendix to such Title 18, amended section 3334(a) of this title, section 3731 of Title 18, and section 605 of Title 47, Telegraphs, Telephones, and Radiotelegraphs, repealed sections 901 to 910 of Title 15, Commerce and Trade, enacted provisions set out as notes under sections 7313 of Title 5, sections 921 and 2510 of Title 18, and section 532 of Title 28, Judiciary and Judicial Procedure, and repealed provisions set out as a note preceding section 3001 of Title 18] may be cited as the 'Omnibus Crime Control and Safe Streets Act of 1968'."

SEPARABILITY OF PROVISIONS

Section 1601 of Pub. L. 90-351, title XVI, June 19, 1968, 82 Stat. 239, provided that: "If the provisions of any part of this Act [see Short Title note above] or any amendments made thereby or the application thereof to any person or circumstances be held invalid, the provisions of the other parts and their application to other persons or circumstances shall not be affected thereby."

SUBCHAPTER I—LAW ENFORCEMENT ASSISTANCE ADMINISTRATION

§ 3711. Establishment

There is hereby established within the Department of Justice under the general authority of the Attorney General, a Law Enforcement Assistance Administration (hereinafter referred to in this chapter as the "Administration"). The Administration shall be under the direction of an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and such other Deputy Administrators as may be designated by the Attorney General. The Administrator shall have final authority over all grants, cooperative agreements, and contracts awarded by the Administration.

(Pub. L. 90-351, title I, § 101, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1170.)

Prior Provisions

A prior section 3711, Pub. L. 90-351, title I, § 101, June 19, 1968, 82 Stat. 198; Pub. L. 91-644, title I, § 2, Jan. 2, 1971, 84 Stat. 1881; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 197; Pub. L. 94-503, title I, §§ 102, 103, Oct. 15, 1976, 90 Stat. 2407, which established the Law Enforcement Assistance Administration and the Office of Community Anti-Crime Programs, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

Section Referred to in Other Sections

This section is referred to in section 5603 of this title.

§ 3712. Duties and functions of Administrator

The Administrator shall—

(1) provide funds to eligible States and units of local government pursuant to subchapter IV of this chapter;

(2) recognize national criminal justice priorities established in accordance with subchapters V and VI of this chapter, inform States and units of local government concerning such priorities and award and allocate funds and technical assistance among the eligible States, units of local government, and public and private nonprofit organizations according to the criteria and on the terms and conditions determined by the Administration to be consistent with subchapters V and VI of this chapter;

(3) publish and disseminate information on the condition and progress of the criminal justice system;

(4) establish and carry on a specific and continuing program of cooperation with the States and units of local government designed to encourage and promote consultation and coordination concerning decisions made by the Administration affecting State and local criminal justice priorities;

(5) cooperate with and render technical assistance to States, units of local government, and other public and private organizations or international agencies involved in criminal justice activities;

(6) cooperate with and render technical assistance to States, units of local government, and other public and private organizations or agencies involved in victim-witness assistance activities and the post-arrest identification and prosecution of career criminals;

(7) provide funds and technical assistance to eligible jurisdictions under this chapter for the development of operational information and telecommunications systems;

(8) exercise the powers and functions set out in subchapter VIII of this chapter; and

(9) exercise such other powers and functions as may be vested in the Administrator pursuant to this chapter.

(Pub. L. 90-351, title I, § 102, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1170.)

Prior Provisions

Provisions similar to those comprising this section were contained in former section 3711 of this title prior to the general revision of this chapter by Pub. L. 96-157.

Section Referred to in Other Sections

This section is referred to in section 3744 of this title.

§ 3713. Office of Community Anti-Crime Programs

(a) Establishment; duties

There is established in the Law Enforcement Assistance Administration the Office of Community Anti-Crime Programs (hereinafter in this section referred to as the "Office"). The Office shall be under the direction of the Administrator and shall—

(1) provide appropriate technical assistance to community and citizens groups to enable such groups to—

(A) apply for grants which encourage community and citizen participation in crime prevention and criminal justice activities;

(B) participate in the formula grant application process pursuant to section 3742(f) of this title;

(C) provide program development and encouragement of neighborhood and community participation in crime prevention and public safety efforts; and

(D) implement programs and projects assisted with grants under subsection (b) of this section.

(2) coordinate its activities with other Federal agencies and programs, including the Community Relations Service of the Department of Justice, which are designed to encourage and assist citizen participation in criminal justice activities;

(3) provide information on successful programs of citizen and community participation to citizen and community groups;

(4) review, at its discretion, formula grant applications submitted under section 3743 of this title in order to assure that the requirements for citizen, neighborhood, and community participation in the application process have been met; and

(5) make recommendations, after consultation with citizen, neighborhood, and community organizations, for the designation of effective community anticrime programs for funding as national priority grants under sub-

chapter V of this chapter and discretionary grants under subchapter VI of this chapter.

(b) Grants to community and citizens groups; use of grants

The Administration is authorized to make grants to be administered by the Office of Community Anti-Crime Programs to community and citizens groups, which grants shall be used—

(1) to enable the community to engage in a process leading to the identification of problems facing that community with respect to crime or conflicts, disputes, and other problems that might lead to crime;

(2) to provide for the consideration by the community of plans to alleviate such problems with special attention to projects that—

(A) have been successful in other communities in dealing with the same or similar problems;

(B) provide alternatives to the criminal justice system in resolving conflicts and disputes and in repairing the injuries suffered;

(C) promote increased citizen participation and confidence in the processes used to resolve conflicts and disputes; and

(D) address the social and economic causes of crime.

(3) to enable community and citizen groups to participate in assistance programs under this chapter, but no grant under this section may be used principally to seek technical assistance or a grant under this chapter;

(4) to conduct training of community groups in the management of grants and such other skills as the Office determines are necessary to enhance the involvement of neighborhoods and citizens in community crime prevention and dispute resolution projects; and

(5) to carry out projects determined to be likely to alleviate the community's crime problems as identified through the process set forth in this subsection.

(c) Coordination among neighborhoods and consultation with locally elected officials

In carrying out the functions under this subchapter the Administrator shall make appropriate provisions for coordination among neighborhoods and for consultation with locally elected officials.

(Pub. L. 90-351, title I, § 103, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1170.)

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in former section 3711 of this title prior to the general revision of this chapter by Pub. L. 96-157.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3722 of this title.

SUBCHAPTER II—NATIONAL INSTITUTE OF JUSTICE

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3797 of this title.

§ 3721. Statement of purpose

It is the purpose of this subchapter to establish a National Institute of Justice, which shall provide for and encourage research and demonstration efforts for the purpose of—

(1) improving Federal, State, and local criminal justice systems and related aspects of the civil justice system;

(2) preventing and reducing crimes;

(3) insuring citizen access to appropriate dispute-resolution forums;

(4) improving efforts to detect, investigate, prosecute, and otherwise combat and prevent white-collar crime and public corruption; and

(5) identifying programs of proven effectiveness, programs having a record of proven success, or programs which offer a high probability of improving the functioning of the criminal justice system.

The Institute shall have authority to engage in and encourage research and development to improve and strengthen the criminal justice system and related aspects of the civil justice system and to disseminate the results of such efforts to Federal, State, and local governments, to develop alternatives to judicial resolution of disputes, to evaluate the effectiveness of programs funded under this chapter, to develop new or improved approaches and techniques, to improve and strengthen the administration of justice, and to identify programs or projects carried out under this chapter which have demonstrated success in improving the quality of justice systems and which offer the likelihood of success if continued or repeated. In carrying out the provisions of this subchapter, the Institute shall give primary emphasis to the problems of State and local justice systems and shall insure that there is a balance between basic and applied research.

(Pub. L. 90-351, title I, § 201, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1172.)

PRIOR PROVISIONS

A prior section 3721, Pub. L. 90-351, title I, § 201, June 19, 1968, 82 Stat. 198; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 197; Pub. L. 94-503, title I, § 104, Oct. 15, 1976, 90 Stat. 2408, which set out the Congressional statement of purpose in providing for a program of planning grants, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

§ 3722. National Institute of Justice

(a) Establishment; general authority of Attorney General over Institute

There is established within the Department of Justice, under the general authority of the Attorney General, a National Institute of Justice (hereinafter referred to in this subchapter as the "Institute").

(b) Director of Institute; appointment by President; authority; restrictions

The Institute shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate. The Director shall have had experience in justice research. The Director shall have final authority over all grants, cooperative agreements, and contracts awarded by the Institute. The Director shall not engage in any other employment than that of serving as Director; nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Institute makes any contract or other arrangement under this chapter.

(c) Duties and functions

The Institute is authorized to—

(1) make grants to, or enter into cooperative agreements or contracts with, public agencies, institutions of higher education, private organizations, or individuals to conduct research, demonstrations, or special projects pertaining to the purposes described in this subchapter, and provide technical assistance and training in support of tests, demonstrations, and special projects;

(2) conduct or authorize multiyear and short-term research and development concerning the criminal and civil justice systems in an effort—

(A) to identify alternative programs for achieving system goals, including programs authorized by section 3713 of this title;

(B) to provide more accurate information on the causes and correlates of crime;

(C) to analyze the correlates of crime and juvenile delinquency and provide more accurate information on the causes and correlates of crime and juvenile delinquency;

(D) to improve the functioning of the criminal justice system;

(E) to develop new methods for the prevention and reduction of crime, the prevention and reduction of parental kidnaping, including the development of programs to facilitate cooperation among the States and units of local government, the detection and apprehension of criminals, the expeditious, efficient, and fair disposition of criminal and juvenile delinquency cases, the improvement of police and minority relations, the conduct of research into the problems of victims and witnesses of crime, the feasibility and consequences of allowing victims to participate in criminal justice decisionmaking, the feasibility and desirability of adopting procedures and programs which increase the victim's participation in the criminal justice process, the reduction in the need to seek court resolution of civil disputes, and the development of adequate corrections facilities and effective programs of correction; and

(F) to develop programs and projects to improve and expand the capacity of States and units of local government and combinations of such units, to detect, investigate, prosecute, and otherwise combat and prevent white-collar crime and public corruption, to improve and expand cooperation among the Federal Government, States, and units of local government in order to enhance the overall criminal justice system response to white-collar crime and public corruption, and to foster the creation and implementation of a comprehensive national strategy to prevent and combat white-collar crime and public corruption.

In carrying out the provisions of this subsection, the Institute may request the assistance of both public and private research agencies;

(3) evaluate the effectiveness of projects or programs carried out under this subchapter;

(4) evaluate, where the Institute deems appropriate, the programs and projects carried out under other subchapters of this chapter to determine their impact upon the quality of criminal and civil justice systems and the extent to which they have met or failed to meet the purposes and policies of this chapter, and disseminate such information to State agencies and, upon request, to units of local government and other public and private organizations and individuals;

(5) make recommendations for action which can be taken by Federal, State, and local governments and by private persons and organizations to improve and strengthen criminal and civil justice systems;

(6) provide research fellowships and clinical internships and carry out programs of training and special workshops for the presentation and dissemination of information resulting from research, demonstrations, and special projects including those authorized by this subchapter;

(7) collect and disseminate information obtained by the Institute or other Federal agencies, public agencies, institutions of higher education, and private organizations relating to the purposes of this subchapter;

(8) serve as a national and international clearinghouse for the exchange of information with respect to the purposes of this subchapter;

(9) submit a biennial report to the President and Congress on the state of justice research. This report shall describe significant achievements and identify areas needing further study. Other Federal agencies involved in justice research shall assist, upon request, in the preparation of this report;

(10) after consultation with appropriate agencies and officials of States and units of local government, make recommendations for the designation of programs or projects which will be effective in improving the functioning of the criminal justice system, for funding as national priority grants under subchapter V of this chapter and discretionary grants under subchapter VI of this chapter; and

(11) encourage, assist, and serve in a consulting capacity to Federal, State, and local justice system agencies in the development, maintenance, and coordination of criminal and civil justice programs and services.

(d) Criminal and civil justice research

To insure that all criminal and civil justice research is carried out in a coordinated manner, the Director is authorized to—

(1) utilize, with their consent, the services, equipment, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

(2) confer with and avail itself of the cooperation, services, records, and facilities of State or of municipal or other local agencies;

(3) request such information, data, and reports from any Federal agency as may be required to carry out the purposes of this section, and the agencies shall provide such information to the Institute as required to carry out the purposes of this subchapter;

(4) seek the cooperation of the judicial branches of Federal and State Government in coordinating civil and criminal justice research and development; and

(5) exercise the powers and functions set out in subchapter VIII of this chapter.

(Pub. L. 90-351, title I, § 202, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1172.)

PRIOR PROVISIONS

A prior section 3722, Pub. L. 90-351, title I, § 202, June 19, 1968, 82 Stat. 198; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 198, which provided for the making of grants to State planning agencies, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

§ 3723. Authority for 100 per centum grants

A grant authorized under this subchapter may be up to 100 per centum of the total cost of each project for which such grant is made. The Institute shall require, whenever feasible, as a condition of approval of a grant under this subchapter, that the recipient contribute money, facilities, or services to carry out the purposes for which the grant is sought.

(Pub. L. 90-351, title I, § 203, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1174.)

PRIOR PROVISIONS

A prior section 3723, Pub. L. 90-351, title I, § 203, June 19, 1968, 82 Stat. 199; Pub. L. 91-644, title I, § 3(a)-(c), Jan. 2, 1971, 84 Stat. 1881; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 198; Pub. L. 93-415, title V, § 542, Sept. 7, 1974, 88 Stat. 1142; Pub. L. 94-503, title I, § 105, Oct. 15, 1976, 90 Stat. 2408; Pub. L. 95-115, § 9(b), Oct. 3, 1977, 91 Stat. 1061, which provided for the establishment of State planning agencies, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

§ 3724. National Institute of Justice Advisory Board

(a) Establishment; composition

There is hereby established a National Institute of Justice Advisory Board (hereinafter in this section referred to as the "Board"). The Board shall consist of twenty-one members who shall be appointed by the President. The members shall represent the public interest and should be experienced in the criminal or civil justice systems, including, representatives of States and units of local government, representatives of police, prosecutors, defense attorneys, courts, corrections, experts in the area of victim and witness assistance and other components of the justice system at all levels of government, representatives of professional organizations, representatives of the academic and research community, members of the business community, officials of neighborhood and community organizations, and the general public. A majority of the members of the Board, including the Chairman and Vice Chairman, shall not be full-time employees of Federal, State, or local governments. The Board, by majority vote, shall elect from among its members a Chairman and Vice Chairman. The Vice Chairman is authorized to sit and act in the place of the Chairman in the absence of the Chairman. The Director shall also be a nonvoting member of the Board and shall not serve as Chairman or Vice Chairman. Vacancies in the membership of the Board shall not affect the power of the remaining members to execute the functions of the Board and shall be filled in the same manner as in the case of the original appointment. The Chairman shall be provided by the Institute with at least one full-time staff assistant to assist the Board. The Administrator of the Law Enforcement Assistance Administration, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, and the Director of the Bureau of Justice Statistics shall serve as nonvoting ex officio members of the Board and shall be ineligible to serve as Chairman or Vice Chairman. Except as otherwise provided herein, no more than one additional full-time Federal officer or employee shall serve as a member of the Board.

(b) Rules respecting organization and procedure

The Board, after appropriate consultation with representatives of State and local governments, may make such rules respecting its organization and procedures as it deems necessary, except that no recommendation shall be reported from the Board unless a majority of the Board assents.

(c) Term of office

The term of office of each member of the Board appointed under subsection (a) of this section shall be three years except the first composition of the Board which shall have one-third of these members appointed to one-year terms, one-third to two-year terms, and one-third to three-year terms; and any such member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. Such members shall be appointed within ninety days after December 27, 1979. The members of the Board appointed under subsection (a) of this section shall receive compensation for each day engaged in the actual performance of duties vested in the Board at rates of pay not in excess of the daily equivalent of the highest rate of basic pay then payable in the General Schedule of section 5332(a) of title 5 and in addition shall be reimbursed for travel, subsistence, and other necessary expenses. No voting member shall serve for more than two consecutive terms.

(d) Duties of Board

The Board shall—

(1) recommend the policies and priorities of the Institute;

(2) create, where necessary, formal peer review procedures over selected categories of grants, cooperative agreements, and contracts;

(3) recommend to the President at least three candidates for the position of Director of the Institute in the event of a vacancy; and

(4) undertake such additional related tasks as the Board may deem necessary.

(e) Delegation of powers and duties to Director

In addition to the powers and duties set forth elsewhere in this chapter, the Director shall exercise such powers and duties of the Board as may be delegated to the Director by the Board.

(Pub. L. 90-351, title I, § 204, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1174.)

PRIOR PROVISIONS

Prior sections 3724 to 3726 were omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

Section 3724, Pub. L. 90-351, title I, § 204, June 19, 1968, 82 Stat. 199; Pub. L. 91-644, title I, § 3(d), Jan. 2, 1971, 84 Stat. 1881; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 199; Pub. L. 94-503, title I, § 106, Oct. 15, 1976, 90 Stat. 2410, related to the maximum percentage of Federal grant funds in the expenses incurred by States.

Section 3725, Pub. L. 90-351, title I, § 205, June 19, 1968, 82 Stat. 199; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 199; Pub. L. 94-503, title I, § 107, Oct. 15, 1976, 90 Stat. 2410, related to the allocation of funds and the reallocation of unused funds. See section 3745 of this title.

Section 3726, Pub. L. 90-351, title I, § 206, as added Pub. L. 94-503, title I, § 108, Oct. 15, 1976, 90 Stat. 2411, related to advisory review of comprehensive statewide plans by the States. See section 3742 of this title.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-643, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER III—BUREAU OF JUSTICE STATISTICS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3745, 3797 of this title.

§ 3731. Statement of purpose

It is the purpose of this subchapter to provide for and encourage the collection and analysis of statistical information concerning crime (including white-collar crime and public corruption), juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system and to support the development of information and statistical systems at the Federal, State, and local levels to improve the efforts of these levels of government to measure and understand the levels of crime (including crimes against the elderly, white-collar crime, and public corruption), juvenile delinquency, and the operation of the criminal justice system and related aspects of the civil justice system. The Bureau shall utilize to the maximum extent feasible State governmental organizations and facilities responsible for the collection and analysis of criminal justice data and statistics. In carrying out the provisions of this subchapter, the Bureau shall give primary emphasis to the problems of State and local justice systems.

(Pub. L. 90-351, title I, § 301, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1176.)

PRIOR PROVISIONS

A prior section 3731, Pub. L. 90-351, title I, § 301, June 19, 1968, 82 Stat. 199; Pub. L. 91-644, title I, § 4(1)-(4), Jan. 2, 1971, 84 Stat. 1882; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 199; Pub. L. 94-503, title I, §§ 109, 128(b), Oct. 15, 1976, 90 Stat. 2411, 2424, which related to the purposes and categories of grants for law enforcement and criminal justice purposes, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

§ 3732. Bureau of Justice Statistics

(a) Establishment

There is established within the Department of Justice, under the general authority of the Attorney General, a Bureau of Justice Statistics (hereinafter referred to in this subchapter as "Bureau").

(b) Appointment of Director; experience; authority; restrictions

The Bureau shall be headed by a Director appointed by the President, by and with the advice and consent of the Senate. The Director shall have had experience in statistical programs. The Director shall have final authority for all grants, cooperative agreements, and contracts awarded by the Bureau. The Director shall not engage in any other employment than that of serving as Director; nor shall the Director hold any office in, or act in any capacity for, any organization, agency, or institution with which the Bureau makes any contract or other arrangement under this Act.

(c) Duties and functions of Bureau

The Bureau is authorized to—

(1) make grants to, or enter into cooperative agreements or contracts with public agencies, institutions of higher education, private organizations, or private individuals for purposes related to this subchapter; grants shall be made subject to continuing compliance with standards for gathering justice statistics set forth in rules and regulations promulgated by the Director;

(2) collect and analyze information concerning criminal victimization, including crimes against the elderly, and civil disputes;

(3) collect and analyze data that will serve as a continuous and comparable national social indication of the prevalence, incidence, rates, extent, distribution, and attributes of crime, juvenile delinquency, civil disputes, and other statistical factors related to crime, civil disputes, and juvenile delinquency, in support of national, State, and local justice policy and decisionmaking;

(4) collect and analyze statistical information, concerning the operations of the criminal justice system at the Federal, State, and local levels;

(5) collect and analyze statistical information concerning the prevalence, incidence, rates, extent, distribution, and attributes of crime, and juvenile delinquency, at the Federal, State, and local levels;

(6) analyze the correlates of crime, civil disputes and juvenile delinquency, by the use of

statistical information, about criminal and civil justice systems at the Federal, State, and local levels, and about the extent, distribution and attributes of crime, and juvenile delinquency, in the Nation and at the Federal, State, and local levels;

(7) compile, collate, analyze, publish, and disseminate uniform national statistics concerning all aspects of criminal justice and related aspects of civil justice, crime, including crimes against the elderly, juvenile delinquency, criminal offenders, juvenile delinquents, and civil disputes in the various States;

(8) recommend national standards for justice statistics and for insuring the reliability and validity of justice statistics supplied pursuant to this chapter;

(9) maintain liaison with the judicial branches of the Federal and State Governments in matters relating to justice statistics, and cooperate with the judicial branch in assuring as much uniformity as feasible in statistical systems of the executive and judicial branches;

(10) provide information to the President, the Congress, the judiciary, State and local governments, and the general public on justice statistics;

(11) establish or assist in the establishment of a system to provide State and local governments with access to Federal informational resources useful in the planning, implementation, and evaluation of programs under this Act;

(12) conduct or support research relating to methods of gathering or analyzing justice statistics;

(13) provide financial and technical assistance to the States and units of local government relating to collection, analysis, or dissemination of justice statistics;

(14) maintain liaison with State and local governments and governments of other nations concerning justice statistics;

(15) cooperate in and participate with national and international organizations in the development of uniform justice statistics;

(16) insure conformance with security and privacy regulations issued pursuant to section 3789g of this title; and

(17) exercise the powers and functions set out in subchapter VIII of this chapter.

(d) Justice statistical collection, analysis, and dissemination

To insure that all justice statistical collection, analysis, and dissemination is carried out in a coordinated manner, the Director is authorized to—

(1) utilize, with their consent, the services, equipment, records, personnel, information, and facilities of other Federal, State, local, and private agencies and instrumentalities with or without reimbursement therefor;

(2) confer and cooperate with State, municipal, and other local agencies;

(3) request such information, data, and reports from any Federal agency as may be required to carry out the purposes of this chapter; and

(4) seek the cooperation of the judicial branch of the Federal Government in gathering data from criminal justice records.

(e) Furnishing of information, data, or reports by Federal agencies

Federal agencies requested to furnish information, data, or reports pursuant to subsection (d)(3) of this section shall provide such information to the Bureau as is required to carry out the purposes of this section.

(f) Consultation with representatives of State and local government and judiciary

In recommending standards for gathering justice statistics under this section, the Director shall consult with representatives of State and local government, including, where appropriate, representatives of the judiciary.

(Pub. L. 90-351, title I, § 302, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1176.)

REFERENCES IN TEXT

This "Act", referred to in subsecs. (b) and (c)(11), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended, known as the Omnibus Crime Control and Safe Streets Act of 1968. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

PRIOR PROVISIONS

A prior section 3732, Pub. L. 90-351, title I, § 302, June 19, 1968, 82 Stat. 200; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 201; Pub. L. 94-503, title I, § 110, Oct. 15, 1976, 90 Stat. 2412, which related to the establishment of State planning agencies to develop comprehensive State plans for grants for law enforcement and criminal justice purposes, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

§ 3733. Authority for 100 per centum grants

A grant authorized under this subchapter may be up to 100 per centum of the total cost of each project for which such grant is made. The Bureau shall require, whenever feasible as a condition of approval of a grant under this subchapter, that the recipient contribute money, facilities, or services to carry out the purposes for which the grant is sought.

(Pub. L. 90-351, title I, § 303, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1178.)

PRIOR PROVISIONS

A prior section 3733, Pub. L. 90-351, title I, § 303, June 19, 1968, 82 Stat. 201; Pub. L. 91-644, title I, § 4(5), (6), Jan. 2, 1971, 84 Stat. 1883; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 201; Pub. L. 93-415, title V, § 543, Sept. 7, 1974, 88 Stat. 1142; Pub. L. 94-503, title I, § 111, Oct. 15, 1976, 90 Stat. 2413; Pub. L. 96-181, § 15(b), Jan. 2, 1980, 93 Stat. 1316, which set out the requirements of State plans in order to qualify for grants for law enforcement and criminal justice purposes, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

§ 3734. Bureau of Justice Statistics Advisory Board

(a) Establishment; composition

There is hereby established a Bureau of Justice Statistics Advisory Board (hereinafter referred to in this section as the "Board"). The Board shall consist of twenty-one members who shall be appointed by the Attorney General. The members should include representatives of

States and units of local government, representatives of police, prosecutors, defense attorneys, courts, corrections, experts in the area of victim and witness assistance, and other components of the justice system at all levels of government, representatives of professional organizations, members of the academic, research, and statistics community, officials of neighborhood and community organizations, members of the business community, and the general public. The Board, by majority vote, shall elect from among its members a Chairman and Vice Chairman. The Vice Chairman is authorized to sit and act in the place of the Chairman in the absence of the Chairman. The Director shall also be a non-voting member of the Board and shall not serve as Chairman or Vice Chairman. Vacancies in the membership of the Board shall not affect the power of the remaining members to execute the functions of the Board and shall be filled in the same manner as in the case of the original appointment. The Chairman shall be provided by the Bureau with at least one full-time staff assistant to assist the Board. The Administrator of the Law Enforcement Assistance Administration, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Director of the National Institute of Justice, and the Director of the Bureau of Justice Statistics shall serve as non-voting ex officio members of the Board but shall be ineligible to serve as Chairman or Vice Chairman. Except as otherwise provided herein, no more than one additional full-time Federal officer or employee shall serve as a member of the Board.

(b) Rules respecting organization and procedure

The Board, after appropriate consultation with representatives of State and local governments, may make such rules respecting its organization and procedures as it deems necessary, except that no recommendation shall be reported from the Board unless a majority of the Board assents.

(c) Term of office

The term of office of each member of the Board appointed under subsection (a) of this section shall be three years except the first composition of the Board which shall have one-third of these members appointed to one-year terms, one-third to two-year terms, and one-third to three-year terms; and any such member appointed to fill a vacancy occurring prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of such term. The members of the Board appointed under subsection (a) of this section shall receive compensation for each day engaged in the actual performance of duties vested in the Board at rates of pay not in excess of the daily equivalent of the highest rate of basic pay then payable under the General Schedule of section 5332(a) of title 5 and in addition shall be reimbursed for travel, subsistence, and other necessary expenses. No voting member shall serve for more than two consecutive terms.

(d) Duties and functions

The Board shall—

(1) review and make recommendations to the Bureau on activities undertaken by the Bureau and formulate and recommend to the Director policies and priorities for the Bureau;

(2) recommend to the President at least three candidates for the position of Director of the Bureau in the event of a vacancy; and

(3) carry out such additional related functions as the Board may deem necessary.

(e) Delegation of powers and duties to Director

In addition to the powers and duties set forth elsewhere in this chapter, the Director shall exercise such powers and duties of the Board as may be delegated to the Director by the Board.

(Pub. L. 90-351, title I, § 304, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1178.)

PRIOR PROVISIONS

A prior section 3734, Pub. L. 90-351, title I, § 304, June 19, 1968, 82 Stat. 202; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 203; Pub. L. 94-503, title I, § 112, Oct. 15, 1976, 90 Stat. 2414, which related to plans or applications for financial assistance from local government units, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law. See sections 3(2) and 14 of Pub. L. 92-643, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 3735. Use of data

Data collected by the Bureau shall be used only for statistical or research purposes, and shall be gathered in a manner that precludes their use for law enforcement or any purpose relating to a particular individual other than statistical or research purposes.

(Pub. L. 90-351, title I, § 305, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1179.)

PRIOR PROVISIONS

Prior sections 3735 to 3739 were omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

Section 3735, Pub. L. 90-351, title I, § 305, June 19, 1968, 82 Stat. 202; Pub. L. 91-644, title I, § 4(7), Jan. 2, 1971, 84 Stat. 1883; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 203, related to the reallocation of funds.

Section 3736, Pub. L. 90-351, title I, § 306, June 19, 1968, 82 Stat. 202; Pub. L. 91-644, title I, § 4(8), Jan. 2, 1971, 84 Stat. 1883; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 203; Pub. L. 94-503, title I, § 113, Oct. 15, 1976, 90 Stat. 2415, related to the allocation of funds.

Section 3737, Pub. L. 90-351, title I, § 307, June 19, 1968, 82 Stat. 202; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 204; Pub. L. 94-503, title I, § 114, Oct. 15, 1976, 90 Stat. 2415, related to priority programs and projects.

Section 3738, Pub. L. 90-351, title I, § 308, as added Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 204, and amended Pub. L. 94-503, title I, § 115, Oct. 15, 1976, 90 Stat. 2415, related to Administration action upon State plans within the prescribed time after date of submission.

Section 3739, Pub. L. 90-351, title I, § 309, as added Pub. L. 94-503, title I, § 116, Oct. 15, 1976, 90 Stat. 2415, related to assistance and grants to aid State antitrust enforcement.

SUBCHAPTER IV—FORMULA GRANTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3712, 3745, 3752, 3754, 3755, 3762, 3766, 3782, 3783, 3789e, 3793 of this title.

§ 3741. Description of grant program

(a) Authorized purposes of grants

It is the purpose of this subchapter to assist States and units of local government in carrying out specific innovative programs which are of proven effectiveness, have a record of proven success, or which offer a high probability of improving the functioning of the criminal justice system. The Administration is authorized to make grants under this subchapter to States and units of local government for the purpose of—

(1) establishing or expanding community and neighborhood programs that enable citizens to undertake initiatives to deal with crime and delinquency;

(2) improving and strengthening law enforcement agencies, as measured by arrest rates, incidence rates, victimization rates, the number of reported crimes, clearance rates, the number of patrol or investigative hours per uniformed officer, or any other appropriate objective measure;

(3) improving the police utilization of community resources through support of joint police-community projects designed to prevent or control neighborhood crime;

(4) disrupting illicit commerce in stolen goods and property and training of special investigative and prosecuting personnel, and the development of systems for collecting, storing, and disseminating information relating to the control of organized crime;

(5) combating arson;

(6) developing investigations and prosecutions of white-collar crime, organized crime, public-corruption-related offenses, and fraud against the government;

(7) reducing the time between arrest or indictment and disposition of trial;

(8) implementing court reforms;

(9) increasing the use and development of alternatives to the prosecution of selected offenders;

(10) increasing the development and use of alternatives to pretrial detention that assure return to court and a minimization of the risk of danger;

(11) increasing the rate at which prosecutors obtain convictions against habitual, nonstatus offenders;

(12) developing and implementing programs which provide assistance to victims, witnesses, and jurors, including restitution by the offender, programs encouraging victim and witness participation in the criminal justice system, and programs designed to prevent retribution against or intimidation of witnesses by persons charged with or convicted of crimes;

(13) providing competent defense counsel for indigent and eligible low-income persons accused of criminal offenses;

(14) developing projects to identify and meet the needs of drug dependent offenders;

(15) increasing the availability and use of alternatives to maximum-security confinement of convicted offenders who pose no threat to public safety;

(16) reducing the rates of violence among inmates in places of detention and confinement;

(17) improving conditions of detention and confinement in adult and juvenile correctional institutions, as measured by the number of such institutions administering programs meeting accepted standards;

(18) training criminal justice personnel in programs meeting standards recognized by the Administrator;

(19) revision and recodification by States and units of local government of criminal statutes, rules, and procedures and revision of statutes, rules, and regulations governing State and local criminal justice agencies;

(20) coordinating the various components of the criminal justice system to improve the overall operation of the system, establishing criminal justice information systems, and supporting and training of criminal justice personnel;

(21) developing statistical and evaluative systems in States and units of local government which assist the measurement of indicators in each of the areas described in paragraphs (1) through (20);

(22) encouraging the development of pilot and demonstration projects for prison industry programs at the State level with particular emphasis on involving private sector enterprise either as a direct participant in such programs, or as purchasers of goods produced through such programs, and aimed at making inmates self-sufficient, to the extent practicable, in a realistic working environment; and

(23) any other innovative program which is of proven effectiveness, has a record of proven success, or which offers a high probability of improving the functioning of the criminal justice system.

(b) Federal and non-Federal portions of program or project costs

(1) Except with respect to allocations under subsection (c) of this section—

(A) for the fiscal year ending September 30, 1980, the Federal portion of any grant made under this subchapter may be up to 100 per centum of the cost of the program or project specified in the application for such grant; and

(B) for any later fiscal period, that portion of a Federal grant made under this section may be up to 90 per centum of the cost of the program or project specified in the application for such grant unless the Administrator determines that State or local budgetary restraints prevent the recipient from providing the remaining portion.

(2)(A) The non-Federal portion of the cost of such program or project shall be in cash.

(B) In the case of a grant to an Indian tribe or other aboriginal group, the Administration may increase the Federal portion of the cost of such program to the extent the Administration deems necessary, if the Administration determines that the tribe or group does not have sufficient funds available to meet the non-Federal portion of such cost.

(3) Except with respect to allocations under subsection (c) of this section, a grant recipient shall assume the cost of a program or project funded under this subchapter after a reasonable period of Federal assistance unless the Administrator determines that the recipient is unable to assume such cost because of State or local budgetary restraints.

(c) Allocation

(1) The Administration shall allocate from the grant provided for in subsection (a) of this section, $200,000 to each of the States for the purposes of administering grants received under this chapter for operating criminal justice councils, judicial coordinating committees, and local offices pursuant to this subchapter, and an additional amount of at least $50,000 shall be made available by the Administration for allocation by the State to the judicial coordinating committee. These foregoing sums shall be available without a requirement for match. The Administration shall allocate additional funds from the grant to a State for use by the State and its units of local government in an amount that is 7½ per centum of the total grant of such State. Any of the additional funds shall be matched in an amount equal to any such expended or obligated amount. An amount equal to at least 7½ per centum of the allocation of an eligible jurisdiction as defined in section 3742(a)(2), (3), or (4) of this title, or of a judicial coordinating committee, must be made available by the State to each such jurisdiction or judicial coordinating committee from these additional funds for purposes set out above. The eligible jurisdiction or combination thereof shall match the amounts passed through in an amount equal to any such amount expended or obligated by the eligible jurisdiction or combination thereof for the purposes set forth above for all Federal funds in excess of $25,000 for each eligible jurisdiction.

(2) Any funds allocated to States or units of local government and unexpended by such States or units of local government for the purposes set forth above shall be available to such States or units of local government for expenditure in accordance with subsection (a) of this section.

(3) The State may allocate at its discretion to units of local government or combinations of such units which are not eligible jurisdictions as defined in section 3742(a)(2), (3), and (4) of this title funds provided under this subsection.

(Pub. L. 90-351, title I, § 401, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1179.)

REFERENCES IN TEXT

"This chapter", referred to in subsec. (c)(1), was in the original "this title" meaning title I of Pub. L. 90-351, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1167, which enacted this chapter, amended sections 5314 and 5315 of Title 5, Government Organization and Employees, section 1761 of Title 18, Crimes and Criminal Procedure, and section 35 of Title 41, Public Contracts, and enacted provisions set out as a note under section 1761 of Title 18. For complete classification of this Act to the Code, see Short Title of 1979 Amendment note set out under section 3701 of this title and tables.

PRIOR PROVISIONS

A prior section 3741, Pub. L. 90-351, title I, § 401, June 19, 1968, 82 Stat. 203; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 205, which set out the Congressional statement of purposes in making provision for training, education, research, demonstration, and special grants, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3743, 3744, 3745, 3782 of this title.

§ 3742. Eligibility

(a) Eligible jurisdictions

The Administration is authorized to make financial assistance under this subchapter available to an eligible jurisdiction to enable it to carry out all or a substantial part of a program or project submitted and approved in accordance with the provisions of this chapter. An eligible jurisdiction shall be—

(1) a State;

(2) a municipality which has no less than 0.15 per centum of total State and local criminal justice expenditures, and which has a population of one hundred thousand or more persons on the basis of the most satisfactory current data available on a nationwide basis to the Administration but only if such municipality would receive at least $50,000 for the applicable year under section 3745 of this title;

(3) a county which has no less than 0.15 per centum of total State and local criminal justice expenditures, and which has a population of one hundred thousand or more persons on the basis of the most satisfactory current data available on a nationwide basis to the Administration but only if such county would receive at least $50,000 for the applicable year under section 3745 of this title;

(4) any combination of contiguous units of local government, whether or not situated in more than one State, or any combination of units of local government all in the same county, which has a population of one hundred thousand or more persons on the basis of the most satisfactory current data available on a nationwide basis to the Administration but only if such combination would receive at least $50,000 for the applicable year under section 3745 of this title;

(5) a unit of local government, or any combination of such contiguous units without regard to population, which are otherwise ineligible under the other paragraphs of this subsection.

(b) State criminal justice councils

(1) Each State shall establish or designate and maintain a criminal justice council (hereinafter referred to in this chapter as the "council") for the purpose of—

(A) analyzing the criminal justice problems within the State based on input and data from all eligible jurisdictions, State agencies, and the judicial coordinating committee and establishing priorities based on the analysis and assuring that these priorities are published and made available to affected criminal justice agencies prior to the time required for application submission;

(B) preparing a comprehensive State application reflecting the statewide goals, objectives, priorities, and projected grant programs;

(C)(i) receiving, reviewing, and approving (or disapproving) applications or amendments submitted by State agencies, the judicial coordinating committee, and units of local government, or combinations thereof, as defined in subsection (a)(5) of this section, pursuant to section 3745(a)(5) of this title; and

(ii) providing financial assistance to these agencies and units according to the criteria of this chapter and on the terms and conditions established by such council at its discretion;

(D) receiving, coordinating, reviewing, and monitoring all applications or amendments submitted by State agencies, the judicial coordinating committee, units of local government, and combinations of such units pursuant to section 3743 of this title, recommending ways to improve the effectiveness of the programs or projects referred to in said applications, assuring compliance of said applications with Federal requirements and State law and integrating said applications into the comprehensive State application;

(E) preparing an annual report for the chief executive of the State and the State legislature containing an assessment of the criminal justice problems and priorities within the State; the adequacy of existing State and local agencies, programs, and resources to meet these problems and priorities; the distribution and use of funds allocated pursuant to this subchapter and the relationship of these funds to State and local resources allocated to crime and justice system problems; and the major policy and legislative initiatives that are recommended to be undertaken on a statewide basis;

(F) assisting the chief executive of the State, the State legislature, and units of local government upon request in developing new or improved approaches, policies, or legislation designed to improve criminal justice in the State;

(G) developing and publishing information concerning criminal justice in the State;

(H) providing technical assistance upon request to State agencies, community-based crime prevention programs, the judicial coordinating committee, and units of local government in matters relating to improving criminal justice in the State; and

(I) assuring fund accounting, auditing, and evaluation of programs and projects funded under this subchapter to assure compliance with Federal requirements and State law.

(2) The council shall be created or designated by State law and shall be subject to the jurisdiction of the chief executive of the State who shall appoint the members of the council, designate the chairman, and provide professional, technical, and clerical staff to serve the council. The council shall be broadly representative and include among its membership—

(A) representatives of eligible jurisdictions as defined in subsection (a)(2), (3), and (4) of this section who shall comprise at least one-third of the membership of the council where there are such eligible jurisdictions in the State and where they submit applications pursuant to this subchapter;

(B) representatives of the smaller units of local government defined in subsection (a)(5) of this section;

(C) representatives of the various components of the criminal justice system, including representatives of agencies directly related to the prevention and control of juvenile delinquency and representatives of police, courts, corrections, prosecutors, and defense attorneys;

(D) representatives of the general public including representatives of neighborhood and community-based, business, and professional organizations of the communities to be served under this subchapter; and

(E) representatives of the judiciary including, at a minimum, the chief judicial officer or other officer of the court of last resort, the chief judicial administrative officer or other appropriate judicial administrative officer of the State, and a local trial court judicial officer; if the chief judicial officer or chief judicial administrative officer cannot or does not choose to serve, the other judicial members and the local trial court judicial officer shall be selected by the chief executive of the State from a list of no less than three nominees for each position submitted by the chief judicial officer of the court of last resort within thirty days after the occurrence of any vacancy in the judicial membership; additional judicial members of the council as may be required by the Administration shall be appointed by the chief executive of the State from the membership of the judicial coordinating committee or, in the absence of a judicial coordinating committee, from a list of no less than three nominees for each position submitted by the chief judicial officer of the court of last resort.

Individual representatives may fulfill the requirements of more than one functional area or geographical area where appropriate to the background and expertise of the individual.

(3)(A) Applications from eligible jurisdictions as defined in subsection (a)(2), (3), and (4) of this section may, at the discretion of such eligible jurisdiction, be in the form of a single application to the State for inclusion in the comprehensive State application. Applications or amendments should conform to the overall priorities, unless the eligible jurisdiction's analysis of its criminal justice system demonstrates that such recommended priorities are inconsistent with their needs. Applications or amendments should conform to uniform administrative requirements for submission of applications. Such requirements shall be consistent with guidelines issued by the Administration. Such application or amendments shall be deemed approved unless the council, within ninety days of the receipt of such application or amendment, finds that the application or amendment—

(i) does not comply with Federal requirements or with State law or regulations;

(ii) is inconsistent with priorities and fails to establish, under guidelines issued by the Administration, good cause for such inconsistency;

(iii) conflicts with or duplicates programs or projects of another applicant under this chapter, or other Federal, State, or local supported programs or applications; or

(iv) proposes a program or project that is substantially identical to or is a continuation of a program or project which has been evaluated and found to be ineffective under section 3744(c)(4) of this title.

Where the council finds such noncompliance, inconsistency, conflict, or duplication, it shall notify the applicant in writing and set forth its reasons for the finding.

(B) The applicant may, within thirty days of receipt of written findings of the council pursuant to subparagraph (A) submit to the council a revised application or state in writing the applicant's reasons for disagreeing with the council's findings.

(C) A revised application submitted under subparagraph (B) shall be treated as an original application except that the council shall act on such application within thirty days.

(D) If an applicant states in writing a disagreement with the council's written findings as specified in subparagraph (A), the findings shall be considered appealed. The appeal shall be in accordance with a procedure developed by the council and reviewed and agreed to by the eligible jurisdiction. If any eligible jurisdiction in a State fails to agree with the council appeal process prior to application submission to the council, the appeal shall be in accordance with procedures developed by the Administration. The Administration appeal procedures shall provide that if the council's action is not supported by clear and convincing evidence or if the council acted arbitrarily or capriciously, the council shall be directed to reconsider or approve the application or amendment.

(E) Approval of the application of such eligible local jurisdiction shall result in the award of funds to such eligible jurisdiction without requirement for further application or review by the council.

(4) Applications from State agencies and eligible jurisdictions as defined in subsection (a)(5) of this section must be in the manner and form proscribed by the council. Where the council determines under paragraph (1)(C) and (D) that an application or amendment from a State agency or an eligible jurisdiction as defined in subsection (a)(5) of this section—

(A) does not comply with Federal requirements or with State law or regulation;

(B) is inconsistent with priorities, policy, organizational, or procedural arrangements, or the crime analysis;

(C) conflicts with or duplicates programs or projects of another applicant under this chapter, or other Federal, State, or local supported programs or applications; or

(D) proposes a program or project that is substantially identical to or is a continuation of a program or project which has been evaluated and found to be ineffective;

the council shall notify the applicant in writing of the finding and the reasons for the finding and may deny funding or recommend appropriate changes. Appeal of the council's action shall be in accordance with procedures established by the council for such matters.

(c) Local criminal justice advisory boards

The chief executive(s) of an eligible jurisdiction as defined in subsection (a)(2), (3), and (4) of this section shall create or designate an office for the purpose of preparing and developing the jurisdiction's application and assuring that such application complies with Federal requirements, State law, fund accounting, auditing and the evaluation of programs and projects to be funded under the application to be submitted to the council pursuant to section 3743 of this title. Each eligible jurisdiction shall establish or designate a local criminal justice advisory board (hereinafter referred to in this section as the "board") for the purpose of—

(1) analyzing the criminal justice problems within the eligible jurisdiction and advising the council of the eligible jurisdiction on priorities;

(2) advising the chief executive of the eligible jurisdiction pursuant to this chapter;

(3) advising on applications or amendments by the eligible jurisdiction;

(4) assuring that there is an adequate allocation of funds for court programs based upon that proportion of the eligible jurisdiction's expenditures for court programs which contributes to the jurisdiction's eligibility for funds and which take into account the court priorities recommended by the judicial coordinating committee; and

(5) assuring that there is an adequate allocation of funds for correction programs based on that portion of the eligible jurisdiction's expenditures for correction programs which contributes to the jurisdiction's eligibility for funds.

Such board shall be established or designated by the chief executive of the eligible jurisdiction and shall be subject to the jurisdiction of the chief executive who shall appoint the members and designate the chairman. Such board shall be broadly representative of the various components of the criminal justice system and shall include among its membership representatives of neighborhood, community-based and professional organizations. In the case of an eligible jurisdiction as defined in subsection (a)(4) of this section, the membership of the board shall be jointly appointed in such manner as the chief executive of each unit of local government shall determine by mutual agreement. Decisions made by the board pursuant to this subsection may be reviewed and either be accepted or rejected by the chief executive of the eligible subgrant jurisdiction, or in the case of an eligible jurisdiction as defined in subsection (a)(4) of this section in such manner as the chief executive of each unit of local government shall determine by mutual agreement. Where an eligible jurisdiction as defined in subsection (a)(2) or (3) of this section chooses not to combine pursuant to subsection (a)(4) of this section and chooses not to exercise the powers of this subsection, it shall be treated as an eligible jurisdiction under subsection (a)(5) of this section.

(d) Judicial coordinating committees

The court of last resort of each State may establish or designate a judicial coordinating committee (hereinafter referred to in this chapter as the "committee") for the preparation, development, and revision of a three-year application or amendments thereto reflecting the needs and priorities of the courts of the State. For those States where there is a judicial agency which is authorized by State law on December 27, 1979, to perform this function and which has a statutory membership of a majority of court officials (including judges and court administrators), the judicial agency may establish or designate the judicial coordinating committee. The committee shall—

(1) establish priorities for the improvement of the various courts of the State;

(2) define, develop, and coordinate programs and projects for the improvement of the courts of the State; and

(3) develop, in accordance with this subchapter, an application for the funding of programs and projects designed to improve the functioning of the courts and judicial agencies of the State.

The committee shall submit its three-year application or amendments to the council. The committee shall review for consistency with the court priorities, applications, or amendments from any jurisdiction which has incurred expenditures for the court services from its own sources or from any other jurisdiction which is applying for funds for court services. The committee shall report to the council and the applicant its findings of consistency and inconsistency. The council shall approve and incorporate into its application in whole or in part the application or amendments of the committee unless the council determines that such committee application or amendments are not in accordance with this chapter, are not in conformance with, or consistent with, their own application made pursuant to section 3743 of this title, or do not conform with the fiscal accountability standards of this chapter.

(e) Processing of applications

(1) The council will provide for procedures that will insure that all applications or amendments by units of local government or combinations thereof or judicial coordinating committees shall be acted upon no later than ninety days after being first received by the council. Final action by the council which results in the return of any application or amendments to an application must contain specific reasons for such action within ninety days of receipt of the application. Any part of such application or amendments which is not acted upon shall be deemed approved for submission to the Administration. Action by the council on any application or part thereof shall not preclude the resubmission of such application or part thereof to the council at a later date.

(2) The council, the judicial coordinating committee, and local boards, established pursuant to subsection (c) of this section, shall meet at such times and in such places as they deem necessary and shall hold each meeting open to the public, giving public notice of the time and place of such meeting, and the nature of the business to be transacted if final action is to be taken at the meeting on the State application or any application for funds or any amendment thereto. The council, the judicial coordinating committee, and local boards, pursuant to subsection (c) of this section, shall provide for public access to all records relating to their functions under this chapter, except such records as are required to be kept confidential by any other provision of local, State, or Federal law.

(3) The council shall, at a time designated in regulations promulgated by the Administration, submit its application made pursuant to this subchapter to the Administration for approval. Its application shall include funding allocations or applications which were submitted by State agencies, the judicial coordinating committee, and units of local government, or combinations thereof, and which were first reviewed and approved by the council pursuant to subsection (b)(3), (b)(4), or (d) of this section, as appropriate.

(f) Participation of citizens and neighborhood and community organizations

To be eligible for funds under this subchapter all eligible jurisdictions shall assure the participation of citizens, and neighborhood and community organizations, in the application process. No grant may be made pursuant to this subchapter unless the eligible jurisdiction has provided satisfactory assurances to the Administration that the applicant has—

(1) provided citizens and neighborhood and community organizations with adequate information concerning the amounts of funds available for proposed programs or projects under this chapter, the range of activities that may be undertaken, and other important program requirements;

(2) provided citizens and neighborhood and community organizations an opportunity to consider and comment on priorities set forth in the application or amendments;

(3) provided for full and adequate participation of units of local government in the performance of the analysis and the establishment of priorities required by subsection (b)(1)(A) of this section; and

(4) provided an opportunity for all affected criminal justice agencies to consider and comment on the proposed programs to be set forth in the application or amendments.

The Administrator, in cooperation with the Office of Community Anti-Crime Programs, may establish such rules, regulations, and procedures as are necessary to assure that citizens and neighborhood and community organizations will be assured an opportunity to participate in the application process.

(Pub. L. 90-351, title I, § 402, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1181.)

PRIOR PROVISIONS

A prior section 3742, Pub. L. 90-351, title I, § 402, June 19, 1968, 82 Stat. 203; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 205; Pub. L. 94-503, title I, § 117, Oct. 15, 1976, 90 Stat. 2416, which provided for the creation of a National Institute of Law Enforcement and Criminal Justice, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157. See section 3722 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3713, 3741, 3745, 3765, 3797 of this title.

§ 3743. Applications

(a) Contents of applications

No grant may be made by the Administration to a State, or by a State to an eligible recipient pursuant to this subchapter, unless the application sets forth criminal justice programs covering a three-year period which meet the objectives of section 3741 of this title. This application must be amended annually if new programs are to be added to the application or if the programs contained in the original application are not implemented. The application must include—

(1) an analysis of the crime problems and criminal justice needs within the relevant jurisdiction and a description of the services to be provided and performance goals and priorities, including a specific statement of how the programs are expected to advance the objectives of section 3741 of this title and meet the identified crime problems and criminal justice needs of the jurisdiction;

(2) an indication of how the programs relate to other similar State or local programs directed at the same or similar problems;

(3) an assurance that following the first fiscal year covered by an application and each fiscal year thereafter, the applicant shall submit to the Administration, where the applicant is a State, and to the council where the applicant is a State agency, the judicial coordinating committees, a nongovernmental grantee, or a unit or combination of units of local government—

(A) a performance report concerning the activities carried out pursuant to this chapter; and

(B) an assessment by the applicant of the impact of those activities on the objectives of this chapter and the needs and objectives identified in the applicant's statement;

(4) a certification that Federal funds made available under this chapter will not be used to supplant State or local funds, but will be used to increase the amounts of such funds that would, in the absence of Federal funds, be made available for criminal justice activities;

(5) an assurance where the applicant is a State, or unit or combination of units of local government that there is an adequate share of funds for courts and for corrections, police, prosecution, and defense programs;

(6) a provision for fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary to keep such records as the Administration shall prescribe to assure fiscal control, proper management, and efficient disbursement of funds received under this chapter;

(7) a provision for the maintenance of such data and information and for the submission of such reports in such form, at such times, and containing such data and information as the Administration may reasonably require to administer other provisions of this chapter;

(8) a certification that its programs meet all the requirements of this section, that all the information contained in the application is correct, that there has been appropriate coordination with affected agencies, and that the applicant will comply with all provisions of this chapter and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Administration and shall be executed by the chief executive officer or other officer of the applicant qualified under regulations promulgated by the Administration; and

(9) satisfactory assurances that equipment, whose purchase was previously made in connection with a program or project in such State assisted under this chapter and whose cost in the aggregate was $100,000 or more, has been put into use not later than one year after the date set at the time of purchase for the commencement of such use and has continued in use during its useful life.

(b) Crime analysis requirement

Applications from judicial coordinating committees, State agencies, and other nongovernmental grantees do not have to include the crime analysis required by subsection (a)(1) of this section but may rely on the crime analysis prepared by the council.

(Pub. L. 90-351, title I, § 403, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1187.)

PRIOR PROVISIONS

A prior section 3743, Pub. L. 90-351, title I, § 403, June 19, 1968, 82 Stat. 203; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 206, which related to the limitations on the size of grants and the contributions requirements for grants, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3713, 3742, 3744, 3745, 3782 of this title.

§ 3744. Review of applications

(a) Administration determinations which are prerequisite to providing of assistance

The Administration shall provide financial assistance to each State applicant under this subchapter to carry out the programs or projects submitted by such applicant upon determining that—

(1) the application or amendment thereof is consistent with the requirements of this chapter;

(2) the application or amendment thereof was made public prior to submission to the

Administration and an opportunity to comment thereon was provided to citizens and neighborhood and community groups; and

(3) prior to the approval of the application or amendment thereof the Administration has made an affirmative finding in writing that the program or project is likely to contribute effectively to the achievement of the objectives of section 3741 of this title.

Each application or amendment made and submitted for approval to the Administration pursuant to section 3743 of this title shall be deemed approved, in whole or in part, by the Administration within ninety days after first received unless the Administration informs the applicant of specific reasons for disapproval.

(b) Failure to conform to requirements or statutory objectives; suspension of funding

The Administration shall suspend funding for an approved application in whole or in part if such application contains a program or project which has failed to conform to the requirements or statutory objectives of this Act as evidenced by—

(1) the annual performance reports submitted to the Administration by the applicant pursuant to section 3782(b) of this title;

(2) the failure of the applicant to submit annual performance reports pursuant to section 3743 of this title;

(3) evaluations conducted pursuant to section 3782(b) of this title;

(4) evaluations and other information provided by the National Institute of Justice.

The Administration may make appropriate adjustments in the amounts of grants in accordance with its findings pursuant to this subsection.

(c) Prohibited uses of grant funds

Grant funds awarded under this subchapter shall not be used for—

(1) the purchase of equipment or hardware except as provided in section 3712(7) of this title, or the payment of personnel costs, unless the cost of such purchases or payments is incurred as an incidental and necessary part of a program of proven effectiveness, a program having a record of proven success, or a program offering high probability of improving the functioning of the criminal justice system (including bulletproof vests). In determining whether to apply this limitation, consideration must be given to the extent of prior funding from any sources in that jurisdiction for substantially similar activities;

(2) programs which have as their primary purpose general salary payments for employees or classes of employees within an eligible jurisdiction, except for the compensation of personnel for time engaged in conducting or undergoing training programs or the compensation of personnel engaged in research, development, demonstration, or short-term programs;

(3) construction projects; or

(4) programs or projects which, based upon evaluations by the National Institute of Justice, Law Enforcement Assistance Administration, Bureau of Justice Statistics, State or local agencies, and other public or private organizations, have been demonstrated to offer a low probability of improving the functioning of the criminal justice system. Such programs must be formally identified by a notice in the Federal Register after opportunity for comment.

(d) Notice and opportunity for hearing

The Administration shall not finally disapprove any application submitted to the Administrator under this subchapter, or any amendments thereof, without first affording the applicant reasonable notice and opportunity for a hearing and appeal pursuant to section 3783 of this title.

(Pub. L. 90-351, title I, § 404, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1188.)

REFERENCES IN TEXT

This "Act", referred to in subsec. (b), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended, known as the Omnibus Crime Control and Safe Streets Act of 1968. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

PRIOR PROVISIONS

A prior section 3744, Pub. L. 90-351, title I, § 404, June 19, 1968, 82 Stat. 204; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 207, which provided for Federal Bureau of Investigation law enforcement training programs, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157. See section 3774 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3742, 3782, 3797 of this title.

§ 3745. Allocation and distribution of funds

(a) Allocation schedule

Of the total amount appropriated for subchapters IV, V, and VI of this chapter in any fiscal year, 80 per centum shall be set aside for this subchapter and allocated to States, units of local government, and combinations of such units as follows:

(1) The sum of $300,000 to each of the participating States as defined in section 3742(a)(1) of this title and the balance according to one of the following two formulas, whichever formula results in the larger amount:

(A) Of the remaining amount to be allocated pursuant to this subchapter:

(i) 25 per centum shall be allocated in proportion to the relative population within the State as compared to the population in all States;

(ii) 25 per centum shall be allocated in proportion to the relative number of index crimes (as documented by the Department of Justice) reported within the State as compared to such numbers in all States;

(iii) 25 per centum shall be allocated in proportion to the relative amount of total State and local criminal justice expenditures within the State as compared to such amounts in all States; and

(iv) 25 per centum shall be allocated in proportion to the relative population within the State, weighted by the share of State personal income paid in State and local taxes, as compared to such weighted populations in all States; or

(B) The remaining amount to be allocated pursuant to this subchapter shall be allocated in proportion to the relative population within the State as compared to the population, in all States;

except that no State which receives financial assistance pursuant to subparagraph (A) shall receive an amount in excess of 110 per centum of that amount available to a State pursuant to subparagraph (B). Formula allocations under this section shall utilize relative population data only for the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands.

(2) If the fund allocation to each of the States pursuant to paragraph (1) results in a total amount in excess of the amount appropriated for the purposes of this subchapter, additional funds shall be allocated by the Administration from subchapters V or VI of this chapter to the States for purposes consistent with those subchapters so that the total amount equals the total amount allocated under paragraph (1). No State shall receive an allocation pursuant to paragraph (1) which is less than the block grant allocation received by such State for fiscal year 1979 pursuant to subchapters III and V of this chapter, except that if the total amount appropriated for this subchapter for any fiscal year subsequent to fiscal year 1979 is less than the total block grant appropriation for subchapters III and V of this chapter during fiscal year 1979, the States shall receive an allocation in accordance with paragraph (1)(B).

(3) From the amount made available to each State pursuant to paragraphs (1) and (2), the Administration shall determine basic allocations to be made available to the State, to eligible jurisdictions as defined in section 3742(a)(2), (3), or (4) of this title and to eligible jurisdictions as defined in section 3742(a)(5) of this title. Such allocations shall be determined—

(A) by distributing 70 per centum of available funds allocated under paragraphs (1) and (2) to the State and those eligible units of local government within the State as defined in section 3742(a) of this title in a proportion equal to their own respective share of total State and local criminal justice expenditures; and

(B) by dividing the remaining 30 per centum of available funds allocated under paragraphs (1) and (2) and distributing to the State and to those eligible units of local government within the State as defined in section 3742(a) of this title, in four equal shares in amounts determined as follows:

(i) for combating crime as specified in section 3741(a) of this title, a proportion of the available funds equal to their own respective share of total State and local expenditures for police services from all sources;

(ii) for improving court administration as specified in section 3741(a) of this title, a proportion of the available funds equal to their own respective share of total State and local expenditures for judicial, legal, and prosecutive, and public defense services from all sources;

(iii) for improving correctional services as specified in section 3741(a) of this title, a proportion of the available funds equal to their own respective share of total State and local expenditures for correctional services from all sources; and

(iv) for devising effective alternatives to the criminal justice system as specified in section 3741(a) of this title[1] a proportion of the available funds equal to their own respective share of total State and local expenditures from all sources.

(4) All allocations under paragraph (3) shall be based upon the most accurate and complete data available for such fiscal year or for the most recent fiscal year for which accurate data are available. Eligible jurisdictions as defined in section 3742(a)(4) of this title may not receive an allocation based upon the population of eligible cities and counties as defined in section 3742(a)(2), (3), and (5) of this title unless such cities and counties participate in activities under this chapter as part of a combination of units of local government as defined in section 3742(a)(4) of this title. In determining allocations for the eligible units as defined in section 3742(a) of this title, an aggregate allocation may be utilized where eligible jurisdictions as defined in section 3742(a) of this title combine to meet the population requirements of section 3742(a)(4) of this title.

(5) The amount made available pursuant to paragraph (3) to eligible units of local government within each State, as defined in section 3742(a)(5) of this title, and to eligible jurisdictions, as defined in section 3742(a)(2), (3), or (5) of this title which choose not to combine pursuant to section 3742(a)(4) of this title and choose not to exercise the powers of section 3742(c) of this title, shall be reserved and set aside in a special discretionary fund for use by the council pursuant to section 3742 of this title, in making grants (in addition to any other grants which may be made under this chapter to the same entities or for the same purposes) to such units of local government or combinations thereof. The council shall allocate such funds among such local units of government or combinations thereof which make application pursuant to section 3743 of this title, according to the criteria of this chapter and on the terms and conditions established by such council at its discretion. If in a particular State, there are no eligible units of local government, as defined in section 3742(a)(2), (3), or (4) of this title, the amount otherwise reserved and set aside in the special discretionary fund shall consist of the entire amount made available to local units of government, pursuant to this section.

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[1] So in original. Probably should be followed by a comma.

(b) Advisory review of general goals, priorities, and policies by State legislatures

At the request of the State legislature while in session or a body designated to act while the legislature is not in session, general goals, priorities, and policies of the council shall be submitted to the legislature for an advisory review prior to its implementation by the council. In this review the general criminal justice goals, priorities, and policies that have been developed pursuant to this subchapter shall be considered. If the legislature or the interim body has not reviewed such matters forty-five days after receipt, such matters shall then be deemed reviewed.

(c) Other programs

No award of funds that are allocated to the States, units of local government, or combinations thereof under this subchapter shall be made with respect to a program other than a program contained in an approved application.

(d) Reallocation of funds

If the Administration determines, on the basis of information available to it during any fiscal year, that a portion of the funds allocated to a State, unit of local government, or combination thereof for that fiscal year will not be required, or that the State, unit of local government, or combination thereof will be unable to qualify or receive funds under the requirements of this subchapter, such funds shall be available for reallocation to the States, or other units of local government and combinations thereof within such State, as the Administration may determine in its discretion, but all States shall be considered equally for reallocated funds.

(e) Private nonprofit organizations

A State may award funds from the State allocation to private nonprofit organizations. Eligible jurisdictions as defined in section 3742(a)(2) through (5) of this title may utilize the services of private nonprofit organizations for purposes consistent with this chapter.

(f) Formula grants under Juvenile Justice and Delinquency Prevention Act of 1974

In order to receive formula grants under the Juvenile Justice and Delinquency Prevention Act of 1974, as amended [42 U.S.C. 5601 et seq.], a State shall submit a plan for carrying out the purposes of that Act in accordance with the provisions of this chapter and section 223 of that Act [42 U.S.C. 5633]. Such plan may at the direction of the Administrator be incorporated into the State application to be submitted under this subchapter.

(g) Regional planning bodies

Eligible jurisdictions which choose to utilize regional planning units may utilize the boundaries and organization of existing general purpose regional planning bodies within the State.

(Pub. L. 90-351, title I, § 405, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1189.)

References in Text

The Juvenile Justice and Delinquency Prevention Act of 1974, as amended, referred to in subsec. (f), is Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended, which is classified principally to chapter 72 (§ 5601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5601 of this title and Tables.

Prior Provisions

Prior sections 3745 to 3748 and 3750 to 3750d were omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

Section 3745, Pub. L. 90-351, title I, § 405, June 19, 1968, 82 Stat. 204; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 207, repealed the Law Enforcement Assistance Act of 1965 and provided for the funds to continue projects started thereunder.

Section 3746, Pub. L. 90-351, title I, § 406, June 19, 1968, 82 Stat. 204; Pub. L. 91-644, title I, § 5(1), Jan. 2, 1971, 84 Stat. 1884; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 207, provided for academic educational assistance. See section 3775 of this title.

Section 3747, Pub. L. 90-351, title I, § 407, formerly § 408, as added Pub. L. 91-644, title I, § 5(2), Jan. 2, 1971, 84 Stat. 1885, and renumbered Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 209, related to the administration of training programs for prosecuting attorneys. See section 3772 of this title.

Previously, a prior section 3747, Pub. L. 90-351, title I, § 407, as added Pub. L. 91-544, title I, § 5(2), Jan. 2, 1971, 84 Stat. 1885, which related to Administration law enforcement training program for enforcement personnel, was omitted in the general amendment of title I of Pub. L. 90-351, this chapter, by section 2 of Pub. L. 93-83.

Section 3748, Pub. L. 90-351, title I, § 408, as added Pub. L. 91-644, title I, § 5(2), Jan. 2, 1971, 84 Stat. 1885, was renumbered section 407 of Pub. L. 90-351 by Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 209, and classified to prior section 3747 of this title.

Section 3750, Pub. L. 90-351, title I, § 451, as added Pub. L. 91-644, title I, § 6(a), Jan. 2, 1971, 84 Stat. 1885, and amended Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 209, set out the Congressional statement of purpose in providing a system of grants for correctional institutions and facilities.

Section 3750a, Pub. L. 90-351, title I, § 452, as added Pub. L. 91-644, title I, § 6(a), Jan. 2, 1971, 84 Stat. 1885, and amended Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 209, related to applications for grants and their incorporation into comprehensive State plans.

Section 3750b, Pub. L. 90-351, title I, § 453, as added Pub. L. 91-644, title I, § 6(a), Jan. 2, 1971, 84 Stat. 1886, and amended Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 209; Pub. L. 94-503, title I, § 118, Oct. 15, 1976, 90 Stat. 2417, set out the required contents of an application for a grant for correctional institutions and facilities.

Section 3750c, Pub. L. 90-351, title I, § 454, as added Pub. L. 91-644, title I, § 6(a), Jan. 2, 1971, 84 Stat. 1886, and amended Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 210; Pub. L. 94-237, § 4(c)(5)(C), Mar. 19, 1976, 90 Stat. 244, set out the guidelines and basic criteria for applicants and grantees.

Section 3750d, Pub. L. 90-351, title I, § 455, as added Pub. L. 91-644, title I, § 6(a), Jan. 2, 1971, 84 Stat. 1886, and amended Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 210; Pub. L. 94-503, title I, § 119(a), Oct. 15, 1976, 90 Stat. 2417, related to the allocation and reallocation of funds.

Section Referred to in Other Sections

This section is referred to in sections 3742, 3755 of this title.

SUBCHAPTER V—NATIONAL PRIORITY GRANTS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 3712, 3713, 3722, 3745, 3762, 3782, 3789e, 3793, 3797 of this title.

§ 3751. Congressional statement of purpose

It is the purpose of this subchapter, through the provision of additional Federal financial aid and assistance, to encourage States and units of local government to carry out programs which, on the basis of research, demonstration, or evaluations by the National Institute of Justice, Bureau of Justice Statistics, Law Enforcement Assistance Administration, State or local governments, or other Federal, State, local, or private organizations or agencies, have been shown to meet the criteria of section 3753(a) of this title.

(Pub. L. 90-351, title I, § 501, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1192.)

PRIOR PROVISIONS

A prior section 3751, Pub. L. 90-351, title I, § 501, June 19, 1968, 82 Stat. 205; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 94-503, title I, § 120, Oct. 15, 1976, 90 Stat. 2418, which related to administrative rules, regulations, and procedures, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157. See section 3782 of this title.

§ 3752. Percentage of appropriation for national priority grant program

Of the total amount appropriated for subchapters IV, V, and VI of this chapter, in any fiscal year, 10 per centum shall be reserved and set aside pursuant to this subchapter as funding incentives for use by the Administration in making national priority grants (in addition to any other grants which may be made under this chapter to the same entities or for the same purpose) to States, units of local government, and combinations of such units.

(Pub. L. 90-351, title I, § 502, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1192.)

PRIOR PROVISIONS

A prior section 3752, Pub. L. 90-351, title I, § 502, June 19, 1968, 82 Stat. 205; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211, which made provision for the delegation of the functions of the Law Enforcement Assistance Administration to other officers of the Department of Justice, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157. See section 3786 of this title.

§ 3753. Procedure for designating national priority programs

(a) Periodic and joint designations by Director of Office of Justice Assistance, Research, and Statistics and Administrator of Law Enforcement Assistance Administration

The Director of the Office of Justice Assistance, Research, and Statistics and the Administrator of the Law Enforcement Assistance Administration shall periodically and jointly designate national priority programs and projects which through research, demonstration, or evaluation have been shown to be effective or innovative and to have a likely beneficial impact on criminal justice. Such national priorities may include programs and projects designated to improve the comprehensive planning and coordination of State and local criminal justice activities. Priorities established under this subsection shall be considered priorities for a period of time determined by such Director and Administrator jointly but not to exceed three years from the time of such determination except in cases of recipients for which State or local budgetary restraints prevent assumption of costs of priority projects. Such priorities shall be designated according to such criteria, and on such terms and conditions, as such Director and such Administrator jointly may determine.

(b) Request to outside agencies to suggest national priority programs and projects

Such Director and such Administrator shall jointly annually request the National Institute of Justice, the Bureau of Justice Statistics, the Law Enforcement Assistance Administration, State and local governments, and other appropriate public and private agencies to suggest national priority programs and projects. Such Director and such Administrator shall jointly then, pursuant to regulations such Director and such Administrator jointly promulgate annually, publish proposed national priority programs and projects pursuant to this subchapter and invite and encourage public comment concerning such priorities. Such priority programs and projects shall not be established or modified until such Director and such Administrator jointly have provided at least sixty days advance notice for public comment and shall encourage and invite recommendations and opinion concerning such priorities from appropriate agencies and officials of State and units of local government. After considering any comments submitted during such period of time, such Director and such Administrator jointly shall establish priority programs and projects for that year (and determine whether existing priority programs and projects should be modified). Such Director and such Administrator shall jointly publish in the Federal Register the priority programs and projects established pursuant to this subchapter prior to the beginning of fiscal year 1981 and each fiscal year thereafter for which appropriations will be available to carry out the program. In the event of a disagreement by such Director and such Administrator as to the exercise of joint functions under this section, the Attorney General shall resolve such disagreement.

(Pub. L. 90-351, title I, § 503, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1192.)

PRIOR PROVISIONS

A prior section 3753, Pub. L. 90-351, title I, § 503, June 19, 1968, 82 Stat. 205; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211, which required specific Congressional authorization to transfer functions, powers, and duties of the Law Enforcement Assistance Administration within the Department of Justice, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3751 of this title.

§ 3754. Application requirements

(a) Contents of applications

No grant may be made pursuant to this subchapter unless an application has been submitted to the Administration in which the applicant—

(1) identifies the priority program to be funded and describes how funds allocated pursuant to this subchapter and pursuant to subchapter IV of this chapter will be expended to carry out the priority program;

(2) describes specifically what percentages of funds allocated for the upcoming year pursuant to subchapter IV of this chapter will be spent on priority programs and projects pursuant to this subchapter;

(3) describes specifically the priority programs and projects for which funds are to be allocated pursuant to subchapter IV of this chapter for the upcoming fiscal year;

(4) describes what percentage of subchapter IV of this chapter funds were expended on national priority projects during the preceding fiscal year; and

(5) describes specifically the priority programs and projects for which funds were allocated pursuant to subchapter IV of this chapter during the preceding fiscal year and the amount of such allocation.

(b) Certifications

Each applicant for funds under this subchapter shall certify that its program or project meets all the requirements of this section, that all the information contained in the application is correct, and that the applicant will comply with all the provisions of this chapter and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Administration.

(c) Review by State criminal justice councils

Each application must be submitted for review to the criminal justice council in whose State the applicant is located. The council shall have thirty days to comment to the Administration upon the application. Any recommendation shall be accompanied by supporting rationale.

(d) Private nonprofit organizations

States and units of local government may utilize the services of private nonprofit organizations for purposes consistent with this subchapter.

(Pub. L. 90-351, title I, § 504, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1193.)

PRIOR PROVISIONS

A prior section 3754, Pub. L. 90-351, title I, § 504, June 19, 1968, 82 Stat. 205; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211, which provided for the place for the holding of hearings, the signing and issuance of subpenas, the administering of oaths, the examination of witnesses, and the reception of evidence by Administration personnel, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

§ 3755. Criteria for award

(a) Establishment of reasonable requirements

The Administration shall, after appropriate consultation with representatives of State and local governments and representatives of the various components of the justice system at all levels of government, establish reasonable requirements consistent with this subchapter for the award of national priority grants. Procedures for awards of national priority grants shall be published in the Federal Register and no national priority grant shall be made in a manner inconsistent with these procedures. The Administration in determining whether to award a priority grant to an eligible jurisdiction shall give consideration to the criminal justice needs and efforts of eligible jurisdictions, to the need for continuing programs which would not otherwise be continued because of the lack of adequate subchapter IV of this chapter funds, and to the degree to which an eligible jurisdiction has expended or proposes to expend funds from subchapter IV of this chapter or other sources of funds, including other Federal grants, for priority programs and projects. No jurisdiction shall be denied a priority grant solely on the basis of its population.

(b) Maximum per centum of grant funds

Grants under this subchapter may be made in an amount equal to 50 per centum of the cost of the priority program or project for which such grant is made except allocations made pursuant to section 3745(a)(2) of this title, which may be made in an amount equal to 100 per centum of the cost of the funded program. The remaining costs may be provided from subchapter IV of this chapter funds or from any other source of funds, including other Federal grants, available to the eligible jurisdiction. The Administration may provide technical assistance to any priority program or project funded under this subchapter. Technical assistance so provided may be funded in an amount equal to 100 per centum of its cost from funds set aside pursuant to this subchapter.

(c) Funds reserved or set aside but not used in the fiscal year

Amounts reserved and set aside pursuant to this subchapter in any fiscal year, but not used in such year, may be used by the Administration to provide additional financial assistance to priority programs or projects of demonstrated effectiveness in improving the functioning of the criminal justice system, notwithstanding the provisions of subsection (b) of this section.

(d) Three-year period for financial aid and assistance; extension or renewal

The Administration may provide financial aid and assistance to programs or projects under this subchapter for a period not to exceed three years. Grants made pursuant to this subchapter may be extended or renewed by the Administration for an additional period of up to two years if an evaluation of the program or project indicates that it has been effective in achieving the stated goals or offers the potential for improving the functioning of the criminal justice system. A recipient shall assume the cost of any program assisted under this subchapter after the period of Federal assistance unless the Administrator determines that the recipient is unable to assume such cost because of State or local budgetary restraints. The Administration shall assure that the problems and needs of all of the States are taken into account in distributing funds under this subchapter among the States.

(Pub. L. 90-351, title I, § 505, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1194.)

PRIOR PROVISIONS

A prior section 3755, Pub. L. 90-351, title I, § 507, June 19, 1968, 82 Stat. 205; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 94-503, title I, §§ 119(b), 121, Oct. 15, 1976, 90 Stat. 2417, 2418, which related to officers, employees, and hearing examiners, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

A prior section 505 of Pub. L. 90-351, title I, June 19, 1968, 82 Stat. 205, which amended section 5315 of Title 5, Government Organization and Employees, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

Prior sections 3756 to 3759 were omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

Section 3756, Pub. L. 90-351, title I, § 508, June 19, 1968, 82 Stat. 205; Pub. L. 91-644, title I, § 7(3), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211, related to the use of services, equipment, personnel, and facilities of other Federal agencies. See section 3789 of this title.

Section 3757, Pub. L. 90-351, title I, § 509, June 19, 1968, 82 Stat. 206; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 211; Pub. L. 94-503, title I, § 122(a), Oct. 15, 1976, 90 Stat. 2418, provided for the withholding of payments for noncompliance with certain requirements and for notice and hearing in the event of such withholding of payments. See section 3783 of this title.

Section 3758, Pub. L. 90-351, title I, § 510, June 19, 1968, 82 Stat. 206; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 212, made provision for administrative proceedings. See sections 3783 and 3784 of this title.

Section 3759, Pub. L. 90-351, title I, § 511, June 19, 1968, 82 Stat. 206; Pub. L. 90-351, title I, § 511, June 19, 1968, 82 Stat. 206; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 212, provided for judicial review. See section 3785 of this title.

Section 3760, Pub. L. 90-351, title I, § 512, June 19, 1968, 82 Stat. 207; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 213, authorized the Administration to carry out the programs provided for under this chapter during the fiscal year ending June 30, 1974, and the two succeeding fiscal years, was previously repealed by Pub. L. 94-503, title I, § 123, Oct. 15, 1976, 90 Stat. 2419.

SUBCHAPTER VI—DISCRETIONARY GRANTS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3712, 3713, 3722, 3745, 3752, 3762, 3782, 3789e, 3793 of this title.

§ 3761. Congressional statement of purpose

It is the purpose of this subchapter, through the provision of additional Federal financial assistance, to encourage States, units of local government, combinations of such units, or private nonprofit organizations to—

(1) undertake programs and projects, including educational programs, to improve and strengthen the criminal justice system;

(2) improve the comprehensive planning and coordination of State and local criminal justice activities especially coordination between city and county jurisdictions;

(3) provide for the equitable distribution of funds under this chapter among all segments and components of the criminal justice system;

(4) develop and implement programs and projects to redirect resources so as to improve and expand the capacity of States and units of local government and combinations of such units, to detect, investigate, prosecute, and otherwise combat and prevent white-collar crime and public corruption, to improve and expand cooperation among the Federal Government, States, and units of local government in order to enhance the overall criminal justice system response to white-collar crime and public corruption, and to foster the creation and implementation of a comprehensive national strategy to prevent and combat white-collar crime and public corruption;

(5) to support modernization and improvement of State and local court and corrections systems and programs;

(6) to support organized crime programs, programs to prevent and reduce crime in public or private places and programs which are designed to disrupt illicit commerce in stolen goods and property; and

(7) to support community and neighborhood anticrime efforts.

(Pub. L. 90-351, title I, § 601, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1195.)

PRIOR PROVISIONS

A prior section 3761, Pub. L. 90-351, title I, § 513, June 19, 1968, 82 Stat. 207; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 213, which provided for the coordination of law enforcement assistance and related Federal programs, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

A prior section 601 of Pub. L. 90-351, title I, June 19, 1968, 82 Stat. 209, which enacted section 3781 of this title, defining the terms as used in this chapter, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157. See section 3791 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3762 of this title.

§ 3762. Percentage of appropriation for discretionary grant program

Of the total amount appropriated for subchapters IV, V, and VI of this chapter in any fiscal year 10 per centum shall be reserved and set aside pursuant to this subchapter in a special discretionary fund for use by the Administration in making grants (in addition to any other grants which may be made under this chapter to the same entities or for the same purposes) to States, units of local government, combinations of such units, or private nonprofit organizations, for the purposes set forth in section 3761 of this title. The Administrator shall assure that funds allocated under this subsection to private nonprofit organizations shall be used for the purpose of developing and conducting programs and projects which would not otherwise be undertaken pursuant to this chapter including programs and projects—

(1) to stimulate and encourage the improvement of justice and the modernization of State court operations by means of financial assistance to national nonprofit organizations operating in conjunction with and serving the judicial branches of State governments;

(2) to provide national education and training programs for State and local prosecutors, defense personnel, judges and judicial person-

nel, and to disseminate and demonstrate new legal developments and methods by means of teaching, special projects, practice, and the publication of manuals and materials to improve the administration of criminal justice. Organizations supported under this paragraph shall assist State and local agencies in the education and training of personnel on a State and regional basis;

(3) to support community and neighborhood anticrime programs;

(4) to stimulate, improve, and support victim-witness assistance programs; and

(5) to improve the administration of justice by encouraging and supporting the development, dissemination, implementation, evaluation, and revision of criminal justice standards and guidelines.

(Pub. L. 90-351, title I, § 602, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1195.)

PRIOR PROVISIONS

A prior section 3762, Pub. L. 90-351, title I, § 514, June 19, 1968, 82 Stat. 207; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 213, which provided for the reimbursement of Federal agencies, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3766 of this title.

§ 3763. Procedure for establishing discretionary programs

(a) Periodic and joint establishment by Director of Office of Justice Assistance, Research, and Statistics and Administrator of Law Enforcement Assistance Administration

The Director of the Office of Justice Assistance, Research, and Statistics and the Administrator of the Law Enforcement Assistance Administration shall periodically and jointly establish discretionary programs and projects for financial assistance under this subchapter. Such programs and projects shall be considered priorities for a period of time not to exceed three years from the time of such determination.

(b) Request to outside agencies to suggest discretionary programs and projects

Such Director and such Administrator shall jointly annually request the National Institute of Justice, the Bureau of Justice Statistics, the Law Enforcement Assistance Administration, State and local governments, and other appropriate public and private agencies to suggest discretionary programs and projects. Such Director and such Administrator shall jointly then, pursuant to regulations, annually publish the proposed priorities pursuant to this subchapter and invite and encourage public comment concerning such priorities. Priorities shall not be established or modified until such Director and such Administrator jointly have provided at least sixty-days advance notice for such public comment and such Director and such Administrator jointly shall encourage and invite recommendations and opinion concerning such priorities from appropriate agencies and officials of State and units of local government. After considering any comments submitted during such period of time and after consultation with appropriate agencies and officials of State and units of local government, such Director and such Administrator jointly shall determine whether existing established priorities should be modified. Such Director and such Administrator shall jointly publish in the Federal Register the priorities established pursuant to this subchapter prior to the beginning of fiscal year 1981 and each fiscal year thereafter for which appropriations will be available to carry out the program.

(Pub. L. 90-351, title I, § 603, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1196.)

PRIOR PROVISIONS

A prior section 3763, Pub. L. 90-351, title I, § 515, June 19, 1968, 82 Stat. 207; Pub. L. 91-644, title I, § 7(4), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 213; Pub. L. 94-503, title I, § 124, Oct. 15, 1976, 90 Stat. 2421, which provided for the functions, powers, and duties of the Law Enforcement Assistance Administration, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157. See section 3712 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3765 of this title.

§ 3764. Application requirements

(a) Contents of applications

No grant may be made pursuant to this subchapter unless an application has been submitted to the Administration in which the applicant—

(1) sets forth a program or project which is eligible for funding pursuant to this subchapter;

(2) describes the services to be provided, performance goals and the manner in which the program is to be carried out;

(3) describes the method to be used to evaluate the program or project in order to determine its impact and effectiveness in achieving the stated goals and agrees to conduct such evaluation according to the procedures and terms established by the Administration;

(4) indicates, if it is a private nonprofit organization, that it has consulted with appropriate agencies and officials of the State and units of local government to be affected by the program and project.

(b) Certifications

Each applicant for funds under this subchapter shall certify that its program or project meets all the requirements of this section, that all the information contained in the application is correct, and that the applicant will comply with all the provisions of this chapter and all other applicable Federal laws. Such certification shall be made in a form acceptable to the Administration.

(Pub. L. 90-351, title I, § 604, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1197.)

PRIOR PROVISIONS

A prior section 3764, Pub. L. 90-351, title I, § 516, June 19, 1968, 82 Stat. 207; Pub. L. 91-644, title I, § 7(5), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 213, which provided for the making of payments under this chapter, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

§ 3765. Criteria for award

The Administration shall, in its discretion and according to the criteria and on the terms and conditions it determines consistent with this subchapter, provide financial assistance to those programs or projects which most clearly satisfy the priorities established under section 3763 of this title. In providing such assistance pursuant to this subchapter, the Administration shall consider whether certain segments and components of the criminal justice system have received a disproportionate allocation of financial aid and assistance pursuant to other subchapters of this chapter, and, if such a finding is made, shall assure the funding of such other segments and components of the criminal justice system as to correct inequities resulting from such disproportionate allocations. Federal funding under this subchapter may be up to 100 per centum of the cost of the program. In distributing funds under this subchapter among the States, the Administration shall assure that the problems and needs of all of the States are taken into account and shall fund some programs and projects responsive to each type of section 3742 of this title eligible jurisdiction.

(Pub. L. 90-351, title I, § 605, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1197.)

PRIOR PROVISIONS

A prior section 3765, Pub. L. 90-351, title I, § 517, June 19, 1968, 82 Stat. 207; Pub. L. 91-644, title I, § 7(6), Jan. 2, 1971, 84 Stat. 1887; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 213, which provided for the personnel of the Administration, was omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

§ 3766. Period for award

The Administration may provide financial aid and assistance to programs or projects under this subchapter for a period not to exceed three years. Grants made pursuant to this subchapter may be extended or renewed by the Administration for an additional period of up to two years if—

(1) an evaluation of the program or project indicates that it has been effective in achieving the stated goals or offers the potential for improving the functioning of the criminal justice system; and

(2) the State, unit of local government, or combination thereof and private nonprofit organizations within which the program or project has been conducted agrees to provide at least one-half of the total cost of such program or project from subchapter IV of this chapter funds or from any other source of funds, including other Federal grants, available to the eligible jurisdiction. Funding for the management and the administration of national nonprofit organizations under section 3762(1) of this title is not subject to the funding limitations of this section.

(Pub. L. 90-351, title I, § 606, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1197.)

PRIOR PROVISIONS

Prior sections 3766 to 3770 were omitted from the Code in the general revision of this chapter by Pub. L. 96-157.

Section 3766, Pub. L. 90-351, title I, § 518, June 19, 1968, 82 Stat. 208; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 214; Pub. L. 94-503, title I, § 122(b), Oct. 15, 1976, 90 Stat. 2418, prohibited certain constructions of the provisions of this chapter. See section 3789d of this title.

Section 3767, Pub. L. 90-351, title I, § 519, June 19, 1968, 82 Stat. 208; Pub. L. 91-644, title I, § 7(7), Jan. 2, 1971, 84 Stat. 1888; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 214; Pub. L. 94-273, § 5(5), Apr. 21, 1976, 90 Stat. 377; Pub. L. 94-503, title I, § 125, Oct. 15, 1976, 90 Stat. 2422; Pub. L. 95-115, § 9(a), Oct. 3, 1977, 91 Stat. 1060, related to annual reports to the President and the Congress. See section 3789e of this title.

Section 3768, Pub. L. 90-351, title I, § 520, June 19, 1968, 82 Stat. 208; Pub. L. 90-462, § 1, Aug. 8, 1968, 82 Stat. 638; Pub. L. 91-644, title I, § 7(8), Jan. 2, 1971, 84 Stat. 1888; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 214; Pub. L. 93-415, title V, § 544, Sept. 7, 1974, 88 Stat. 1142; Pub. L. 94-430, § 3, Sept. 29, 1976, 90 Stat. 1348; Pub. L. 94-503, title I, § 126, Oct. 15, 1976; 90 Stat. 2423, related to the authorization of appropriations. See sections 3793 and 3793a of this title.

Section 3769, Pub. L. 90-351, title I, § 521, June 19, 1968, 82 Stat. 208; Pub. L. 91-644, title I, § 7(9), Jan. 2, 1971, 84 Stat. 1888; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 215; Pub. L. 94-503, title I, §§ 127, 128(a), Oct. 15, 1976, 90 Stat. 2424, related to recordkeeping requirements. See section 3789f of this title.

Section 3770, Pub. L. 90-351, title I, § 523, as added Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 215, provided for the use of unobligated Federal funds for 90 percent of costs.

SUBCHAPTER VII—TRAINING AND MANPOWER DEVELOPMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 3789e, 3793 of this title.

§ 3771. Congressional statement of purpose

It is the purpose of this subchapter to provide for and encourage training, manpower development, and new personnel practices for the purpose of improving the criminal justice system.

(Pub. L. 90-351, title I, § 701, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1198.)

PRIOR PROVISIONS

A prior section 3771 of this title, Pub. L. 90-351, title I, § 524, as added Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 215, which related to the availability of information for prescribed purposes, was omitted in the general revision of this chapter by Pub. L. 96-157. See section 3789g of this title.

A prior section 701 of Pub. L. 90-351, title I, as added Pub. L. 94-430, § 2, Sept. 29, 1976, 90 Stat. 1346, which provided for payments of Public safety officers' death benefits was classified to former section 3796 of this title and was omitted in the general revision of this chapter by Pub. L. 96-157. See section 3796 of this title.

Another prior section 701 of Pub. L. 90-351, title II, June 19, 1968, 82 Stat. 210, is classified to sections 3501 and 3502 of Title 18, Crimes and Criminal Procedure.

§ 3772. Training for prosecuting attorneys

(a) Establishment and support of training program

The Administration is authorized to establish and support a training program for prosecuting attorneys from State and local agencies engaged in the prosecution of white-collar and organized crime. The program shall be designed to develop new or improved approaches, techniques, systems, manuals, and devices to strengthen prosecutive capabilities against white-collar and organized crime.

(b) Travel expenses and per diem allowances

While participating in the training program or traveling in connection with participation in the training program, State and local personnel may be allowed travel expenses and a per diem allowance in the same manner as prescribed under section 5703 of title 5 for persons employed intermittently in the Government service.

(c) Costs

The cost of training State and local personnel under this section shall be provided out of funds appropriated to the Administration for the purpose of such training.

(Pub. L. 90-351, title I, § 702, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1198.)

PRIOR PROVISIONS

A prior section 3772 of this title, Pub. L. 90-351, title I, § 526, as added Pub. L. 93-415, title V, § 545, Sept. 7, 1974, 88 Stat. 1143, which related to the acceptance of volunteer services, was omitted in the general revision of this chapter by Pub. L. 96-157. See section 3789h of this title.

A prior section 702 of Pub. L. 90-351, title I, as added Pub. L. 94-430, § 2, Sept. 29, 1976, 90 Stat. 1347, which provided limits on the payment of public safety officers' death benefits, was classified to former section 3796a of this title and was omitted in the general revision of this chapter by Pub. L. 96-157. See section 3796a of this title.

§ 3773. Training State and local criminal justice personnel

(a) Authorized activities

The Administration is authorized—

(1) to assist in conducting local, regional, or national training programs for the training of State and local criminal justice personnel, including but not limited to those engaged in the investigation of crime and apprehension of criminals, community relations, the prosecution, defense, or adjudication of those charged with crime, corrections, rehabilitation, probation, and parole of offenders. Such training activities shall be designed to supplement and improve rather than supplant the training activities of the State and units of local government and shall not duplicate the training activities of the Federal Bureau of Investigation. While participating in the training program or traveling in connection with participation in the training program, State and local personnel may be allowed travel expenses and a per diem allowance in the same manner as prescribed under section 5703 of title 5 for persons employed intermittently in the Government service;

(2) to carry out a program of planning, development, demonstration, and evaluation of training programs for State and local criminal justice personnel;

(3) to assist in conducting programs relating to recruitment, selection, placement, and career development practices of State and local law enforcement and criminal justice personnel, and to assist State and local governments in planning manpower programs for criminal justice; and

(4) to carry out a program of planning, development, demonstration, and evaluation of recruitment, selection, and placement practices.

(b) Programs costs; increase in non-Federal share; minimum use of funds for per diem or subsistence

(1) The amount of a grant or contract under this section may be up to 100 per centum of the total cost of a program, but the total financial support may not exceed 80 per centum of the total operating budget of any funded institutions or programs.

(2) Institutions funded under this section shall assure that to the maximum extent feasible efforts shall be made to increase the non-Federal share of the total operating budgets of such institutions or programs with the objective of becoming self-sustaining.

(3) To the greatest extent possible funds appropriated for the purposes of this section shall not be utilized to provide per diem or subsistence for State and local officials receiving such training.

(Pub. L. 90-351, title I, § 703, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1198.)

PRIOR PROVISIONS

A prior section 3773 of this title, Pub. L. 90-351, title I, § 527, as added Pub. L. 93-415, title V, § 545, Sept. 7, 1974, 88 Stat. 1143, which related to the administration of the juvenile delinquency programs by the Office of Juvenile Justice and Delinquency Prevention, was omitted in the general revision of this chapter by Pub. L. 96-157. See section 3789i of this title.

A prior section 703 of Pub. L. 90-351, as added Pub. L. 94-430, § 2, Sept. 29, 1976, 90 Stat. 1347, which defined the terms used in the provisions for public safety officers' death benefits, was classified to former section 3796b of this title and was omitted in the general revision of this chapter by Pub. L. 96-157. See section 3796b of this title.

§ 3774. Federal Bureau of Investigation training of State and local criminal justice personnel

(a) Authority of Director

The Director of the Federal Bureau of Investigation is authorized to—

(1) establish and conduct training programs at the Federal Bureau of Investigation National Academy at Quantico, Virginia, to provide, at the request of a State or unit of local government, training for State and local criminal justice personnel;

(2) develop new or improved approaches, techniques, systems, equipment, and devices to improve and strengthen criminal justice; and

(3) assist in conducting, at the request of a State or unit of local government, local and

regional training programs for the training of State and local criminal justice personnel engaged in the investigation of crime and the apprehension of criminals. Such training shall be provided only for persons actually employed as State police or highway patrol, police of a unit of local government, sheriffs, and their deputies, and other persons as the State or unit may nominate for police training while such persons are actually employed as officers of such State or unit.

(b) General authority of Attorney General

In the exercise of the functions, powers, and duties established under this section the Director of the Federal Bureau of Investigation shall be under the general authority of the Attorney General.

(Pub. L. 90–351, title I, § 704, as added Pub. L. 96–157, § 2, Dec. 27, 1979, 93 Stat. 1199.)

PRIOR PROVISIONS

A prior section 3774 of this title, Pub. L. 90–351, title I, § 528, as added Pub. L. 93–415, title V, § 545, Sept. 7, 1974, 88 Stat. 1143, which authorized the employment of personnel by the Law Enforcement Assistance Administration, was omitted in the general revision of this chapter by Pub. L. 96–157.

A prior section 704 of Pub. L. 96–351, title I, as added Pub. L. 94–430, § 2, Sept. 29, 1976, 90 Stat. 1347, which provided for the administration of the program of public safety officers' death benefits, was classified to former section 3796c of this title and was omitted in the general revision of this chapter by Pub. L. 96–157. See section 3796c of this title.

§ 3775. Criminal justice education program

(a) General authorization

Pursuant to the provisions of subsections (b) and (c) of this section, the Administration is authorized, after appropriate consultation with the Commissioner of Education, to carry out programs of academic educational assistance to improve and strengthen criminal justice.

(b) Loan authority; terms and conditions; eligible persons; cancellation of loans

The Administration is authorized to enter into contracts to make, and make payments to institutions of higher education for loans, not exceeding $2,200 per academic year to any person, to persons enrolled on a full-time basis in undergraduate or graduate programs approved by the Administration and leading to degrees or certificates in areas directly related to criminal justice or suitable for persons employed in criminal justice, with special consideration to police or correctional personnel of States or units of local government on academic leave to earn such degrees or certificates. Loans to persons assisted under this subsection shall be made on such terms and conditions as the Administration and the institution offering such programs may determine, except that the total amount of any such loan, plus interest, shall be canceled for service as a full-time officer or employee of a criminal justice agency at the rate of 25 per centum of the total amount of such loan plus interest for each complete year of such service or its equivalent of such service, as determined under regulations of the Administration.

(c) Tuition, book, and fee payments authority; eligible persons; service agreement and repayment

The Administration is authorized to enter into contracts to make and to make payments to institutions of higher education for tuition, books, and fees, not exceeding $250 per academic quarter or $400 per semester for any person, for officers of any publicly funded criminal justice agency enrolled on a full-time or part-time basis in courses included in an undergraduate or graduate program which is approved by the Administration and which leads to a degree or certificate in an area related to criminal justice or an area suitable for persons employed in criminal justice. Assistance under this subsection may be granted only on behalf of an applicant who enters into an agreement to remain in the service of a criminal justice agency employing such applicant for a period of two years following completion of any course for which payments are provided under this subsection, and in the event such service is not completed, to repay the full amount of such payments on such terms and in such manner as the Administration may prescribe.

(d) Eligible teachers

Full-time teachers or persons preparing for careers as full-time teachers of courses related to criminal justice or suitable for persons employed in criminal justice, in institutions of higher education which are eligible to receive funds under this section, shall be eligible to receive assistance under subsections (b) and (c) of this section as determined under regulations of the Administration.

(e) Grant or contract authority for specified program or project activities; limitation

The Administration is authorized to make grants to or enter into contracts with institutions of higher education, or combinations of such institutions, to assist them in planning, developing, strengthening, improving, or carrying out programs or projects for the development or demonstration of improved methods of criminal justice education, including—

(1) planning for the development or expansion of undergraduate or graduate programs in law enforcement and criminal justice, and for law enforcement related courses in public schools;

(2) education and training of faculty members;

(3) strengthening the criminal justice aspects of courses leading to an undergraduate, graduate, or professional degree; and

(4) research into, and development of, methods of educating students or faculty, including the preparation of teaching materials and the planning of curriculums. The amount of a grant or contract may be up to 75 per centum of the total cost of programs and projects for which a grant or contract is made.

(f) Internship grants

The Administration is authorized to enter into contracts to make and to make payments to institutions of higher education for grants not exceeding $65 per week to persons enrolled on a full-time basis in undergraduate or graduate degree programs who are accepted for and serve in full-time internships in criminal justice agencies for not less than eight weeks during any summer recess or for any entire quarter or semester on leave from the degree program.

(Pub. L. 90-351, title I, § 705, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1199.)

Prior Provisions

Provisions similar to this section were contained in former section 3746 of this title prior to the general revision of this chapter by Pub. L. 96-157.

Transfer of Functions

All functions of the Commissioner of Education and all functions of the Attorney General and of the Law Enforcement Assistance Administration with regard to the student loan and grant programs known as the law enforcement education program and the law enforcement intern program authorized by former section 3746(b), (c), and (f) of this title [now subsecs. (b), (c), and (f) of this section] were transferred to the Secretary of Education pursuant to sections 3441(a)(1) and 3445 of Title 20, Education.

Section Referred to in Other Sections

This section is referred to in title 20 section 3445.

SUBCHAPTER VIII—ADMINISTRATIVE PROVISIONS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 3712, 3722, 3732, 3793 of this title.

§ 3781. Establishment of Office of Justice Assistance, Research, and Statistics

(a) There is established within the Department of Justice, under the general authority and policy control of the Attorney General, an Office of Justice Assistance, Research, and Statistics. The chief officer of the Office of Justice Assistance, Research, and Statistics shall be a Director appointed by the President by and with the advice and consent of the Senate.

(b) The Office of Justice Assistance, Research, and Statistics shall directly provide staff support to, and coordinate the activities of, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration.

(Pub. L. 90-351, title I, § 801, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1201.)

Prior Provisions

A prior section 3781, Pub. L. 90-351, title I, § 601, June 19, 1968, 82 Stat. 209; 1970 Reorg. Plan No. 2, eff. July 1, 1970, 35 F.R. 7959, 84 Stat. 2085; Pub. L. 91-644, title I, §§ 6(b), 9, Jan. 2, 1971, 84 Stat. 1887, 1888; Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 216; Pub. L. 94-503, title I, § 129, Oct. 15, 1976, 90 Stat. 2424, which defined the terms used in this subchapter, was omitted in the general revision of this chapter by Pub. L. 96-157. See section 3791 of this title.

A prior section 801 of Pub. L. 90-351, title III, June 19, 1968, 82 Stat. 211, is set out as a note under section 2510 of Title 18, Crimes and Criminal Procedure.

§ 3782. Rules, regulations, and procedures; consultations and establishment

(a) General authorization of certain Federal agencies

The Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, and the National Institute of Justice are authorized, after appropriate consultation with representatives of States and units of local government, to establish such rules, regulations, and procedures as are necessary to the exercise of their functions, and as are consistent with the stated purpose of this chapter.

(b) Continuing evaluation of selected programs or projects; cost, effectiveness, impact value, and comparative considerations; annual performance report; assessment of activity effectiveness; suspension of funds for nonsubmission of report

The Law Enforcement Assistance Administration shall, after consultation with the National Institute of Justice, the Bureau of Justice Statistics, State and local governments, and the appropriate public and private agencies, establish such rules and regulations as are necessary to assure the continuing evaluation of selected programs or projects conducted pursuant to subchapters IV, V, and VI of this chapter, in order to determine—

(1) whether such programs or projects have achieved the performance goals stated in the original application, are of proven effectiveness, have a record of proven success, or offer a high probability of improving the criminal justice system;

(2) whether such programs or projects have contributed or are likely to contribute to the improvement of the criminal justice system and the reduction and prevention of crime;

(3) their cost in relation to their effectiveness in achieving stated goals;

(4) their impact on communities and participants; and

(5) their implication for related programs.

Evaluations shall be in addition to the requirements of sections 3743 and 3744 of this title. In conducting the evaluations called for by this subsection, the Law Enforcement Assistance Administration shall, when practical, compare the effectiveness of programs conducted by similar applicants and different applicants, and shall compare the effectiveness of programs or projects conducted by States and units of local government pursuant to subchapter IV of this chapter with similar programs carried out pursuant to subchapters V and VI of this chapter. The law Enforcement Assistance Administration shall also require applicants under subchapter IV of this chapter to submit an annual performance report concerning activities carried out pursuant to subchapter IV of this chapter together with an assessment by the applicant of the effectiveness of those activities in achieving the objectives of section 3741 of this title and the relationships of those activities to the needs and objectives specified by the applicant in the application submitted pursuant to section 3743 of this title. The administration shall suspend funding for an approved application under subchapter IV of this chapter if an applicant fails to submit such an annual performance report.

(c) Procedures for paperwork minimization and prevention of duplication and delays in award and expenditure of funds

The procedures established to implement the provisions of this chapter shall minimize paperwork and prevent needless duplication and unnecessary delays in award and expenditure of funds at all levels of government.

(Pub. L. 90-351, title I, § 802, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1201.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3751 of this title prior to the general revision of this chapter by Pub. L. 96-157.

A prior section 802 of Pub. L. 90-351, title III, June 19, 1968, 82 Stat. 212-223, enacted sections 2510 to 2520 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3744 of this title.

§ 3783. Notice and hearing on denial or termination of grant

(a) Payments to recipients; limitation, reduction, or termination

Whenever, after reasonable notice and opportunity for a hearing on the record in accordance with section 554 of title 5, the National Institute of Justice, the Bureau of Justice Statistics, or the Law Enforcement Assistance Administration finds that a recipient of their respective assistance under this chapter has failed to comply substantially with—

(1) any provision of this chapter;

(2) any regulations or guidelines promulgated under this chapter; or

(3) any application submitted in accordance with the provisions of this chapter, or the provisions of any other applicable Federal Act;

they, until satisfied that there is no longer any such failure to comply, shall—

(A) terminate payments to the recipient under this chapter;

(B) reduce payments to the recipient under this chapter by an amount equal to the amount of such payments which were not expended in accordance with this chapter; or

(C) limit the availability of payments under this chapter to programs, projects, or activities not affected by such failure to comply.

(b) Notice of action; reasons for action; hearing or investigation; finality of findings and determinations

If a State grant application filed under subchapter IV of this chapter or any grant application filed under any other subchapter of this chapter has been rejected or a State applicant under subchapter IV of this chapter or an applicant under any other subchapter of this chapter has been denied a grant or has had a grant, or any portion of a grant, discontinued, terminated or has been given a grant in a lesser amount that such applicant believes appropriate under the provisions of this chapter, the National Institute of Justice, the Bureau of Justice Statistics, or the Law Enforcement Assistance Administration, as appropriate, shall notify the applicant or grantee of its action and set forth the reason for the action taken. Whenever such an applicant or grantee requests a hearing, the National Institute of Justice, the Bureau of Justice Statistics, the Law Enforcement Assistance Administration, or any authorized officer thereof, is authorized and directed to hold such hearings or investigations, including hearings on the record in accordance with section 554 of title 5, at such times and places as necessary, following appropriate and adequate notice to such applicant; and the findings of fact and determinations made with respect thereto shall be final and conclusive, except as otherwise provided herein.

(c) Rehearing; regulations and procedures; presentation of additional information

If such recipient is dissatisfied with the findings and determinations of the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, following notice and hearing provided for in subsection (a) of this section, a request may be made for rehearing, under such regulations and procedures as such Administration, Bureau, or Institute, as the case may be, may establish, and such recipient shall be afforded an opportunity to present such additional information as may be deemed appropriate and pertinent to the matter involved.

(Pub. L. 90-351, title I, § 803, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1202.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3758 of this title prior to the general revision of this chapter by Pub. L. 96-157.

A prior section 803 of Pub. L. 90-351, title III, June 19, 1968, 82 Stat. 223 amended section 605 of Title 47, Telegraphs, Telephones, and Radiotelegraphs.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3744, 3785 of this title.

§ 3784. Finality of determinations

In carrying out the functions vested by this chapter in the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, their determinations, findings, and conclusions shall, after reasonable notice and opportunity for a hearing, be final and conclusive upon all applications, except as otherwise provided herein.

(Pub. L. 90-351, title I, § 804, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1203.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3758 of this title prior to the general revision of this chapter by Pub. L. 96-157.

A prior section 804 of Pub. L. 90-351, title III, June 19, 1968, 82 Stat. 223, was set out as a note under section 2510 of Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3785 of this title.

§ 3785. Appellate court review

(a) Jurisdiction of court of appeals; petition for review; time for filing, copies; record; objections before appropriate agency

If any applicant or recipient is dissatisfied with a final action with respect to section 3783, 3784, or 3789d(c)(2)(G) of this title, such applicant or recipient may, within sixty days after notice of such action, file with the United States court of appeals for the circuit in which such applicant or recipient is located, or in the United States Court of Appeals for the District of Columbia, a petition for review of the action. A copy of the petition shall forthwith be transmitted by the petitioner to the Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, as appropriate, and the Attorney General of the United States, who shall represent the Federal Government in the litigation. The Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, as appropriate, shall thereupon file in the court the record of the proceeding on which the action was based, as provided in section 2112 of title 28. No objection to the action shall be considered by the court unless such objection has been urged before the Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, as appropriate.

(b) Determination by court of appeals: conclusiveness of findings; remand; conclusiveness of new or modified findings

The court shall have jurisdiction to affirm or modify a final action or to set it aside in whole or in part. The findings of fact by the Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, if supported by substantial evidence on the record considered as a whole, shall be conclusive, but the court, for good cause shown, may remand the case to the Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the National Institute of Justice, or the Bureau of Justice Statistics, to take additional evidence to be made part of the record. The Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, may thereupon make new or modified findings of fact by reason of the new evidence so taken and filed with the court and shall file such modified or new findings along with any recommendations such entity may have for the modification or setting aside of such entity's original action. All new or modified findings shall be conclusive with respect to questions of fact if supported by substantial evidence when the record as a whole is considered.

(c) Determination by court of appeals; Supreme Court review

Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Office of Justice Assistance, Research, and Statistics, the Law Enforcement Assistance Administration, the Bureau of Justice Statistics, or the National Institute of Justice, or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon writ of certiorari or certifications as provided in section 1254 of title 28.

(Pub. L. 90-351, title I, § 805, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1203.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3759 of this title prior to the general revision of this chapter by Pub. L. 96-157.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3789d of this title.

§ 3786. Delegation of functions

The Attorney General, the Office of Justice Assistance, Research, and Statistics, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration may delegate to any of their respective officers or employees such functions as they deem appropriate.

(Pub. L. 90-351, title I, § 806, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1204.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3752 of this title prior to the general revision of this chapter by Pub. L. 96-157.

§ 3787. Subpena power; authority to hold hearings

In carrying out their functions, the Office of Justice Assistance, Research, and Statistics, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration, and upon authorization, any member thereof or any hearing examiner or administrative law judge assigned to or employed thereby shall have the power to hold hearings and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States they may designate.

(Pub. L. 90-351, title I, § 807, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1204.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3754 of this title prior to the general revision of this chapter by Pub. L. 96-157.

§ 3788. Employment of hearing officers

The Office of Justice Assistance, Research, and Statistics, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration may appoint such officers and employees as shall be necessary to carry out their powers and duties under this chapter and may appoint such hearing examiners or administrative law judges or request the use of such administrative law judges selected by the Office of Personnel Management pursuant to section 3344 of title 5 as shall be necessary to carry out their powers and duties under this chapter.

(Pub. L. 90-351, title I, § 810, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1204.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3755 of this title prior to the general revision of this chapter by Pub. L. 96-157.

§ 3789. Authority to use available services

The Office of Justice Assistance, Research, and Statistics, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration are authorized, on a reimbursable basis when appropriate, to use the available services, equipment, personnel, and facilities of Federal, State, and local agencies to the extent deemed appropriate after giving due consideration to the effectiveness of such existing services, equipment, personnel, and facilities.

(Pub. L. 90-351, title I, § 811, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1205.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3756 of this title prior to the general revision of this chapter by Pub. L. 96-157.

§ 3789a. Consultation with other Federal, State, and local officials

In carrying out the provisions of this chapter, including the issuance of regulations, the Attorney General, the Director of the Office of Justice Assistance, Research, and Statistics, the Administrator of the Law Enforcement Assistance Administration, and the Directors of the National Institute of Justice and the Bureau of Justice Statistics shall consult with other Federal departments and agencies and State and local officials.

(Pub. L. 90-351, title I, § 812, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1205.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3756 of this title prior to the general revision of this chapter by Pub. L. 96-157.

§ 3789b. Reimbursement authority

(a) The Office of Justice Assistance, Research, and Statistics, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration may arrange with and reimburse the heads of other Federal departments and agencies for the performance of any of their functions under this chapter.

(b) The National Institute of Justice, the Bureau of Justice Statistics, the Law Enforcement Assistance Administration, and the Office of Justice Assistance, Research, and Statistics in carrying out their respective functions may use grants, contracts, or cooperative agreements in accordance with the standards established in the Federal Grant and Cooperative Agreement Act of 1977 (41 U.S.C. 501 et seq.).

(Pub. L. 90-351, title I, § 813, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1205.)

REFERENCES IN TEXT

The Federal Grant and Cooperative Agreement Act of 1977, referred to in subsec. (b), is Pub. L. 95-224, Feb. 3, 1978, 92 Stat. 3, which is classified principally to chapter 8 (§ 501 et seq.) of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 501 of Title 41 and Tables.

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3756 of this title prior to the general revision of this chapter by Pub. L. 96-157.

§ 3789c. Services of experts and consultants; advisory committees

(a) Compensation of experts and consultants

The Office of Justice Assistance, Research, and Statistics, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration may procure the services of experts and consultants in accordance with section 3109 of title 5 at rates of compensation for individuals not to exceed the daily equivalent of the rate then payable for GS-18 by section 5332 of title 5.

(b) Compensation and travel expenses of committee members

The Office of Justice Assistance, Research, and Statistics, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration are authorized to appoint, without regard to the provisions of title 5 relating to appointments in the competitive service, technical or other advisory committees to advise them with respect to the administration of this chapter as they deem necessary. Members of those committees not otherwise in the employ of the United States, while engaged in advising them or attending meetings of the committees, shall be compensated at rates to be fixed by the Offices but not to exceed the daily equivalent of the rate then payable for GS-18 by section 5332 of title 5 and while away from home or regular place of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of such title 5 for persons in the Government service employed intermittently.

(c) Payments; installments; advances or reimbursement; transportation and subsistence expenses for attendance at conferences or other assemblages

Payments under this chapter may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administration, and may be used to pay the transportation and subsistence expenses of persons attending conferences or other assemblages notwithstanding the provisions of section 551 of title 31.

(Pub. L. 90-351, title I, § 814, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1205.)

REFERENCES IN TEXT

GS-18, referred to in subsecs. (a) and (b), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

Provisions of title 5 relating to appointments in the competitive service, referred to in subsec. (b), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3765 of this title prior to the general revision of this chapter by Pub. L. 96-157.

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 3789d. Prohibition of Federal control over State and local criminal justice agencies

(a) General rule

Nothing contained in this chapter or any other Act shall be construed to authorize any department, agency, officer, or employee of the United States to exercise any direction, supervision, or control over any police force or any other criminal justice agency of any State or any political subdivision thereof.

(b) Racial imbalance requirement restriction

Notwithstanding any other provision of law, nothing contained in this chapter shall be construed to authorize the National Institute of Justice, the Bureau of Justice Statistics, or the Law Enforcement Assistance Administration—

(1) to require, or condition the availability or amount of a grant upon the adoption by an applicant or grantee under this chapter of a percentage ratio, quota system, or other program to achieve racial balance in any criminal justice agency; or

(2) to deny or discontinue a grant because of the refusal of an applicant or grantee under this chapter to adopt such a ratio, system, or other program.

(c) Discrimination prohibited; determination of discrimination; notice of violation to chief executive of State; compliance, writing, semiannual report; noncompliance, suspension of payments, effective period; resumption of payments; preliminary hearing before administrative law judge, deferral of suspension; hearing; finding of compliance or noncompliance; appeal of findings; civil action by Attorney General, injunction; private action, exhaustion of administrative remedies, attorney fees, intervention by Attorney General

(1) No person in any State shall on the ground of race, color, religion, national origin, or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under or denied employment in connection with any programs or activity funded in whole or in part with funds made available under this chapter.

(2)(A) Whenever there has been—

(i) receipt of notice of a finding, after notice and opportunity for a hearing, by a Federal court (other than in an action brought by the Attorney General) or State court, or by a Federal or State administrative agency, to the effect that there has been a pattern or practice of discrimination in violation of paragraph (1); or

(ii) a determination after an investigation by the Office of Justice Assistance, Research, and Statistics (prior to a hearing under subparagraph (F) but including an opportunity for the State government or unit of local government to make a documentary submission regarding the allegation of discrimination with respect to such program or activity, with funds made available under this chapter) that a State government or unit of local government is not in compliance with paragraph (1);

the Office of Justice Assistance, Research, and Statistics shall, within ten days after such occurrence, notify the chief executive of the affected State, or the State in which the affected unit of local government is located, and the chief executive of such unit of local government, that such program or activity has been so found or determined not to be in compliance with paragraph (1), and shall request each chief executive, notified under this subparagraph with respect to such violation, to secure compliance. For purposes of clause (i) a finding by a Federal or State administrative agency shall be deemed rendered after notice and opportunity for a hearing if it is rendered pursuant to procedures consistent with the provisions of subchapter II of chapter 5 of title 5.

(B) In the event the chief executive secures compliance after notice pursuant to subparagraph (A), the terms and conditions with which the affected State government or unit of local government agrees to comply shall be set forth in writing and signed by the chief executive of the State, by the chief executive of such unit (in the event of a violation by a unit of local government), and by the Office of Justice Assistance, Research, and Statistics. On or prior to the effective date of the agreement, the Office of Justice Assistance, Research, and Statistics shall send a copy of the agreement to each complainant, if any, with respect to such violation. The chief executive of the State, or the chief executive of the unit (in the event of a violation by a unit of local government) shall file semiannual reports with the Office of Justice Assistance, Research, and Statistics detailing the steps taken to comply with the agreement. These reports shall cease to be filed upon the determination of the Office of Justice Assistance, Research, and Statistics that compliance has been secured, or upon the determination by a Federal or State court that such State government or local governmental unit is in compliance with this section. Within fifteen days of receipt of such reports, the Office of Justice Assistance, Research, and Statistics shall send a copy thereof to each such complainant.

(C) If, at the conclusion of ninety days after notification under subparagraph (A)—

(i) compliance has not been secured by the chief executive of that State or the chief executive of that unit of local government; and

(ii) an administrative law judge has not made a determination under subparagraph (F) that it is likely the State government or unit of local government will prevail on the merits; the Office of Justice Assistance, Research, and Statistics shall notify the Attorney General that compliance has not been secured and caused to have suspended further payment of any funds under this chapter to that program or activity. Such suspension shall be limited to the specific program or activity cited by the Office of Justice Assistance, Research, and Statistics in the notice under subparagraph (A). Such suspension shall be effective for a period of not more than one hundred and twenty days, or, if there is a hearing under subparagraph (G), not more than thirty days after the conclusion of such hearing, unless there has been an express finding by the Office of Justice Assistance, Research, and Statistics, after notice and opportunity for such a hearing, that the recipient is not in compliance with paragraph (1).

(D) Payment of the suspended funds shall resume only if—

(i) such State government or unit of local government enters into a compliance agreement approved by the Office of Justice Assistance, Research, and Statistics and the Attorney General in accordance with subparagraph (B);

(ii) such State government or unit of local government complies fully with the final order or judgment of a Federal or State court, or by a Federal or State administrative agency if that order or judgment covers all the matters raised by the Office of Justice Assistance, Research, and Statistics in the notice pursuant to subparagraph (A), or is found to be in compliance with paragraph (1) by such court; or

(iii) after a hearing the Office of Justice Assistance, Research, and Statistics pursuant to subparagraph (F) finds that noncompliance has not been demonstrated.

(E) Whenever the Attorney General files a civil action alleging a pattern or practice of discriminatory conduct on the basis of race, color, religion, national origin, or sex in any program or activity of a State government or unit of local government which State government or unit of local government receives funds made available under this chapter, and the conduct allegedly violates the provisions of this section and neither party within forty-five days after such filing has been granted such preliminary relief with regard to the suspension or payment of funds as may be otherwise available by law, the Office of Justice Assistance, Research, and Statistics shall cause to have suspended further payment of any funds under this chapter to that specific program or activity alleged by the Attorney General to be in violation of the provisions of this subsection until such time as the court orders resumption of payment.

(F) Prior to the suspension of funds under subparagraph (C), but within the ninety-day period after notification under subparagraph (C), the State government or unit of local government may request an expedited preliminary hearing on the record in accordance with section 554 of title 5, in order to determine whether it is likely that the State government or unit of local government would, at a full hearing under subparagraph (G), prevail on the merits on the issue of the alleged noncompliance. A finding under this subparagraph by the administrative law judge in favor of the State government or unit of local government shall defer the suspension of funds under subparagraph (C) pending a finding of noncompliance at the conclusion of the hearing on the merits under subparagraph (G).

(G)(i) At any time after notification under subparagraph (A), but before the conclusion of the one-hundred-and-twenty-day period referred to in subparagraph (C), a State government or unit of local government may request a hearing on the record in accordance with section 554 of title 5, which the Office of Justice Assistance, Research, and Statistics shall initiate within sixty days of such request.

(ii) Within thirty days after the conclusion of the hearing, or, in the absence of a hearing, at the conclusion of the one-hundred-and-twenty-day period referred to in subparagraph (C), the Office of Justice Assistance, Research, and Statistics shall make a finding of compliance or noncompliance. If the Office of Justice Assistance, Research, and Statistics makes a finding of noncompliance, the Office of Justice Assistance, Research, and Statistics shall notify the Attorney General in order that the Attorney General may institute a civil action under paragraph (3), cause to have terminated the payment of funds under this chapter, and, if appropriate, seek repayment of such funds.

(iii) If the Office of Justice Assistance, Research, and Statistics makes a finding of compliance, payment of the suspended funds shall resume as provided in subparagraph (D).

(H) Any State government or unit of local government aggrieved by a final determination of the Office of Justice Assistance, Research, and Statistics under subparagraph (G) may appeal such determination as provided in section 3785 of this title.

(3) Whenever the Attorney General has reason to believe that a State government or unit of local government has engaged in or is engaging in a pattern or practice in violation of the provisions of this section, the Attorney General may bring a civil action in an appropriate United States district court. Such court may grant as relief any temporary restraining order, preliminary or permanent injunction, or other order, as necessary or appropriate to insure the full enjoyment of the rights described in this section, including the suspension, termination, or repayment of such funds made available under this chapter as the court may deem appropriate, or placing any further such funds in escrow pending the outcome of the litigation.

(4)(A) Whenever a State government or unit of local government, or any officer or employee thereof acting in an official capacity, has engaged or is engaging in any act or practice prohibited by this subsection, a civil action may be instituted after exhaustion of administrative remedies by the person aggrieved in an appropriate United States district court or in a State court of general jurisdiction. Administrative remedies shall be deemed to be exhausted upon the expiration of sixty days after the date the administrative complaint was filed with the Office of Justice Assistance, Research, and Statistics or any other administrative enforcement agency, unless within such period there has been a determination by the Office of Justice Assistance, Research, and Statistics or the agency on the merits of the complaint, in which case such remedies shall be deemed exhausted at the time the determination becomes final.

(B) In any civil action brought by a private person to enforce compliance with any provision of this subsection, the court may grant to a prevailing plaintiff reasonable attorney fees, unless the court determines that the lawsuit is frivolous, vexatious, brought for harassment purposes, or brought principally for the purpose of gaining attorney fees.

(C) In any action instituted under this section to enforce compliance with paragraph (1), the Attorney General, or a specially designated assistant for or in the name of the United States, may intervene upon timely application if he certifies that the action is of general public importance. In such action the United States shall be entitled to the same relief as if it had instituted the action.

(Pub. L. 90-351, title I, § 815, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1206.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3766 of this title prior to the general revision of this chapter by Pub. L. 96-157.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 3785, 3789f of this title.

§ 3789e. Report to President and Congress

(a) Annual report; scope of coverage

On or before March 31 of each year, the Administrator of the Law Enforcement Assistance Administration shall report to the President and to the Committees on the Judiciary of the Senate and House of Representatives on activities pursuant to subchapters IV, V, VI, and VII of this chapter during the preceding fiscal year. Such report shall include—

(1) a description of the progress made in accomplishing the objectives of such subchapters;

(2) a description of the national priority programs and projects established pursuant to subchapter V of this chapter;

(3) the amounts obligated under subchapters IV, V, and VI of this chapter for each of the components of the criminal justice system;

(4) the nature and number of jurisdictions which expended funds under subchapter IV of this chapter on national priority programs or projects established pursuant to subchapter V of this chapter, and the percentage of subchapter IV of this chapter funds expended by such jurisdictions on such programs or projects;

(5) a summary of the major innovative policies and programs for reducing and preventing crime recommended by the Administration during the preceding fiscal year in the course of providing technical and financial aid and assistance to State and local governments pursuant to this chapter;

(6) a description of the procedures used to audit, monitor, and evaluate programs or projects to insure that all recipients have complied with this chapter and that the information contained in the applications was correct;

(7) the number of subchapter IV of this chapter applications or amendments approved by the Administration without recommending substantial changes;

(8) the number of subchapter IV of this chapter applications or amendments in which the Administration recommended substantial changes, and the disposition of such programs or projects;

(9) the number of programs or projects under subchapter IV of this chapter applications or amendments with respect to which a discontinuation, suspension, or termination of payments occurred together with the reasons for such discontinuation, suspension, or termination;

(10) the number of programs or projects under subchapter IV of this chapter applications or amendments which were subsequently discontinued by the jurisdiction following the termination of funding under this chapter; and

(11) a description of equipment whose cost in the aggregate was $100,000 or more that was purchased in connection with each program or project assisted under subchapter IV of this chapter, and the current use status of such equipment.

(b) Report covering receipt and compilation of evaluations, statistics, and performance reports; comprehensive statistics, analysis, and findings respecting attainment of described objectives

Not later than three years after December 27, 1979, the Administrator of the Law Enforcement Assistance Administration, after consultation with the Director of the National Institute of Justice, the Director of the Bureau of[1] Statistics, and the Administrator of the Office of Juvenile Justice and Delinquency Prevention, with respect to the receipt and compilation of evaluations, statistics, and performance reports required by this chapter, shall submit to the Committees on the Judiciary of the Senate and the House of Representatives a report. The report shall set forth comprehensive statistics which, together with the Administrator's analysis and findings, shall indicate whether grants made to States or units of local government under subchapters IV, V, and VI of this chapter have made a reasonably expected contribution toward—

(1) improving and strengthening law enforcement agencies, as measured by arrest rates, incidence rates, victimization rates, the number of reported crimes, clearance rates,

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[1] So in original. Probably should be "of Justice".

the number of patrol or investigative hours per uniformed officer, or any other appropriate objective measure;

(2) improving the police utilization of community resources through support of joint police-community projects designed to prevent or control neighborhood crime;

(3) disrupting illicit commerce in stolen goods and property;

(4) combating arson;

(5) developing investigations and prosecutions of white-collar crime, organized crime, public-corruption-related offenses, and fraud against the government;

(6) reducing the time between arrest or indictment and disposition of trial;

(7) increasing the use and development of alternatives to the prosecution of selected offenders;

(8) increasing the development and use of alternatives to pretrial detention that assure return to court and a minimization of the risk of danger;

(9) increasing the rate at which prosecutors obtain convictions against habitual, nonstatus offenders;

(10) developing and implementing programs which provide assistance to victims and witnesses, including restitution by the offender, programs encouraging victim and witness participation in the criminal justice system, and programs designed to prevent retribution against or intimidation of witnesses by persons charged with or convicted of crimes;

(11) providing competent defense counsel for indigent and eligible low-income persons accused of criminal offenses;

(12) developing projects to identify and meet the needs of drug dependent offenders;

(13) increasing the availability and use of alternatives to maximum-security confinement of convicted offenders who pose no threat to public safety;

(14) reducing the rates of violence among inmates in places of detention and confinement;

(15) improving conditions of detention and confinement in adult and juvenile correctional institutions, as measured by the number of such institutions administering programs meeting accepted standards;

(16) training criminal justice personnel in programs meeting standards recognized by the Administrator;

(17) revision and recodification by States and units of local government of criminal statutes, rules, and procedures and revision of statutes, rules, and regulations governing State and local criminal justice agencies; and

(18) developing statistical and evaluative systems in States and units of local government which assist the measurement of indicators in each of the areas described in paragraphs (1) through (17).

Such report shall identify separately, to the maximum practicable extent, such contribution according to the subchapters of this chapter under which such grants are authorized and made.

(c) Plan for collection, analysis, and evaluation of data for measurement of progress in prescribed and additional areas; definitions of "comprehensive statistics" and "reasonably expected contribution"

Not later than two hundred and seventy days after December 27, 1979, the Administrator of the Law Enforcement Assistance Administration shall transmit to the Committees on the Judiciary of the Senate and the House of Representatives a plan for the collection, analysis, and evaluation of any data relevant to measure, as objectively as is practicable, progress in each of the areas described in subsection (b) of this section. In developing such plan, the Administrator of the Law Enforcement Assistance Administration shall consult with the Director of the National Institute of Justice, the Director of the Bureau of Justice Statistics, the Administrator of the Office of Juvenile Justice and Delinquency Prevention, and the Committees on the Judiciary of the Senate and the House of Representatives. After such consultation and at any time prior to the submission of such plan as required by this subsection, the Administrator may recommend to such committees reporting areas in addition to those described in subsection (b) of this section. Such plans shall include the Administrator's recommended definitions of the terms "comprehensive statistics" and "reasonably expected contribution" as used in subsection (b) of this section, which take into account the total amount of funds available for distribution to States and units of local government under subchapters IV, V, and VI of this chapter, as compared to the total amount of funds available for expenditure by States and units of local government for criminal justice purposes. Such plan shall be used by the Administrator in preparing the report required by subsection (b) of this section.

(d) Attainment of reasonably expected contribution in prescribed and added areas

The report required by subsection (b) of this section shall address whether a reasonably expected contribution has been attained in the areas described in subsection (b) of this section and any area added by the Administrator under subsection (c) of this section.

(e) Data collection; minimum duplication

To the maximum extent feasible, the Administrator shall minimize duplication in data collection requirements imposed on grantee agencies by this section.

(Pub. L. 90-351, title I, § 816, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1209.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3795 of this title prior to the general revision of this chapter by Pub. L. 96-157.

§ 3789f. Other administrative provisions

(a) Recordkeeping requirement; scope of disclosure; other sources of funds

Each recipient of funds under this chapter shall keep such records as the Office of Justice Assistance, Research, and Statistics shall prescribe, including records which fully disclose the amount and disposition by such recipient of the funds, the total cost of the project or undertaking for which such funds are used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Access to records for audit and examination

The Office of Justice Assistance, Research, and Statistics or any of its duly authorized representatives, shall have access for purpose of audit and examination of any books, documents, papers, and records of the recipients of funds under this chapter which in the opinion of the Office of Justice Assistance, Research, and Statistics may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to under this chapter.

(c) Audit and examination period after completion of program or project

The Comptroller General of the United States or any of his duly authorized representatives, shall, until the expiration of three years after the completion of the program or project with which the assistance is used, have access for the purpose of audit and examination to any books, documents, papers, and records of recipients of Federal funds under this chapter which in the opinion of the Comptroller General may be related or pertinent to the grants, contracts, subcontracts, subgrants, or other arrangements referred to under this chapter.

(d) Civil rights regulations; conforming changes

Within one hundred and twenty days after December 27, 1979, the Office of Justice Assistance, Research, and Statistics shall review existing civil rights regulations and conform them to this chapter. Such regulations shall include—

(1) reasonable and specific time limits for the Office of Justice Assistance, Research, and Statistics to respond to the filing of a complaint by any person alleging that a State government or unit of local government is in violation of the provisions of section 3789d(c) of this title, including reasonable time limits for instituting an investigation, making an appropriate determination with respect to the allegations, and advising the complainant of the status of the complaint; and

(2) reasonable and specific time limits for the Office of Justice Assistance, Research, and Statistics to conduct independent audits and reviews of State governments and units of local government receiving funds pursuant to this chapter for compliance with the provisions of section 3789d(c) of this title.

(e) Recipients of assistance subject to provisions of section

The provisions of this section shall apply to all recipients of assistance under this chapter, whether by direct grant, cooperative agreement, or contract under this chapter or by subgrant or subcontract from primary grantees or contractors under this chapter.

(f) Revolving fund for acquisition of stolen goods and property within Law Enforcement Assistance Administration

There is hereby established within the Law Enforcement Assistance Administration a revolving fund for the purpose of supporting projects that will acquire stolen goods and property in an effort to disrupt illicit commerce in such goods and property. Notwithstanding any other provision of law, any income or royalties generated from such projects together with income generated from any sale or use of such goods or property, where such goods or property are not claimed by their lawful owner, shall be paid into the revolving fund. Where a party establishes a legal right to such goods or property, the Administrator of the fund may in his discretion assert a claim against the property or goods in the amount of Federal funds used to purchase such goods or property. Proceeds from such claims shall be paid into the revolving fund. The Administrator is authorized to make disbursements by appropriate means, including grants, from the fund for the purpose of this section.

(Pub. L. 90-351, title I, § 817, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1212.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3769 of this title prior to the general revision of this chapter by Pub. L. 96-157.

§ 3789g. Confidentiality of information

(a) Research or statistical information; immunity from process; prohibition against admission as evidence or use in any proceedings

Except as provided by Federal law other than this chapter, no officer or employee of the Federal Government, and no recipient of assistance under the provisions of this chapter shall use or reveal any research or statistical information furnished under this chapter by any person and identifiable to any specific private person for any purpose other than the purpose for which it was obtained in accordance with this chapter. Such information and copies thereof shall be immune from legal process, and shall not, without the consent of the person furnishing such information, be admitted as evidence or used for any purpose in any action, suit, or other judicial, legislative, or administrative proceedings.

(b) Criminal history information; disposition and arrest data; procedures for collection, storage, dissemination, and current status; security and privacy; availability for law enforcement, criminal justice, and other lawful purposes; automated systems: review, challenge, and correction of information

All criminal history information collected, stored, or disseminated through support under this chapter shall contain, to the maximum extent feasible, disposition as well as arrest data where arrest data is included therein. The collection, storage, and dissemination of such information shall take place under procedures reasonably designed to insure that all such information is kept current therein; the Office of Justice Assistance, Research, and Statistics shall assure that the security and privacy of all information is adequately provided for and that information shall only be used for law enforcement and criminal justice and other lawful purposes. In addition, an individual who believes that criminal history information concerning him contained in an automated system is inaccurate, incomplete, or maintained in violation of this chapter, shall, upon satisfactory verification of his identity, be entitled to review such information and to obtain a copy of it for the purpose of challenge or correction.

(c) Criminal intelligence systems and information; prohibition against violation of privacy and constitutional rights of individuals

All criminal intelligence systems operating through support under this chapter shall collect, maintain, and disseminate criminal intelligence information in conformance with policy standards which are prescribed by the Office of Justice Assistance, Research, and Statistics and which are written to assure that the funding and operation of these systems furthers the purpose of this chapter and to assure that such systems are not utilized in violation of the privacy and constitutional rights of individuals.

(d) Violations; fine as additional penalty

Any person violating the provisions of this section, or of any rule, regulation, or order issued thereunder, shall be fined not to exceed $10,000, in addition to any other penalty imposed by law.

(Pub. L. 90-351, title I, § 818, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1213.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3771 of this title prior to the general revision of this chapter by Pub. L. 96-157.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3732 of this title.

§ 3789h. Authority to accept voluntary services

The Office of Justice Assistance, Research, and Statistics, the National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration are authorized to accept and employ, in carrying out the provisions of this chapter, voluntary and uncompensated services notwithstanding the provisions of section 665(b) of title 31. Such individuals shall not be considered Federal employees except for purposes of chapter 81 of title 5 with respect to job-incurred disability and title 28 with respect to tort claims.

(Pub. L. 90-351, title I, § 819, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1213.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3772 of this title prior to the general revision of this chapter by Pub. L. 96-157.

§ 3789i. Administration of juvenile delinquency programs

(a) All programs concerned with juvenile delinquency and administered by the Administration shall be administered or subject to the policy direction of the office established by section 5611(a) of this title.

(b) The Director of the National Institute of Justice and the Director of the Bureau of Justice Statistics shall work closely with the Administrator of the Office of Juvenile Justice and Delinquency Prevention in developing and implementing programs in the juvenile justice and delinquency prevention field.

(Pub. L. 90-351, title I, § 820, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1214.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3773 of this title prior to the general revision of this chapter by Pub. L. 96-157.

§ 3789j. Prohibition on land acquisition

No funds under this chapter shall be used for land acquisition.

(Pub. L. 90-351, title I, § 821, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1214.)

§ 3789k. Prohibition on use of Central Intelligence Agency services

Notwithstanding any other provision of this chapter, no use will be made of services, facilities, or personnel of the Central Intelligence Agency.

(Pub. L. 90-351, title I, § 822, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1214.)

§ 3789*l*. Indian liability waiver

Where a State does not have an adequate forum to enforce grant provisions imposing liability on Indian tribes, the Administration is authorized to waive State liability and may pursue such legal remedies as are necessary.

(Pub. L. 90-351, title I, § 823, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1214.)

§ 3789m. District of Columbia matching fund source

Funds appropriated by the Congress for the activities of any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia may be used to provide the non-Federal share of the cost of programs or projects funded under this chapter.

(Pub. L. 90-351, title I, § 824, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1214.)

§ 3789n. Limitation on civil justice matters

Authority of any entity established under this chapter shall extend to civil justice matters only to the extent that such civil justice matters bear directly and substantially upon criminal justice matters or are inextricably intertwined with criminal justice matters.

(Pub. L. 90-351, title I, § 825, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1214.)

§ 3789*o*. Reimbursement for unused equipment

The Law Enforcement Assistance Administration may require a State council, a grantee, or other recipient of assistance under this chapter to reimburse the Administration for the federally assisted part of the cost of any equipment whose purchase was in connection with a program or project assisted by such Administration under this chapter and which cost in the aggregate $100,000, or more, if such equipment has not been placed in use one year after the date set at the time of purchase for the commencement of such use, or has not continued in use during its useful life. In lieu of requiring reimbursement under this section, such Administration may require that the State council, a grantee, or other recipient of assistance under this chapter take appropriate measures to put such equipment into use.

(Pub. L. 90-351, title I, § 826, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1214.)

SUBCHAPTER IX—DEFINITIONS

§ 3791. General provisions

(a) Definitions

As used in this chapter—

(1) "criminal justice" means activities pertaining to crime prevention, control, or reduction, or the enforcement of the criminal law, including, but not limited to, police efforts to prevent, control, or reduce crime or to apprehend criminals, including juveniles, activities of courts having criminal jurisdiction, and related agencies (including but not limited to prosecutorial and defender services, juvenile delinquency agencies and pretrial service or release agencies), activities of corrections, probation, or parole authorities and related agencies assisting in the rehabilitation, supervision, and care of criminal offenders, and programs relating to the prevention, control, or reduction of narcotic addiction and juvenile delinquency;

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, and the Commonwealth of the Northern Mariana Islands;

(3) "unit of local government" means any city, county, township, town, borough, parish, village, or other general purpose political subdivision of a State, an Indian tribe which performs law enforcement functions as determined by the Secretary of the Interior, or, for the purpose of assistance eligibility, any agency of the District of Columbia government or the United States Government performing law enforcement functions in and for the District of Columbia;

(4) "construction" means the erection, acquisition, or expansion of new or existing buildings or other physical facilities, and the acquisition or installation of initial equipment therefor, but does not include renovation, repairs, or remodeling;

(5) "combination" as applied to States or units of local government means any grouping or joining together of such States or units for the purpose of preparing, developing, or implementing a criminal justice program or project;

(6) "public agency" means any State, unit of local government, combination of such States or units, or any department, agency, or instrumentality of any of the foregoing;

(7) "correctional institution or facility" means any place for the confinement or rehabilitation of offenders or individuals charged with or convicted of criminal offenses;

(8) "comprehensive", with respect to an application, means that the application must be based on a total and integrated analysis of the criminal justice problems, and that goals, priorities, and standards for methods, organization, and operation performance must be established in the application;

(9) "criminal history information" includes records and related data, contained in an automated or manual criminal justice informational system, compiled by law enforcement agencies for the purpose of identifying criminal offenders and alleged offenders and maintaining as to such persons records of arrests, the nature and disposition of criminal charges, sentencing, confinement, rehabilitation, and release;

(10) "evaluation" means the administration and conduct of studies and analyses to determine the impact and value of a project or program in accomplishing the statutory objectives of this chapter;

(11) "neighborhood or community-based organizations" means organizations which are representative of communities or significant segments of communities;

(12) "chief executive" means the highest official of a State or local jurisdiction;

(13) "municipality" means—

(A) any unit of local government which is classified as a municipality by the United States Bureau of the Census; or

(B) any other unit of local government which is a town or township and which, in the determination of the Administration—

(i) possesses powers and performs functions comparable to those associated with municipalities;

(ii) is closely settled; and

(iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census;

(14) "population" means total resident population based on data compiled by the United States Bureau of the Census and referable to the same point or period in time;

(15) "Attorney General" means the Attorney General of the United States or his designee;

(16) "court of last resort" means that State court having the highest and final appellate authority of the State. In States having two or more such courts, court of last resort shall mean that State court, if any, having highest and final appellate authority, as well as both administrative responsibility for the State's judicial system and the institutions of the State judicial branch and rulemaking authority. In other States having two or more courts with highest and final appellate authority, court of last resort shall mean the highest appellate court which also has either rulemaking authority or administrative responsibility

for the State's judicial system and the institutions of the State judicial branch. Except as used in the definition of the term "court of last resort" the term "court" means a tribunal recognized as a part of the judicial branch of a State or of its local government units;

(17) "institution of higher education" means any such institution as defined by section 1141(a) of title 20, subject, however, to such modifications and extensions as the Administration may determine to be appropriate;

(18) "white-collar crime" means an illegal act or series of illegal acts committed by nonphysical means and by concealment or guile, to obtain money or property, to avoid the payment or loss of money or property, or to obtain business or personal advantage;

(19) "proven effectiveness" means that a program, project, approach, or practice has been shown by analysis of performance and results to make a significant contribution to the accomplishment of the objectives for which it was undertaken or to have a significant effect in improving the condition or problem it was undertaken to address;

(20) "record of proven success" means that a program, project, approach, or practice has been demonstrated by evaluation or by analysis of performance data and information to be successful in a number of jurisdictions or over a period of time in contributing to the accomplishment of objectives or to improving conditions identified with the problem, to which it is addressed; and

(21) "high probability of improving the criminal justice system" means that a prudent assessment of the concepts and implementation plans included in a proposed program, project, approach, or practice, together with an assessment of the problem to which it is addressed and of data and information bearing on the problem, concept, and implementation plan, provides strong evidence that the proposed activities would result in identifiable improvements in the criminal justice system if implemented as proposed.

(b) Data basis for definitions; reflection of technical changes or modifications

Where appropriate, the definitions in subsection (a) of this section shall be based, with respect to any fiscal year, on the most recent data compiled by the United States Bureau of the Census and the latest published reports of the Office of Management and Budget available ninety days prior to the beginning of such fiscal year. The Administration may by regulation change or otherwise modify the meaning of the terms defined in subsection (a) of this section in order to reflect any technical change or modification thereof made subsequent to such date by the United States Bureau of the Census or the Office of Management and Budget.

(c) Designation of public agencies for undertaking a program or project

One or more public agencies, including existing local public agencies, may be designated by the chief executive officer of a State or a unit of local government to undertake a program or project in whole or in part.

(Pub. L. 90-351, title I, § 901, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1216.)

PRIOR PROVISIONS

A prior section 3791 of this title, Pub. L. 90-351, title I, § 651, as added Pub. L. 91-644, title I, § 10, Jan. 2, 1971, 84 Stat. 1889, and amended Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 218, which related to embezzlement, theft, and fraud, was omitted in the general revision of this chapter by Pub. L. 96-157. See section 3795 of this title.

A prior section 901 of Pub. L. 90-351, title IV, June 19, 1968, 82 Stat. 225, was classified as a note under section 921 of Title 18, Crimes and Criminal Procedure.

A prior section 3792 of this title, Pub. L. 90-351, title I, § 652, as added Pub. L. 91-644, title I, § 10, Jan. 2, 1971, 84 Stat. 1889, and amended Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 218, which related to fraudulent and false statements or entries, was omitted in the general revision of this chapter by Pub. L. 96-157. See section 3795a of this title.

SUBCHAPTER X—FUNDING

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 3793 of this title.

§ 3793. Authorization of appropriations

There is authorized to be appropriated to carry out the functions of the Bureau of Justice Statistics $25,000,000 for the fiscal year ending September 30, 1980; $25,000,000 for the fiscal year ending September 30, 1981; $25,000,000 for the fiscal year ending September 30, 1982; and $25,000,000 for the fiscal year ending September 30, 1983. There is authorized to be appropriated to carry out the functions of the National Institute of Justice $25,000,000 for the fiscal year ending September 30, 1980; $25,000,000 for the fiscal year ending September 30, 1981; $25,000,000 for the fiscal year ending September 30, 1982; and $25,000,000 for the fiscal year ending September 30, 1983. There is authorized to be appropriated for subchapters IV, V, VI, VII, VIII, and X of this chapter, and for the purposes of carrying out the remaining functions of the Law Enforcement Assistance Administration, other than subchapter XII of this chapter, $750,000,000 for the fiscal year ending September 30, 1980; $750,000,000 for the fiscal year ending September 30, 1981; $750,000,000 for the fiscal year ending September 30, 1982; and $750,000,000 for the fiscal year ending September 30, 1983. Funds appropriated for any fiscal year may remain available for obligation until expended. There is authorized to be appropriated in each fiscal year such sums as may be necessary to carry out the purposes of subchapter XII of this chapter.

(Pub. L. 90-351, title I, § 1001, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1218.)

PRIOR PROVISIONS

A prior section 3793, Pub. L. 90-351, title I, § 653, as added Pub. L. 91-644, title I, § 10, Jan. 2, 1971, 84 Stat. 1889, and amended Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 218, which subjected the operation of the law enforcement and criminal justice program under this chapter to section 371 of Title 18, Crimes and Criminal Procedure, was omitted in the general revision of this chapter by Pub. L. 96-157. See section 3795b of this title.

A prior section 1001 of Pub. L. 90-351, title V, June 19, 1968, 82 Stat. 235, enacted section 7313 of Title 5, Government Organization and Employees.

FINANCIAL SUPPORT FOR PROGRAMS, ETC., DEVOTED TO INTERNATIONAL ASPECTS OF CRIME PREVENTION AND CRIMINAL JUSTICE

Pub. L. 96-132, § 20(a), Nov. 30, 1979, 93 Stat. 1049, provided that: "The National Institute of Justice, the Bureau of Justice Statistics, and the Law Enforcement Assistance Administration are authorized to use funds, and to authorize States to use funds, for programs, projects or events devoted to the international aspects of crime prevention and criminal justice."

§ 3793a. Maintenance of effort

In addition to the funds appropriated under section 5671(a) of this title, there shall be maintained from appropriations for each fiscal year, at least 19.15 per centum of the total appropriations under this chapter, for juvenile delinquency programs, with primary emphasis on programs for juveniles convicted of criminal offenses or adjudicated delinquent on the basis of an act which would be a criminal offense if committed by an adult.

(Pub. L. 90-351, title I, § 1002, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1218.)

PRIOR PROVISIONS

A prior section 1002 of Pub. L. 90-351, title V, June 19, 1968, 82 Stat. 235, was classified as a note under section 7313 of Title 5, Government Organization and Employees.

Provisions similar to this section were contained in former section 3768 of this title prior to the general revision of this chapter by Pub. L. 96-157.

§ 3793b. Authorization of appropriations for Office of Community Anti-Crime Programs

There are authorized to be appropriated for the purposes of carrying out the functions of the Office of Community Anti-Crime Programs $25,000,000 for the fiscal year ending September 30, 1980; $25,000,000 for the fiscal year ending September 30, 1981; $25,000,000 for the fiscal year ending September 30, 1982; and $25,000,000 for the fiscal year ending September 30, 1983.

(Pub. L. 90-351, title I, § 1003, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1219.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3768 of this title prior to the general revision of this chapter by Pub. L. 96-157.

SUBCHAPTER XI—CRIMINAL PENALTIES

§ 3795. Misuse of Federal assistance

Whoever embezzles, willfully misapplies, steals, or obtains by fraud or endeavors to embezzle, willfully misapply, steal, or obtain by fraud any funds, assets, or property which are the subject of a grant or contract or other form of assistance pursuant to this chapter, whether received directly or indirectly from the Law Enforcement Assistance Administration, the National Institute of Justice, the Bureau of Justice Statistics, or whoever receives, conceals, or retains such funds, assets or property with intent to convert such funds, assets or property to his use or gain, knowing such funds, assets, or property has been embezzled, willfully misapplied, stolen or obtained by fraud, shall be fined not more than $10,000 or imprisoned for not more than five years, or both.

(Pub. L. 90-351, title I, § 1101, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1219.)

PRIOR PROVISIONS

A prior section 3795, Pub. L. 90-351, title I, § 670, as added Pub. L. 91-644, title I, § 12, Jan. 2, 1971, 84 Stat. 1889, and amended Pub. L. 93-83, § 2, Aug. 6, 1973, 87 Stat. 218, which related to reports to Congress and the President, was omitted in the general revision of this chapter by Pub. L. 96-157. See section 3789e of this title.

A prior section 1101 of Pub. L. 90-351, title VI, June 19, 1968, 82 Stat. 236, was classified as a note under section 532 of Title 28, Judiciary and Judicial Procedure.

§ 3795a. Falsification or concealment of facts

Whoever knowingly and willfully falsifies, conceals, or covers up by trick, scheme, or device, any material fact in any application for assistance submitted pursuant to this chapter or in any records required to be maintained pursuant to this chapter shall be subject to prosecution under the provisions of section 1001 of title 18.

(Pub. L. 90-351, title I, § 1102, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1219.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3792 of this title prior to the general revision of this chapter by Pub. L. 96-157.

§ 3795b. Conspiracy to commit offense against United States

Any law enforcement or criminal justice program or project underwritten, in whole or in part, by any grant, or contract or other form of assistance pursuant to this chapter, whether received directly or indirectly from the Law Enforcement Assistance Administration, the National Institute of Justice, or the Bureau of Justice Statistics shall be subject to the provisions of section 371 of title 18.

(Pub. L. 90-351, title I, § 1103, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1219.)

PRIOR PROVISIONS

Provisions similar to this section were contained in former section 3793 of this title prior to the general revision of this chapter by Pub. L. 96-157.

SUBCHAPTER XII—PUBLIC SAFETY OFFICERS' DEATH BENEFITS

SUBCHAPTER REFFERED TO IN OTHER SECTIONS

This subchapter is referred to in section 3793 of this title.

§ 3796. Payment of death benefits

(a) Amount; recipients

In any case in which the Administration determines, under regulations issued pursuant to this subchapter, that a public safety officer has died as the direct and proximate result of a personal injury sustained in the line of duty, the Administration shall pay a benefit of $50,000 as follows:

(1) if there is no surviving child of such officer, to the surviving spouse of such officer;

(2) if there is a surviving child or children and a surviving spouse, one-half to the surviving child or children of such officer in equal shares and one-half to the surviving spouse;

(3) if there is no surviving spouse, to the child or children of such officer in equal shares; or

(4) if none of the above, to the dependent parent or parents of such officer in equal shares.

(b) Interim benefit payment

Whenever the Administration determines upon a showing of need and prior to taking final action, that the death of a public safety officer is one with respect to which a benefit will probably be paid, the Administration may make an interim benefit payment not exceeding $3,000 to the person entitled to receive a benefit under subsection (a) of this section.

(c) Deduction of interim payment

The amount of an interim payment under subsection (b) of this section shall be deducted from the amount of any final benefit paid to such person.

(d) Repayment of interim payment; waiver

Where there is no final benefit paid, the recipient of any interim payment under subsection (b) of this section shall be liable for repayment of such amount. The Administration may waive all or part of such repayment, considering for this purpose the hardship which would result from such repayment.

(e) Reductions from final benefit payment

The benefit payable under this subchapter shall be in addition to any other benefit that may be due from any other source, but shall be reduced by—

(1) payments authorized by section 8191 of title 5; or

(2) payments authorized by section 12(k) of the Act of September 1, 1916, as amended (D.C. Code, sec. 4-531(1)).

(f) Execution or attachment prohibited

No benefit paid under this subchapter shall be subject to execution or attachment.

(Pub. L. 90-351, title I, § 1201, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1219.)

PRIOR PROVISIONS

A prior section 3796, Pub. L. 90-351, title I, § 701, as added Pub. L. 94-430, § 2, Sept. 29, 1976, 90 Stat. 1346, which contained provisions similar to this section, was omitted in the general revision of this chapter by Pub. L. 96-157.

A prior section 1201 of Pub. L. 90-351, title VII, June 19, 1968, 82 Stat. 236, is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3796c of this title.

§ 3796a. Limitations on benefits

No benefit shall be paid under this subchapter—

(1) if the death was caused by the intentional misconduct of the public safety officer or by such officer's intention to bring about his death;

(2) if voluntary intoxication of the public safety officer was the proximate cause of such officer's death; or

(3) to any person who would otherwise be entitled to a benefit under this subchapter if such person's actions were a substantial contributing factor to the death of the public safety officer.

(Pub. L. 90-351, title I, § 1202, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1220.)

PRIOR PROVISIONS

A prior section 3796a, Pub. L. 90-351, title I, § 702, as added Pub. L. 94-430, § 2, Sept. 29, 1976, 90 Stat. 1347, which contained provisions similar to this section, was omitted in the general revision of this chapter by Pub. L. 96-157.

A prior section 1202 of Pub. L. 90-351, title VII, June 19, 1968, 82 Stat. 236, is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

§ 3796b. Definitions

As used in this subchapter—

(1) "child" means any natural, illegitimate, adopted, or posthumous child or stepchild of a deceased public safety officer who, at the time of the public safety officer's death, is—

(i) eighteen years of age or under;

(ii) over eighteen years of age and a student as defined in section 8101 of title 5; or

(iii) over eighteen years of age and incapable of self-support because of physical or mental disability;

(2) "dependent" means a person who was substantially reliant for support upon the income of the deceased public safety officer;

(3) "fireman" includes a person serving as an officially recognized or designated member of a legally organized volunteer fire department;

(4) "intoxication" means a disturbance of mental or physical faculties resulting from the introduction of alcohol, drugs, or other substances into the body;

(5) "law enforcement officer" means a person involved in crime and juvenile delinquency control or reduction, or enforcement of the criminal laws. This includes, but is not limited to, police, corrections, probation, parole, and judicial officers;

(6) "public agency" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Commonwealth of the Northern Mariana Islands, and any territory or possession of the United States, or any unit of local government, combination of such States, or units, or any department, agency, or instrumentality of any of the foregoing; and

(7) "public safety officer" means a person serving a public agency in an official capacity,

with or without compensation, as a law enforcement officer or a fireman.

(Pub. L. 90-351, title I, § 1203, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1220.)

PRIOR PROVISIONS

A prior section 3796b of this title, Pub. L. 90-351, title I, § 703, as added Pub. L. 94-430, § 2, Sept. 29, 1976, 90 Stat. 1347, which contained provisions similar to this section, was omitted in the general revision of this chapter by Pub. L. 96-157.

A prior section 1203 of Pub. L. 90-351, title VII, June 19, 1968, 82 Stat. 237, is set out in the Appendix to Title 18, Crimes and Criminal Procedure.

§ 3796c. Administrative provisions; rules, regulations, and procedures; use of State and local administrative and investigative assistance

(a) The Administration is authorized to establish such rules, regulations, and procedures as may be necessary to carry out the purposes of this subchapter. Such rules, regulations, and procedures will be determinative of conflict of laws issues arising under this subchapter. Rules, regulations, and procedures issued under this subchapter may include regulations governing the recognition of agents or other persons representing claimants under this subchapter before the Administration. The Administration may prescribe the maximum fees which may be charged for services performed in connection with any claim under this subchapter before the Administration, and any agreement in violation of such rules and regulations shall be void.

(b) In making determinations under section 3796 of this title, the Administration may utilize such administrative and investigative assistance as may be available from State and local agencies. Responsibility for making final determinations shall rest with the Administration.

(Pub. L. 90-351, title I, § 1204, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1221.)

PRIOR PROVISIONS

A prior section 3796c of this title, Pub. L. 90-351, title I, § 704, as added Pub. L. 94-430, § 2, Sept. 29, 1976, 90 Stat. 1347, which contained provisions similar to this section, was omitted in the general revision of this chapter by Pub. L. 96-157.

SUBCHAPTER XIII—TRANSITION; EFFECTIVE DATE; REPEALER

§ 3797. Continuation of rules, authorities, and proceedings

(a) Continuing status until otherwise affected

All orders, determinations, rules, regulations, and instructions of the Law Enforcement Assistance Administration which are in effect on December 27, 1979, shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked by the President or the Attorney General, the Office of Justice Assistance, Research, and Statistics or the Director of the Bureau of Justice Statistics, the National Institute of Justice, or the Administrator of the Law Enforcement Assistance Administration with respect to their functions under this chapter or by operation of law.

(b) Obligation by Director of National Institute of Justice of previously appropriated unused or reversionary funds for continuation of research and development projects or purposes of this chapter

The Director of the National Institute of Justice may award new grants, enter into new contracts or cooperative agreements, or otherwise obligate previously appropriated unused or reversionary funds for the continuation of research and development projects in accordance with the provisions of this chapter as in effect on the day before December 27, 1979, based upon applications received under this chapter before December 27, 1979, or for purposes consistent with provisions of this chapter.

(c) Obligation by Director of Bureau of Justice Statistics of pre-fiscal year 1980 appropriated funds for statistical projects or purposes of this chapter

The Director of the Bureau of Justice Statistics may award new grants, enter into new contracts or cooperative agreements or otherwise obligate funds appropriated for fiscal years before 1980 for statistical projects to be expended in accordance with the provisions of this chapter, as in effect on the day before December 27, 1979, based upon applications received under this chapter before December 27, 1979, or for purposes consistent with provisions of this chapter.

(d) Obligation by Administrator of Law Enforcement Assistance Administration of previously appropriated unused or reversionary funds or presently appropriated funds for continuation of projects or purposes of this chapter

The Administrator of the Law Enforcement Assistance Administration may award new grants, enter into new contracts or cooperative agreements, approve comprehensive plans for the fiscal year beginning October 1, 1979, and otherwise obligate previously appropriated unused or reversionary funds or funds appropriated for the fiscal year beginning October 1, 1979, for the continuation of projects in accordance with the provisions of this chapter, as in effect on the day before December 27, 1979, or for purposes consistent with provisions of this chapter.

(e) Pending suits, actions, or other proceedings unaffected

The amendments made to this chapter by the Justice System Improvement Act of 1979 shall not affect any suit, action, or other proceeding commenced by or against the Government before December 27, 1979.

(f) Appropriated funds available for audit matters and continuing programs and projects

Nothing in this chapter prevents the utilization of funds appropriated for purposes of this chapter for all activities necessary or appropriate for the review, audit, investigation, and judicial or administrative resolution of audit matters for those grants or contracts that were awarded under this chapter. The final disposition and dissemination of program and project accomplishments with respect to programs and projects approved in accordance with this chapter, as in effect before December 27, 1979, which continue in operation beyond December 27, 1979, may be carried out with funds appropriated for purposes of this chapter.

(g) Transfer of personnel pursuant to performance-of-functions standard; determination of interim positions for Administrator and Deputy Administrators by Attorney General

Except as otherwise provided in this chapter, the personnel employed on December 27, 1979, by the Law Enforcement Assistance Administration are transferred as appropriate to the Office of Justice Assistance, Research, and Statistics, the National Institute of Justice or the Bureau of Justice Statistics, considering the function to be performed by these organizational units and the functions previously performed by the employee. Determinations as to specific positions to be filled in an acting capacity for a period of not more than ninety days by the Administrator and Deputy Administrators employed on December 27, 1979, may be made by the Attorney General notwithstanding any other provision of law.

(h) Unobligated funds of a State or unit of local government available for cost of any program or project

Any funds made available under subchapters II, III, and V of this chapter, as in effect before December 27, 1979, which are not obligated by a State or unit of local government, may be used to provide up to 100 per centum of the cost of any program or project.

(i) State criminal justice council as the State planning agency for carrying out predecessor provisions

Notwithstanding any other provision of this chapter, all provisions of this chapter, as in effect on the day before December 27, 1979, which are necessary to carry out the provisions of the Juvenile Justice and Delinquency Prevention Act of 1974 [42 U.S.C. 5601 et seq.], remain in effect for the sole purpose of carrying out the Juvenile Justice and Delinquency Prevention Act of 1974, and the State criminal justice council established under this chapter shall serve as the State planning agency for the purposes of the Juvenile Justice and Delinquency Prevention Act of 1974.

(j) State planning agency meeting representation requirement competent to carry out functions, powers, and duties of State criminal justice council

The functions, powers, and duties specified in this chapter to be carried out by State criminal justice councils or by local offices may be carried out by agencies previously established or designated as State, regional, or local planning agencies, pursuant to this chapter, as in effect before December 27, 1979, if they meet the representation requirement of section 3742 of this title within two years of December 27, 1979.

(k) Construction project funding for additional two years

Notwithstanding the provisions of section 3744(c)(3) of this title, any construction projects which were funded under this chapter, as in effect before December 27, 1979, and which were budgeted in anticipation of receiving additional Federal funding for such construction may continue for two years to be funded under this chapter.

(Pub. L. 90-351, title I, § 1301, as added Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1221.)

REFERENCES IN TEXT

The Justice System Improvement Act of 1979, referred to in subsec. (e), is Pub. L. 96-157, Dec. 27, 1979, 93 Stat. 1167, as amended, which is classified principally to this chapter (§ 3701 et seq.). For complete classification of this Act to the Code, see Short Title of 1979 Amendment note under section 3701 of this title and Tables.

The Juvenile Justice and Delinquency Prevention Act of 1974, referred to in subsec. (i), is Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, as amended, which is classified principally to chapter 72 (§ 5601 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note under section 5601 of this title and Tables.

PRIOR PROVISIONS

A prior section 1301 of Pub. L. 90-351, title VIII, June 19, 1968, 82 Stat. 237, amended section 3731 of Title 18, Crimes and Criminal Procedure.

CHAPTER 47—JUVENILE DELINQUENCY PREVENTION AND CONTROL

SUBCHAPTER I—PREVENTIVE SERVICES AND DEMONSTRATION PROGRAMS

PART A—COMMUNITY-BASED COORDINATED YOUTH SERVICES

§ 3811. Congressional statement of purpose

REPEALS

Title IV of Pub. L. 93-415, cited in the credit to this section, was repealed by Pub. L. 95-115, § 10, Oct. 3, 1977, 91 Stat. 1061.

Repeal by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 3812. Grants for planning programs; applications for grants

REPEALS

Title IV of Pub. L. 93-415, cited in the credit to this section, was repealed by Pub. L. 95-115, § 10, Oct. 3, 1977, 91 Stat. 1061.

Repeal by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 3813. Use of funds

REPEALS

Title IV of Pub. L. 93-415, cited in the credit to this section, was repealed by Pub. L. 95-115, § 10, Oct. 3, 1977, 91 Stat. 1061.

Repeal by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 3814. Considerations for approval of applications

REPEALS

Title IV of Pub. L. 93-415, cited in the credit to this section, was repealed by Pub. L. 95-115, § 10, Oct. 3, 1977, 91 Stat. 1061.

Repeal by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L.

95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

PART B—DEMONSTRATIONS IN YOUTH DEVELOPMENT

§ 3821. Grants to States, agencies, etc.; purpose; application; contents; duration

REPEALS

Title IV of Pub. L. 93-415, cited in the credit to this section, was repealed by Pub. L. 95-115, § 10, Oct. 3, 1977, 91 Stat. 1061.

Repeal by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

SUBCHAPTER IV—ADMINISTRATION

§ 3882. Authorization of appropriations

REPEALS

Title IV of Pub. L. 93-415, cited in the credit to this section, was repealed by Pub. L. 95-115, § 10, Oct. 3, 1977, 91 Stat. 1061.

Repeal by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 3883. Amounts available to each State

REPEALS

Title IV of Pub. L. 93-415, cited in the credit to this section, was repealed by Pub. L. 95-115, § 10, Oct. 3, 1977, 91 Stat. 1061.

Repeal by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 3888. Coordination

REPEALS

Title IV of Pub. L. 93-415, cited in the credit to this section, was repealed by Pub. L. 95-115, § 10, Oct. 3, 1977, 91 Stat. 1061.

Repeal by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 3889. Repealed. Pub. L. 93-415, title IV, § 402(b), Sept. 7, 1974, 88 Stat. 1133

REPEALS

Title IV of Pub. L. 93-415, which repealed this section, was repealed by Pub. L. 95-115, § 10, Oct. 3, 1977, 91 Stat. 1061.

Repeal by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 3891. Definitions

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

CHAPTER 50—NATIONAL FLOOD INSURANCE

§ 4001. Congressional findings and declaration of purpose

FLOODPLAIN MANAGEMENT

For provisions relating to the reduction of the risk of flood loss, the minimization of the impact of floods on human safety, health and welfare, and the management of floodplains, see Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951, set out as a note under section 4321 of this title.

§ 4003. Additional definitions

(a) As used in this Act, unless the context otherwise requires, the term—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) "financial assistance for acquisition or construction purposes" means any form of financial assistance which is intended in whole or in part for the acquisition, construction, reconstruction, repair, or improvement of any publicly or privately owned building or mobile home, and for any machinery, equipment, fixtures, and furnishings contained or to be contained therein, and shall include the purchase or subsidization of mortgages or mortgage loans but shall exclude assistance pursuant to the Disaster Relief Act of 1974 [42 U.S.C. 5121 et seq.] (other than assistance under such Act in connection with a flood);

[*See main edition for text of* (*5*) *and* (*6*); (*b*)]

(As amended Pub. L. 95-128, title VII, § 703(b), Oct. 12, 1977, 91 Stat. 1145.)

REFERENCES IN TEXT

The Disaster Relief Act of 1974 and such Act, referred to in subsec. (a)(4), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

AMENDMENTS

1977—Subsec. (a)(4). Pub. L. 95-128 substituted "assistance pursuant to the Disaster Relief Act of 1974 (other than assistance under such Act in connection with a flood)" for "assistance for emergency work essential for the protection and preservation of life and property performed pursuant to the Disaster Relief Act of 1970 or any subsequent Act of Congress which supersedes or modifies the Disaster Relief Act of 1970".

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER I—THE NATIONAL FLOOD INSURANCE PROGRAM

§§ 4011, 4012

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4012a. Requirement of flood insurance for Federal approval of financial assistance

Transfer of Functions

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

Section Referred to in Other Sections

This section is referred to in section 4013 of this title.

§ 4013. Nature and limitation of insurance coverage; regulations

[*See main edition for text of* (*a*)]

(b) In addition to any other terms and conditions under subsection (a) of this section, such regulations shall provide that—

[*See main edition for text of* (*1*)]

(2) in the case of any residential property for which the risk premium rate is determined in accordance with the provisions of section 4014(a)(1) of this title, additional flood insurance in excess of the limits specified in clause (i) of subparagraph (A) of paragraph (1) shall be made available to every insured upon renewal and every applicant for insurance so as to enable such insured or applicant to receive coverage up to an amount of $150,000 under the provisions of this clause;

(3) in the case of any residential property for which the risk premium rate is determined in accordance with the provisions of section 4014(a)(1) of this title, additional flood insurance in excess of the limits specified in clause (ii) of subparagraph (A) of paragraph (1) shall be made available to every insured upon renewal and every applicant for insurance so as to enable any such insured or applicant to receive coverage up to an amount of $50,000 under the provisions of this clause;

(4) in the case of business property owned, leased, or operated by small business concerns for which the risk premium rate is determined in accordance with the provisions of section 4014(a)(1) of this title, additional flood insurance in excess of the limits specified in subparagraph (B) of paragraph (1) shall be made available to every such owner, lessee, or operator in respect to any single structure, including any contents thereof, related to premises of small business occupants (as that term is defined by the Secretary), up to an amount equal to (i) $250,000 plus (ii) $200,000 multiplied by the number of such occupants which coverage shall be allocated among such occupants (or among the occupant or occupants and the owner) in accordance with the regulations prescribed by the Secretary pursuant to such subparagraph (B), except that the aggregate liability for the structure itself may in no case exceed $250,000;

(5) any flood insurance coverage which may be made available in excess of the limits specified in subparagraph (A), (B), or (C) of paragraph (1), shall be based only on chargeable premium rates under section 4015 of this title, which are not less than the estimated premium rates under section 4014(a)(1) of this title, and the amount of such excess coverage shall not in any case exceed an amount equal to the applicable limit so specified (or allocated) under paragraph (1)(C), (2), (3), or (4), as applicable; and

(6) the flood insurance purchase requirements of section 4012a of this title do not apply to the additional flood insurance limits made available in excess of twice the limits made available under paragraph (1).

(As amended Pub. L. 95-128, title VII, § 704(a), Oct. 12, 1977, 91 Stat. 1145.)

Amendments

1977—Subsec. (b)(2). Pub. L. 95-128 added par. (2) and redesignated former par. (2) as (5).

Subsec. (b)(3), (4). Pub. L. 95-128 added pars. (3) and (4).

Subsec. (b)(5). Pub. L. 95-128 redesignated former par. (2) as (5), and as so redesignated, deleted "(or allocated to any person under subparagraph (B) of such paragraph)" following "paragraph (1)" and inserted "under paragraph (1)(C), (2), (3), or (4), as applicable" following "(or allocated)".

Subsec. (b)(6). Pub. L. 95-128 added par. (6).

Transfer of Functions

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

§§ 4014 to 4020

Transfer of Functions

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

§§ 4022 to 4025

Transfer of Functions

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4026. Expiration of program

No new contract for flood insurance under this chapter shall be entered into after September 30, 1981.

(As amended Pub. L. 95-60, § 3, June 30, 1977, 91 Stat. 257; Pub. L. 95-80, § 3, July 31, 1977, 91

Stat. 339; Pub. L. 95-128, title VII, § 701(a), Oct. 12, 1977, 91 Stat. 1144; Pub. L. 95-406, § 6(a), Sept. 30, 1978, 92 Stat. 880; Pub. L. 95-557, title III, § 308(a), Oct. 31, 1978, 92 Stat. 2098; Pub. L. 96-153, title VI, § 602(a), Dec. 21, 1979, 93 Stat. 1137.)

AMENDMENTS

1979—Pub. L. 96-153 substituted "September 30, 1981" for "September 30, 1980".

1978—Pub. L. 95-557 substituted "September 30, 1980" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Pub. L. 95-128 substituted "September 30, 1978" for "September 30, 1977".

Pub. L. 95-80 substituted "September 30, 1977" for "July 31, 1977".

Pub. L. 95-60 substituted "July 31, 1977" for "June 30, 1977".

§ 4027. Annual report to the President

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER II—ORGANIZATION AND ADMINISTRATION OF FLOOD INSURANCE PROGRAM

§ 4041. Implementation of program

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

PART A—INDUSTRY PROGRAM WITH FEDERAL FINANCIAL ASSISTANCE

§§ 4051, 4052

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

§§ 4054, 4055

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4056. Emergency implementation of flood insurance program; applicability of other provisions of law

(a) Notwithstanding any other provisions of this chapter, for the purpose of providing flood insurance coverage at the earliest possible time, the Secretary shall carry out the flood insurance program authorized under subchapter I of this chapter during the period ending September 30, 1981, in accordance with the provisions of this part and the other provisions of this chapter insofar as they relate to this part but subject to the modifications made by or under subsection (b) of this section.

[*See main edition for text of* (b)]

(As amended Pub. L. 95-128, title VII, § 701(b), Oct. 12, 1977, 91 Stat. 1144; Pub. L. 95-406, § 6(b), Sept. 30, 1978, 92 Stat. 880; Pub. L. 95-557, title III, § 308(b), Oct. 31, 1978, 92 Stat. 2098; Pub. L. 96-153, title VI, § 602(b), Dec. 21, 1979, 93 Stat. 1137.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-153 substituted "September 30, 1981" for "September 30, 1980".

1978—Subsec. (a). Pub. L. 95-557 substituted "September 30, 1980" for "October 31, 1978".

Pub. L. 95-406 substituted "October 31, 1978" for "September 30, 1978".

1977—Subsec. (a). Pub. L. 95-128 substituted "September 30, 1978" for "September 30, 1977".

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

PART B—GOVERNMENT PROGRAM WITH INDUSTRY ASSISTANCE

§§ 4071, 4072

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

PART C—GENERAL PROVISIONS

§§ 4081 to 4084

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER III—COORDINATION OF FLOOD INSURANCE WITH LAND-MANAGEMENT PROGRAMS IN FLOOD-PRONE AREAS

§§ 4101, 4102

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92

Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4103. Purchase of insured properties damaged substantially beyond repair by flood

(a) Transfers to State or local agencies for use for prescribed period consistent with sound land management and use

The Secretary may, when he determines that the public interest would be served thereby, enter into negotiations with any owner of real property or interest therein which—

(1) was located in any flood-risk area, as determined by the Secretary,

(2) was covered by flood insurance under the flood insurance program authorized under this chapter, and

(3) incurred significant flood damage on not less than three previous occasions over a five-year period of time and on each occasion the cost of repair, on the average, equaled or exceeded 25 per centum of the value of the structure at the time of each flood event or was damaged substantially beyond repair by flood while so covered,

and may purchase such property or interests therein, for subsequent transfer, by sale, lease, donation, or otherwise, to any State or local agency which enters into an agreement with the Secretary that such property shall, for a period not less than forty years following transfer, be used for only such purposes as the Secretary may, by regulation, determine to be consistent with sound land management and use in such area.

(b) Real property purchases; single casualty damages

When any real property referred to in paragraphs (1) and (2) of subsection (a) of this section has sustained damage as a result of a single casualty of any nature under such circumstances that a statute, ordinance or regulation precludes its repair or restoration or permits repair or restoration only at a significantly increased construction cost, the Secretary may enter into negotiations with the owner of the property or interest therein for the purchase of such property for the uses and purposes of this section.

(c) Low-interest loans for single-family dwellings; authorization of appropriations

Whenever, as a result of damage from any casualty, the repair, reconstruction, or substantial improvement of any single-family dwelling structure located within a regulatory floodway and insured under the flood insurance program is deemed by the Secretary to be made more effective from the standpoint of prudent flood plain management by elevation of the structure so it will not interfere with the flow of water from the base flood within such regulatory floodway, the Secretary is authorized to make a low-interest loan at a rate of interest of 2 per centum per annum, repayable in ten years, to the owner of any such structure for the purpose of so elevating the structure. There is authorized to be appropriated for purposes of implementing this subsection not to exceed $4,500,000.

(d) Regulations

The Secretary is authorized to issue such regulations as may be necessary to carry out the purposes of this section.

(As amended Pub. L. 95-128, title VII, § 704(b), Oct. 12, 1977, 91 Stat. 1145.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-128, § 704(b)(1), (2), designated existing provisions as subsec. (a) and inserted in par. (3) provisions respecting property incurring significant flood damage on not less than three previous occasions over a five-year period of time.

Subsecs. (b) to (d). Pub. L. 95-128, § 704(b)(3), added subsecs. (b) to (d).

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4104. Flood elevation determinations

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Reimbursement of certain expenses; appropriation authorization

When, incident to any appeal under subsection (b) or (c) of this section, the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal which is successful in whole or part, the Secretary shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Secretary in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. There is authorized to be appropriated for purposes of implementing this subsection, not to exceed $250,000.

(g) Judicial review of final administrative determinations; venue; time for appeal; scope of review; good cause for stay of final determinations

Any appellant aggrieved by any final determination of the Secretary upon administrative appeal, as provided by this section, may appeal such determination to the United States district court for the district within which the community is located not more than sixty days after receipt of notice of such determination. The scope of review by the court shall be as provided by chapter 7 of title 5. During the pendency of any such litigation, all final determinations of the Secretary shall be effective for the purposes of this chapter unless stayed by the court for good cause shown.

(As amended Pub. L. 95-128, title VII, § 704(c), Oct. 12, 1977, 91 Stat. 1146.)

AMENDMENTS

1977—Subsec. (f). Pub. L. 95-128, § 704(c)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 95-128, § 704(c)(1), redesignated former subsec. (f) as (g).

Transfer of Functions

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4104a. Notification of purchaser or lessee of special flood hazards in area of location of improved real estate or mobile home securing loan; regulations prescribing procedures

Transfer of Functions

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

Section Referred to in Other Sections

This section is referred to in section 4106 of this title.

§ 4105. Disaster mitigation requirements; notification to flood-prone areas

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Administrative procedures; establishment; reimbursement of certain expenses; appropriation authorization

The Secretary is authorized to establish administrative procedures whereby the identification under this section of one or more areas in the community as having special flood hazards may be appealed to the Secretary by the community or any owner or lessee of real property within the community who believes his property has been inadvertently included in a special flood hazard area by the identification. When, incident to any appeal under this subsection, the owner or lessee of real property or the community, as the case may be, incurs expense in connection with the services of surveyors, engineers, or similar services, but not including legal services, in the effecting of an appeal which is successful in whole or part, the Secretary shall reimburse such individual or community to an extent measured by the ratio of the successful portion of the appeal as compared to the entire appeal and applying such ratio to the reasonable value of all such services, but no reimbursement shall be made by the Secretary in respect to any fee or expense payment, the payment of which was agreed to be contingent upon the result of the appeal. There is authorized to be appropriated for purposes of implementing this subsection not to exceed "$250,000.[1]

(As amended Pub. L. 95-128, title VII, § 704(d), Oct. 12, 1977, 91 Stat. 1146.)

Amendments

1977—Subsec. (e). Pub. L. 95-128 added subsec. (e).

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[1] So in original. Quotation marks preceding $250,000 probably should be deleted.

Transfer of Functions

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4106. Nonparticipation in flood insurance program

[*See main edition for text of* (*a*)]

(b) Notification of purchaser or lessee of property in flood hazard area of availability of Federal disaster relief assistance in the event of a flood disaster

In addition to the requirements of section 4104a of this title, each Federal instrumentality described in such section shall by regulation require the institutions described in such section to notify (as a condition of making, increasing, extending, or renewing any loan secured by property described in such section) the purchaser or lessee of such property of whether, in the event of a disaster caused by flood to such property, Federal disaster relief assistance will be available to such property.

(As amended Pub. L. 95-128, title VII, § 703(a), Oct. 12, 1977, 91 Stat. 1144.)

Amendments

1977—Subsec. (b). Pub. L. 95-128 substituted provisions respecting notification of purchaser or lessee of property in flood hazards area of availability of Federal disaster relief assistance in the event of a flood disaster for prior provisions relating to: Federal regulations against loans by financial institutions, unaffected pre-March 1, 1976 residences, small business concerns, improvements under $5,000 and nonresidential farm improvement.

Transfer of Functions

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

Floodplain Management

For provisions relating to the reduction of the risk of flood loss, the minimization of the impact of floods on human safety, health and welfare, and the management of floodplains, see Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951 set out as a note under section 4321 of this title.

§ 4107. Consultation with local officials; scope

Transfer of Functions

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER IV—GENERAL PROVISIONS

§§ 4121 to 4123

Transfer of Functions

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

§ 4127. Authorization of appropriations; availability

[*See main edition for text of* (*a*) *and* (*b*)]

(c) There are authorized to be appropriated for studies under this title not to exceed $100,000,000 for the fiscal year 1977, not to exceed $108,000,000 for the fiscal year 1978, not to exceed $114,000,000 for the fiscal year 1979, and not to exceed $74,000,000 for the fiscal year 1980.

(As amended Pub. L. 95-128, title VII, § 702, Oct. 12, 1977, 91 Stat. 1144; Pub. L. 95-557, title III, § 309, Oct. 31, 1978, 92 Stat. 2098; Pub. L. 96-153, title VI, § 602(c), Dec. 21, 1979, 93 Stat. 1137.)

AMENDMENTS

1979—Subsec. (c). Pub. L. 96-153 authorized appropriation of $74,000,000 for fiscal year 1980.

1978—Subsec. (c). Pub. L. 95-557 substituted "not to exceed $108,000,000 for the fiscal year 1978, and not to exceed $114,000,000 for the fiscal year 1979" for "and not to exceed $108,000,000 for the fiscal year 1978".

1977—Subsec. (c). Pub. L. 95-128 authorized appropriation of $108,000,000 for fiscal year 1978.

§ 4128. Rules and regulations

TRANSFER OF FUNCTIONS

All functions vested in the Secretary of Housing and Urban Development pursuant to the provisions of this chapter were transferred to the Director of the Federal Emergency Management Agency by section 202 of Reorganization Plan No. 3 of 1978, 43 F.R. 41943, 92 Stat. 3789, set out in the Appendix to Title 5, Government Organization and Employees.

FLOODPLAIN MANAGEMENT

For provisions relating to the reduction of the risk of flood loss, the minimization of the impact of floods on human safety, health and welfare, and the management of floodplains, see Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951, set out as a note under section 4321 of this title.

CHAPTER 51—DESIGN AND CONSTRUCTION OF PUBLIC BUILDINGS TO ACCOMMODATE THE PHYSICALLY HANDICAPPED

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 3027, 6042, 6063, 6705 of this title; title 20 sections 355b, 1132d-11, 1406, 2441, 2443; title 29 sections 721, 776, 792, 796d; title 39 section 410.

§§ 4152 to 4154a

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

CHAPTER 52—INTERGOVERNMENTAL COOPERATION

SUBCHAPTER II—GRANTS-IN-AID TO THE STATES; IMPROVED ADMINISTRATION

§ 4214. Eligible State agency

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 29 section 828.

CHAPTER 52A—JOINT FUNDING SIMPLIFICATION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 3020a of this title; title 29 section 710.

CHAPTER 55—NATIONAL ENVIRONMENTAL POLICY

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

Sec.
4361a. Budget projections in annual revisions of plan for research, development, and demonstration [New].
4361b. Implementation by Administrator of Environmental Protection Agency of recommendations of "CHESS" Investigative Report; waiver; inclusion of status of implementation requirements in annual revisions of plan for research, development, and demonstration [New].
4361c. Staff management [New].
  (a) Appointments for educational programs.
  (b) Post-doctoral research fellows.
  (c) Non-government research associates.
  (d) Women and minority groups.
4362. Interagency cooperation on prevention of environmental cancer and heart and lung disease [New].
4362a Task Force on Environmental Cancer and Heart and Lung Disease; membership of Director of National Center for Health Statistics and of head of Center for Disease Control [New].
4363. Continuing and long-term research and development program; establishment with separate identity; allocation of funds [New].
4363a. Pollution control technologies demonstrations [New].
4364. Expenditure of funds for research and development related to regulatory program activities [New].
  (a) Coordination, etc., with research needs and priorities of program offices and Environmental Protection Agency.
  (b) Program offices subject to coverage.
4365. Science Advisory Board [New].
  (a) Establishment by and advice to Administrator of Environmental Protection Agency.
  (b) Membership; Chairman; meetings; qualifications of members.
  (c) Review and comment on plan for research, development, and demonstration and annual revisions; transmission to Congress.
  (d) Omitted.
  (e) Proposed environmental criteria, document, standard, limitation, or regulation; functions respecting in conjunction with Administrator.

Sec.
- (f) Utilization of technical and scientific capabilities of Federal agencies and national environmental laboratories for determining adequacy of scientific and technical basis of proposed criteria document, etc.
- (g) Member committees and investigative panels; establishment; chairmenship.
- (h) Appointment and compensation of secretary and other personnel; compensation of members.
- (i) Consultation and coordination with Scientific Advisory Panel.

4366. Identification and coordination of research, development, and demonstration activities [New].
- (a) Consultation and cooperation of Administrator of Environmental Protection Agency with heads of Federal agencies; inclusion of activities in annual revisions of plan for research, etc.
- (b) Coordination of programs by Administrator.

4367. Reporting requirements of financial interests of officers and employees of Environmental Protection Agency [New].
- (a) Covered officers and employees.
- (b) Implementation of requirements by Administrator.
- (c) Exemption of positions by Administrator.
- (d) Violations; penalties.

4368. Grants to qualified citizens groups [New].

4369. Miscellaneous reports [New].
- (a) Availability to Congressional committees.
- (b) Transmittal of jurisdictional information.
- (c) Comment by government agencies and the public.
- (d) Transmittal of research information to the Department of Energy.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2242, 4374, 5175, 5304, 7616, 8302 of this title; title 10 section 2687; title 15 sections 719f, 719h, 793; title 16 sections 590h, 1536, 1602, 1604, 2705; title 21 section 343; title 23 sections 103, 117; title 30 sections 185, 1292; title 33 sections 59c-2, 59k, 59n, 59*o*, 1293a, 1344, 1371, 1505; title 43 sections 421h, 1351, 1577, 1597, 1652, 1866, 1904, 2006; title 45 section 917; title 49 sections 1604, 1716.

§ 4321. Congressional declaration of purpose

TRANSFER OF FUNCTIONS

Enforcement functions of Secretary or other official in Department of Interior related to compliance with system activities requiring coordination and approval under this chapter, and enforcement functions of Secretary or other official in Department of Agriculture, insofar as they involve lands and programs under jurisdiction of that Department, related to compliance with this chapter with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, §§ 102(e), (f), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, effective July 1, 1979, set out in the appendix to Title 5, Government Organization and Employees.

EX. ORD. NO. 11472. CABINET COMMITTEE ON THE ENVIRONMENT AND CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

Ex. Ord. No. 11472, May 29, 1969, 34 F.R. 8693, as amended by Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247; Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, provided:

By virtue of the authority vested in me as President of the United State, it is ordered as follows:

[*See main edition for text of Part I*]

PART II. CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

[Revoked by Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839.]

[*See main edition for text of Part III*]

TERMINATION OF CABINET COMMITTEE ON THE ENVIRONMENT

[*See main edition for text of first par.*]

The Domestic Council was abolished by Reorg. Plan No. 1 of 1977, § 3, 42 F.R. 56101, 91 Stat. 1633, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 5D of Reorg. Plan No. 1 of 1977 transferred all functions vested in the Domestic Council to the President with power to delegate the performance of such transferred functions within the Executive Office of the President.

CITIZENS' ADVISORY COMMITTEE ON ENVIRONMENTAL QUALITY

For provisions relating to termination of, see Ex. Ord. No. 12007, Aug. 22, 1977, 42 F.R. 42839, set out as a note under section 14 of Appendix of Title 5, Government Organization and Employees.

EX. ORD. NO. 11514. PROTECTION AND ENHANCEMENT OF ENVIRONMENTAL QUALITY

Ex. Ord. No. 11514, Mar. 5, 1970, 35 F.R. 4247, as amended by Ex. Ord. No. 11991 May 24, 1977, 42 F.R. 26967, provided:

By virtue of the authority vested in me as President of the United States and in furtherance of the purpose and policy of the National Environmental Policy Act of 1969 (Public Law No. 91-190, approved January 1, 1970) [this chapter], it is ordered as follows:

[*See main edition for text of Sec. 1*]

SEC. 2. *Responsibilities of Federal agencies.* Consonant with Title I of the National Environmental Policy Act of 1969 [sections 4331-4335 of this title], hereafter referred to as the "Act", the heads of Federal agencies shall:

[*See main edition for text of* (*a*) *to* (*f*)]

(g) In carrying out their responsibilities under the Act and this Order, comply with the regulations issued by the Council except where such compliance would be inconsistent with statutory requirements.

SEC. 3. *Responsibilities of Council on Environmental Quality.* The Council on Environmental Quality shall:

[*See main edition for text of* (*a*) *to* (*g*)]

(h) Issue regulations to Federal agencies for the implementation of the procedural provisions of the Act (42 U.S.C. 4332(2)). Such regulations shall be developed after consultation with affected agencies and after such public hearings as may be appropriate. They will be designed to make the environmental impact statement process more useful to decisionmakers and the public; and to reduce paperwork and the accumulation of extraneous background data, in order to emphasize the need to focus on real environmental issues and alternatives. They will require impact statements to be concise, clear, and to the point, and supported by evidence that agencies have made the necessary environmental analyses. The Council shall include in its regulations procedures (1) for the early preparation of environmental impact statements, and (2) for the referral to the Council of conflicts between agencies concerning the implementation of the National Environmental Policy Act of 1969, as amended [this chapter], and Section 309 of the Clean Air Act, as amended [section 7609 of this title], for the Council's recommendation as to their prompt resolution.

[*See main edition for text of* (i) *to* (k); *Sec. 4*]

Ex. Ord. No. 11644. Use of Off-Road Vehicles on Public Lands

Ex. Ord. No. 11644, Feb. 8, 1972, 37 F.R. 2877, as amended by Ex. Ord. No. 11989, May 24, 1977, 42 F.R. 26959, provided:

[*See main edition for text of first two pars.; Sec. 1*]

Sec. 2. *Definitions.* As used in this order, the term:

[*See main edition for text of* (*1*) *and* (*2*)]

(3) "off-road vehicle" means any motorized vehicle designed for or capable of cross-country travel on or immediately over land, water, sand, snow, ice, marsh, swampland, or other natural terrain; except that such term excludes (A) any registered motorboat, (B) any fire, military, emergency or law enforcement vehicle when used for emergency purposes, and any combat or combat support vehicle when used for national defense purposes, and (C) any vehicle whose use is expressly authorized by the respective agency head under a permit, lease, license, or contract; and

[*See main edition for text of* (*4*); *Secs. 3 to 8*]

Sec. 9. *Special Protection of the Public Lands.* (a) Notwithstanding the provisions of Section 3 of this Order, the respective agency head shall, whenever he determines that the use of off-road vehicles will cause or is causing considerable adverse effects on the soil, vegetation, wildlife, wildlife habitat or cultural or historic resources of particular areas or trails of the public lands, immediately close such areas or trails to the type of off-road vehicle causing such effects, until such time as he determines that such adverse effects have been eliminated and that measures have been implemented to prevent future recurrence.

(b) Each respective agency head is authorized to adopt the policy that portions of the public lands within his jurisdiction shall be closed to use by off-road vehicles except those areas or trails which are suitable and specifically designated as open to such use pursuant to Section 3 of this Order.

Ex. Ord. No. 11987. Exotic Organisms

Ex. Ord. No. 11987, May 24, 1977, 42 F.R. 26949, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the purposes and policies of the Lacey Act (18 U.S.C. 42) and the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), it is hereby ordered as follows:

Section 1. As used in this Order:

(a) "United States" means all of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands.

(b) "Introduction" means the release, escape, or establishment of an exotic species into a natural ecosystem.

(c) "Exotic species" means all species of plants and animals not naturally occurring, either presently or historically, in any ecosystem of the United States.

(d) "Native species" means all species of plants and animals naturally occurring, either presently or historically, in any ecosystem of the United States.

Sec. 2. (a) Executive agencies shall, to the extent permitted by law, restrict the introduction of exotic species into the natural ecosystems on lands and waters which they own, lease, or hold for purposes of administration; and, shall encourage the States, local governments, and private citizens to prevent the introduction of exotic species into natural ecosystems of the United States.

(b) Executive agencies, to the extent they have been authorized by statute to restrict the importation of exotic species, shall restrict the introduction of exotic species into any natural ecosystem of the United States.

(c) Executive agencies shall, to the extent permitted by law, restrict the use of Federal funds, programs, or authorities used to export native species for the purpose of introducing such species into ecosystems outside the United States where they do not naturally occur.

(d) This Order does not apply to the introduction of any exotic species, or the export of any native species, if the Secretary of Agriculture or the Secretary of the Interior finds that such introduction or exportation will not have an adverse effect on natural ecosystems.

Sec. 3. The Secretary of the Interior, in consultation with the Secretary of Agriculture and the heads of other appropriate agencies, shall develop and implement, by rule or regulation, a system to standardize and simplify the requirements, procedures and other activities appropriate for implementing the provisions of this Order. The Secretary of the Interior shall ensure that such rules or regulations are in accord with the performance by other agencies of those functions vested by law, including this Order, in such agencies.

Jimmy Carter.

Ex. Ord. No. 11988. Floodplain Management

Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951, as amended by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.), the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001 et seq.), and the Flood Disaster Protection Act of 1973 (Public Law 93-234, 87 Stat. 975) [see Short Title of 1973 Amendment note set out under section 4001 of this title], in order to avoid to the extent possible the long and short term adverse impacts associated with the occupancy and modification of floodplains and to avoid direct or indirect support of floodplain development wherever there is a practicable alternative, it is hereby ordered as follows:

Section 1. Each agency shall provide leadership and shall take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

Sec. 2. In carrying out the activities described in Section 1 of this Order, each agency has a responsibility to evaluate the potential effects of any actions it may take in a floodplain; to ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and to prescribe procedures to implement the policies and requirements of this Order, as follows:

(a)(1) Before taking an action, each agency shall determine whether the proposed action will occur in a floodplain—for major Federal actions significantly affecting the quality of the human environment, the evaluation required below will be included in any statement prepared under Section 102(2)(C) of the National Environmental Policy Act [section 4332(2)(C) of this title]. This determination shall be made according to a Department of Housing and Urban Development (HUD) floodplain map or a more detailed map of an area, if available. If such maps are not available, the agency shall make a determination of the location of the floodplain based on the best available information. The Water Resources Council shall issue guidance on this information not later than October 1, 1977.

(2) If an agency has determined to, or proposes to, conduct, support, or allow an action to be located in a floodplain, the agency shall consider alternatives to avoid adverse effects and incompatible development in the floodplains. If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in this Order requires siting in a floodplain, the agency shall, prior to taking action, (i) design or modify its action in order to minimize potential harm to or within the floodplain, consistent with regulations issued in accord with Section 2(d) of this Order, and (ii) prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

(3) For programs subject to the Office of Management and Budget Circular A-95, the agency shall send the notice, not to exceed three pages in length including a location map, to the state and areawide A-95 clearinghouses for the geographic areas affected. The notice shall include: (i) the reasons why the action is proposed to be located in a floodplain; (ii) a statement indicating whether the action conforms to applicable state or local floodplain protection standards and (iii) a list of the alternatives considered. Agencies shall endeavor to allow a brief comment period prior to taking any action.

(4) Each agency shall also provide opportunity for early public review of any plans or proposals for actions in floodplains, in accordance with Section 2(b) of Executive Order No. 11514, as amended [set out as a note above], including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended [section 4332(2)(C) of this title].

(b) Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in a floodplain, whether the proposed action is in accord with this Order.

(c) Each agency shall take floodplain management into account when formulating or evaluating any water and land use plans and shall require land and water resources use appropriate to the degree of hazard involved. Agencies shall include adequate provision for the evaluation and consideration of flood hazards in the regulations and operating procedures for the licenses, permits, loan or grants-in-aid programs that they administer. Agencies shall also encourage and provide appropriate guidance to applicants to evaluate the effects of their proposals in floodplains prior to submitting applications for Federal licenses, permits, loans or grants.

(d) As allowed by law, each agency shall issue or amend existing regulations and procedures within one year to comply with this Order. These procedures shall incorporate the Unified National Program for Floodplain Management of the Water Resources Council, and shall explain the means that the agency will employ to pursue the nonhazardous use of riverine, coastal and other floodplains in connection with the activities under its authority. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order. Agencies shall prepare their procedures in consultation with the Water Resources Council, the Director of the Federal Emergency Management Agency, and the Council on Environmental Quality, and shall update such procedures as necessary.

Sec. 3. In addition to the requirements of Section 2, agencies with responsibilities for Federal real property and facilities shall take the following measures:

(a) The regulations and procedures established under Section 2(d) of this Order shall, at a minimum, require the construction of Federal structures and facilities to be in accordance with the standards and criteria and to be consistent with the intent of those promulgated under the National Flood Insurance Program. They shall deviate only to the extent that the standards of the Flood Insurance Program are demonstrably inappropriate for a given type of structure or facility.

(b) If, after compliance with the requirements of this Order, new construction of structures or facilities are to be located in a floodplain, accepted floodproofing and other flood protection measures shall be applied to new construction or rehabilitation. To achieve flood protection, agencies shall, wherever practicable, elevate structures above the base flood level rather than filling in land.

(c) If property used by the general public has suffered flood damage or is located in an identified flood hazard area, the responsible agency shall provide on structures, and other places where appropriate, conspicuous delineation of past and probable flood height in order to enhance public awareness of and knowledge about flood hazards.

(d) When property in floodplains is proposed for lease, easement, right-of-way, or disposal to non-Federal public or private parties, the Federal agency shall (1) reference in the conveyance those uses that are restricted under identified Federal, State or local floodplain regulations; and (2) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successors, except where prohibited by law; or (3) withhold such properties from conveyance.

Sec. 4. In addition to any responsibilities under this Order and Sections 202 and 205 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. 4106 and 4128), agencies which guarantee, approve, regulate, or insure any financial transaction which is related to an area located in a floodplain shall, prior to completing action on such transaction, inform any private parties participating in the transaction of the hazards of locating structures in the floodplain.

Sec. 5. The head of each agency shall submit a report to the Council on Environmental Quality and to the Water Resources Council on June 30, 1978, regarding the status of their procedures and the impact of this Order on the agency's operations. Thereafter, the Water Resources Council shall periodically evaluate agency procedures and their effectiveness.

Sec. 6. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting floodplains.

(b) The term "base flood" shall mean that flood which has a one percent or greater chance of occurrence in any given year.

(c) The term "floodplain" shall mean the lowland and relatively flat areas adjoining inland and coastal waters including floodprone areas of offshore islands, including at a minimum, that area subject to a one percent or greater chance of flooding in any given year.

Sec. 7. Executive Order No. 11296 of August 10, 1966, is hereby revoked. All actions, procedures, and issuances taken under that Order and still in effect shall remain in effect until modified by appropriate authority under the terms of this Order.

SEC. 8. Nothing in this Order shall apply to assistance provided for emergency work essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 9. To the extent the provisions of Section 2(a) of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended [this chapter].

JIMMY CARTER.

EX. ORD. NO. 11990. PROTECTION OF WETLANDS

Ex. Ord. No. 11990, May 24, 1977, 42 F.R. 26961, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, and as President of the United States of America, in furtherance of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), in order to avoid to the extent possible the long and short term adverse impacts associated with the destruction or modification of wetlands and to avoid direct or indirect support of new construction in wetlands wherever there is a practicable alternative, it is hereby ordered as follows:

SECTION 1. (a) Each agency shall provide leadership and shall take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities.

(b) This Order does not apply to the issuance by Federal agencies of permits, licenses, or allocations to private parties for activities involving wetlands on non-Federal property.

SEC. 2. (a) In furtherance of Section 101(b)(3) of the National Environmental Policy Act of 1969 (42 U.S.C. 4331(b)(3)) to improve and coordinate Federal plans, functions, programs and resources to the end that the Nation may attain the widest range of beneficial uses of the environment without degradation and risk to health or safety, each agency, to the extent permitted by law, shall avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental and other pertinent factors.

(b) Each agency shall also provide opportunity for early public review of any plans or proposals for new construction in wetlands, in accordance with Section 2(b) of Executive Order No. 11514, as amended [set out as a note above], including the development of procedures to accomplish this objective for Federal actions whose impact is not significant enough to require the preparation of an environmental impact statement under Section 102(2)(C) of the National Environmental Policy Act of 1969, as amended [section 4332(2)(C) of this title].

SEC. 3. Any requests for new authorizations or appropriations transmitted to the Office of Management and Budget shall indicate, if an action to be proposed will be located in wetlands, whether the proposed action is in accord with this Order.

SEC. 4. When Federally-owned wetlands or portions of wetlands are proposed for lease, easement, right-of-way or disposal to non-Federal public or private parties, the Federal agency shall (a) reference in the conveyance those uses that are restricted under identified Federal, State or local wetlands regulations; and (b) attach other appropriate restrictions to the uses of properties by the grantee or purchaser and any successor, except where prohibited by law; or (c) withhold such properties from disposal.

SEC. 5. In carrying out the activities described in Section 1 of this Order, each agency shall consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are:

(a) public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion;

(b) maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and

(c) other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

SEC. 6. As allowed by law, agencies shall issue or amend their existing procedures in order to comply with this Order. To the extent possible, existing processes, such as those of the Council on Environmental Quality and the Water Resources Council, shall be utilized to fulfill the requirements of this Order.

SEC. 7. As used in this Order:

(a) The term "agency" shall have the same meaning as the term "Executive agency" in Section 105 of Title 5 of the United States Code and shall include the military departments; the directives contained in this Order, however, are meant to apply only to those agencies which perform the activities described in Section 1 which are located in or affecting wetlands.

(b) The term "new construction" shall include draining, dredging, channelizing, filling, diking, impounding, and related activities and any structures or facilities begun or authorized after the effective date of this Order.

(c) The term "wetlands" means those areas that are inundated by surface or ground water with a frequency sufficient to support and under normal circumstances does or would support a prevalence of vegetative or aquatic life that requires saturated or seasonally saturated soil conditions for growth and reproduction. Wetlands generally include swamps, marshes, bogs, and similar areas such as sloughs, potholes, wet meadows, river overflows, mud flats, and natural ponds.

SEC. 8. This Order does not apply to projects presently under construction, or to projects for which all of the funds have been appropriated through Fiscal Year 1977, or to projects and programs for which a draft or final environmental impact statement will be filed prior to October 1, 1977. The provisions of Section 2 of this Order shall be implemented by each agency not later than October 1, 1977.

SEC. 9. Nothing in this Order shall apply to assistance provided for emergency work, essential to save lives and protect property and public health and safety, performed pursuant to Sections 305 and 306 of the Disaster Relief Act of 1974 (88 Stat. 148, 42 U.S.C. 5145 and 5146).

SEC. 10. To the extent the provisions of Sections 2 and 5 of this Order are applicable to projects covered by Section 104(h) of the Housing and Community Development Act of 1974, as amended (88 Stat. 640, 42 U.S.C. 5304(h)), the responsibilities under those provisions may be assumed by the appropriate applicant, if the applicant has also assumed, with respect to such projects, all of the responsibilities for environmental review, decisionmaking, and action pursuant to the National Environmental Policy Act of 1969, as amended [this chapter].

JIMMY CARTER.

EX. ORD. NO. 12088. FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, provided:

By the authority vested in me as President by the Constitution and statutes of the United States of America, including Section 22 of the Toxic Substances Control Act (15 U.S.C. 2621), Section 313 of the Federal Water Pollution Control Act, as amended (33 U.S.C. 1323), Section 1447 of the Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300j-6), Section 118 of the Clean Air Act, as amended (42 U.S.C. 7418(b)), Section 4 of the Noise Control Act of 1972 (42 U.S.C. 4903), Section 6001 of the Solid Waste Disposal Act, as amended (42 U.S.C. 6961), and Section 301 of Title 3 of the United States Code, and to ensure Federal compliance with applicable pollution control standards, it is hereby ordered as follows:

1-1. APPLICABILITY OF POLLUTION CONTROL STANDARDS

1-101. The head of each Executive agency is responsible for ensuring that all necessary actions are taken for the prevention, control, and abatement of environmental pollution with respect to Federal facilities and activities under the control of the agency.

1-102. The head of each Executive agency is responsible for compliance with applicable pollution control standards, including those established pursuant to, but not limited to, the following:

(a) Toxic Substances Control Act (15 U.S.C. 2601 et seq.).

(b) Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq.).

(c) Public Health Service Act, as amended by the Safe Drinking Water Act (42 U.S.C. 300f et seq.).

(d) Clean Air Act, as amended (42 U.S.C. 7401 et seq.).

(e) Noise Control Act of 1972 (42 U.S.C. 4901 et seq.).

(f) Solid Waste Disposal Act, as amended (42 U.S.C. 6901 et seq.).

(g) Radiation guidance pursuant to Section 274(h) of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2021(h); see also, the Radiation Protection Guidance to Federal Agencies for Diagnostic X Rays approved by the President on January 26, 1978 and published at page 4377 of the Federal Register on February 1, 1978).

(h) Marine Protection, Research, and Sanctuaries Act of 1972, as amended (33 U.S.C. 1401, 1402, 1411-1421, 1441-1444 and 16 U.S.C. 1431-1434).

(i) Federal Insecticide, Fungicide, and Rodenticide Act, as amended (7 U.S.C. 136 et seq.).

1-103. "Applicable pollution control standards" means the same substantive, procedural, and other requirements that would apply to a private person.

1-2. AGENCY COORDINATION

1-201. Each Executive agency shall cooperate with the Administrator of the Environmental Protection Agency, hereinafter referred to as the Administrator, and State, interstate, and local agencies in the prevention, control, and abatement of environmental pollution.

1-202. Each Executive agency shall consult with the Administrator and with State, interstate, and local agencies concerning the best techniques and methods available for the prevention, control, and abatement of environmental pollution.

1-3. TECHNICAL ADVICE AND OVERSIGHT

1-301. The Administrator shall provide technical advice and assistance to Executive agencies in order to ensure their cost effective and timely compliance with applicable pollution control standards.

1-302. The administrator shall conduct such reviews and inspections as may be necessary to monitor compliance with applicable pollution control standards by Federal facilities and activities.

1-4. POLLUTION CONTROL PLAN

1-401. Each Executive agency shall submit to the Director of the Office of Management and Budget, through the Administrator, an annual plan for the control of environmental pollution. The plan shall provide for any necessary improvement in the design, construction, management, operation, and maintenance of Federal facilities and activities, and shall include annual cost estimates. The Administrator shall establish guidelines for developing such plans.

1-402. In preparing its plan, each Executive agency shall ensure that the plan provides for compliance with all applicable pollution control standards.

1-403. The plan shall be submitted in accordance with any other instructions that the Director of the Office of Management and Budget may issue.

1-5. FUNDING

1-501. The head of each Executive agency shall ensure that sufficient funds for compliance with applicable pollution control standards are requested in the agency budget.

1-502. The head of each Executive agency shall ensure that funds appropriated and apportioned for the prevention, control and abatement of environmental pollution are not used for any other purpose unless permitted by law and specifically approved by the Office of Management and Budget.

1-6. COMPLIANCE WITH POLLUTION CONTROLS

1-601. Whenever the Administrator or the appropriate State, interstate, or local agency notifies an Executive agency that it is in violation of an applicable pollution control standard (see Section 1-102 of this Order), the Executive agency shall promptly consult with the notifying agency and provide for its approval a plan to achieve and maintain compliance with the applicable pollution control standard. This plan shall include an implementation schedule for coming into compliance as soon as practicable.

1-602. The Administrator shall make every effort to resolve conflicts regarding such violation between Executive agencies and, on request of any party, such conflicts between an Executive agency and a State, interstate, or a local agency. If the Administrator cannot resolve a conflict, the Administrator shall request the Director of the Office of Management and Budget to resolve the conflict.

1-603. The Director of the Office of Management and Budget shall consider unresolved conflicts at the request of the Administrator. The Director shall seek the Administrator's technological judgment and determination with regard to the applicability of statues and regulations.

1-604. These conflict resolution procedures are in addition to, not in lieu of, other procedures, including sanctions, for the enforcement of applicable pollution control standards.

1-605. Except as expressly provided by a Presidential exemption under this Order, nothing in this Order, nor any action or inaction under this Order, shall be construed to revise or modify any applicable pollution control standard.

1-7. LIMITATION ON EXEMPTIONS

1-701. Exemptions from applicable pollution control standards may only be granted under statues cited in Section 1-102(a) through 1-102(f) if the President makes the required appropriate statutory determination: that such exemption is necessary (a) in the interest of national security, or (b) in the paramount interest of the United States.

1-702. The head of an Executive agency may, from time to time, recommend to the President through the

Director of the Office of Management and Budget, that an activity or facility, or uses thereof, be exempt from an applicable pollution control standard.

1-703. The Administrator shall advise the President, through the Director of the Office of Management and Budget, whether he agrees or disagrees with a recommendation for exemption and his reasons therefor.

1-704. The Director of the Office of Management and Budget must advise the President within sixty days of receipt of the Administrator's views.

1-8. General Provisions

1-801. The head of each Executive agency that is responsible for the construction or operation of Federal facilities outside the United States shall ensure that such construction or operation complies with the environmental pollution control standards of general applicability in the host country or jurisdiction.

1-802. Executive Order No. 11752 of December 17, 1973, is revoked.

Jimmy Carter.

Ex. Ord. No. 12114. Environmental Effects Abroad of Major Federal Actions

Ex. Ord. No. 12114, Jan. 4, 1979, 44 F.R. 1957, provided:

By virtue of the authority vested in me by the Constitution and the laws of the United States, and as President of the United States, in order to further environmental objectives consistent with the foreign policy and national security policy of the United States, it is ordered as follows:

Section 1

1-1. *Purpose and Scope.* The purpose of this Executive Order is to enable responsible officials of Federal agencies having ultimate responsibility for authorizing and approving actions encompassed by this Order to be informed of pertinent environmental considerations and to take such considerations into account, with other pertinent considerations of national policy, in making decisions regarding such actions. While based on independent authority, this Order furthers the purpose of the National Environmental Policy Act [this chapter] and the Marine Protection Research and Sanctuaries Act [section 1431 et seq. of Title 16, Conservation, and section 1401 et seq. of Title 33, Navigation and Navigable Waters] and the Deepwater Port Act [section 1501 et seq. of Title 33, Navigation and Navigable Waters] consistent with the foreign policy and national security policy of the United States, and represents the United States government's exclusive and complete determination of the procedural and other actions to be taken by Federal agencies to further the purpose of the National Environmental Policy Act [this chapter], with respect to the environment outside the United States, its territories and possessions.

Section 2

2-1. *Agency Procedures.* Every Federal agency taking major Federal actions encompassed hereby and not exempted herefrom having significant effects on the environment outside the geographical borders of the United States and its territories and possessions shall within eight months after the effective date of this Order have in effect procedures to implement this Order. Agencies shall consult with the Department of State and the Council on Environmental Quality concerning such procedures prior to placing them in effect.

2-2. *Information Exchange.* To assist in effectuating the foregoing purpose, the Department of State and the Council on Environmental Quality in collaboration with other interested Federal agencies and other nations shall conduct a program for exchange on a continuing basis of information concerning the environment. The objectives of this program shall be to provide information for use by decisionmakers, to heighten awareness of and interest in environmental concerns and, as appropriate, to facilitate environmental cooperation with foreign nations.

2-3. *Actions Included.* Agencies in their procedures under Section 2-1 shall establish procedures by which their officers having ultimate responsibility for authorizing and approving actions in one of the following categories encompassed by this Order, take into consideration in making decisions concerning such actions, a document described in Section 2-4(a):

(a) major Federal actions significantly affecting the environment of the global commons outside the jurisdiction of any nation (e.g., the oceans or Antarctica);

(b) major Federal actions significantly affecting the environment of a foreign nation not participating with the United States and not otherwise involved in the action;

(c) major Federal actions significantly affecting the environment of a foreign nation which provide to that nation:

(1) a product, or physical project producing a principal product or an emission or effluent, which is prohibited or strictly regulated by Federal law in the United States because its toxic effects on the environment create a serious public health risk; or

(2) a physical project which in the United States is prohibited or strictly regulated by Federal law to protect the environment against radioactive substances.

(d) major Federal actions outside the United States, its territories and possessions which significantly affect natural or ecological resources of global importance designated for protection under this subsection by the President, or, in the case of such a resource protected by international agreement binding on the United States, by the Secretary of State. Recommendations to the President under this subsection shall be accompanied by the views of the Council on Environmental Quality and the Secretary of State.

2-4. *Applicable Procedures.* (a) There are the following types of documents to be used in connection with actions described in Section 2-3:

(i) environmental impact statements (including generic, program and specific statements);

(ii) bilateral or multilateral environmental studies, relevant or related to the proposed action, by the United States and one more foreign nations, or by an international body or organization in which the United States is a member or participant; or

(iii) concise reviews of the environmental issues involved, including environmental assessments, summary environmental analyses or other appropriate documents.

(b) Agencies shall in their procedures provide for preparation of documents described in Section 2-4(a), with respect to actions described in Section 2-3, as follows:

(i) for effects described in Section 2-3(a), an environmental impact statement described in Section 2-4(a)(i);

(ii) for effects described in Section 2-3(b), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iii) for effects described in Section 2-3(c), a document described in Section 2-4(a)(ii) or (iii), as determined by the agency;

(iv) for effects described in Section 2-3(d), a document described in Section 2-4(a)(i), (ii) or (iii), as determined by the agency.

Such procedures may provide that an agency need not prepare a new document when a document described in Section 2-4(a) already exists.

(c) Nothing in this Order shall serve to invalidate any existing regulations of any agency which have been adopted pursuant to court order or pursuant to judicial settlement of any case or to prevent any agency from providing in its procedures for measures in addition to those provided for herein to further the purpose of the National Environmental Policy Act [this chapter] and other environmental laws, including the Marine Protection Research and Sanctuaries

Act [section 1431 et seq. of Title 16, Conservation, and section 1401 et seq. of Title 33, Navigation and Navigable Waters], and the Deepwater Port Act [section 1501 et seq. of Title 33, Navigation and Navigable Waters], consistent with the foreign and national security policies of the United States.

(d) Except as provided in Section 2-5(b), agencies taking action encompassed by this Order shall, as soon as feasible, inform other Federal agencies with relevant expertise of the availability of environmental documents prepared under this Order.

Agencies in their procedures under Section 2-1 shall make appropriate provision for determining when an affected nation shall be informed in accordance with Section 3-2 of this Order of the availability of environmental documents prepared pursuant to those procedures.

In order to avoid duplication of resources, agencies in their procedures shall provide for appropriate utilization of the resources of other Federal agencies with relevant environmental jurisdiction or expertise.

2-5. *Exemptions and Considerations.* (a) Notwithstanding Section 2-3, the following actions are exempt from this Order:

(i) actions not having a significant effect on the environment outside the United States as determined by the agency;

(ii) actions taken by the President;

(iii) actions taken by or pursuant to the direction of the President or Cabinet officer when the national security or interest is involved or when the action occurs in the course of an armed conflict;

(iv) intelligence activities and arms transfers;

(v) export licenses or permits or export approvals, and actions relating to nuclear activities except actions providing to a foreign nation a nuclear production or utilization facility as defined in the Atomic Energy Act of 1954 [section 2011 et seq. of this title], as amended, or a nuclear waste management facility;

(vi) votes and other actions in international conferences and organizations;

(vii) disaster and emergency relief action.

(b) Agency procedures under Section 2-1 implementing Section 2-4 may provide for appropriate modifications in the contents, timing and availability of documents to other affected Federal agencies and affected nations, where necessary to:

(i) enable the agency to decide and act promptly as and when required;

(ii) avoid adverse impacts on foreign relations or infringement in fact or appearance of other nations' sovereign responsibilities, or

(iii) ensure appropriate reflection of:

(1) diplomatic factors;

(2) international commercial, competitive and export promotion factors;

(3) needs for governmental or commercial confidentiality;

(4) national security considerations;

(5) difficulties of obtaining information and agency ability to analyze meaningfully environmental effects of a proposed action; and

(6) the degree to which the agency is involved in or able to affect a decision to be made.

(c) Agency procedure under Section 2-1 may provide for categorical exclusions and for such exemptions in addition to those specified in subsection (a) of this Section as may be necessary to meet emergency circumstances, situations involving exceptional foreign policy and national security sensitivities and other such special circumstances. In utilizing such additional exemptions agencies shall, as soon as feasible, consult with the Department of State and the Council on Environmental Quality.

(d) The provisions of Section 2-5 do not apply to actions described in Section 2-3(a) unless permitted by law.

SECTION 3

3-1. *Rights of Action.* This Order is solely for the purpose of establishing internal procedures for Federal agencies to consider the significant effects of their actions on the environment outside the United States, its territories and possessions, and nothing in this Order shall be construed to create a cause of action.

3-2. *Foreign Relations.* The Department of State shall coordinate all communications by agencies with foreign governments concerning environmental agreements and other arrangements in implementation of this Order.

3-3. *Multi-Agency Actions.* Where more than one Federal agency is involved in an action or program, a lead agency, as determined by the agencies involved, shall have responsibility for implementation of this Order.

3-4. *Certain Terms.* For purposes of this Order, "environment" means the natural and physical environment and excludes social, economic and other environments; and an action significantly affects the environment if it does significant harm to the environment even though on balance the agency believes the action to be beneficial to the environment. The term "export approvals" in Section 2-5(a)(v) does not mean or include direct loans to finance exports.

3-5. *Multiple Impacts.* If a major Federal action having effects on the environment of the United States or the global commons requires preparation of an environmental impact statement, and if the action also has effects on the environment of a foreign nation, an environmental impact statement need not be prepared with respect to the effects on the environment of the foreign nation.

JIMMY CARTER.

REORGANIZATION PLAN NO. 3 OF 1970

[*See main edition for text of Reorg. Plan No. 3 of 1970, Message of the President, and Transfer of Functions note*]

OFFICE OF INSPECTOR GENERAL

All the functions, powers, and duties of the Office of Audit and the Security and Inspection Division in the Environmental Protection Agency were transferred to the Office of Inspector General in the Environmental Protection Agency by section 9(a)(1)(H) of Pub. L. 95-452, Oct. 12, 1978, 92 Stat. 1107, set out in the Appendix to Title 5, Government Organization and Employees.

SUBCHAPTER I—POLICIES AND GOALS

§ 4331. Congressional declaration of national environmental policy

EXECUTIVE ORDER NO. 11752

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, set out as a note under this section in the main edition, which related to the prevention, control, and abatement of environmental pollution at Federal facilities, was revoked by Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

§ 4332. Cooperation of agencies; reports; availability of information; recommendations; international and national coordination of efforts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2242, 4334, 7153, 7609, 8473 of this title; title 15 section 793; title 16 sections 1536, 1604; title 30 sections 185, 1292; title 33 section 1504; title 43 sections 1331, 1344, 1751, 2005, 2006; title 45 section 791; title 49 section 1431.

SUBCHAPTER III—MISCELLANEOUS PROVISIONS

§ 4361. Plan for research, development, and demonstration

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4361a, 4361b, 4365, 4366 of this title.

§ 4361a. Budget projections in annual revisions of plan for research, development, and demonstration

The Administrator of the Environmental Protection Agency, in each annual revision of the five-year plan transmitted to the Congress under section 4361 of this title, shall include budget projections for a "no-growth" budget, for a "moderate-growth" budget, and for a "high-growth" budget. In addition, each such annual revision shall include a detailed explanation of the relationship of each budget projection to the existing laws which authorize the Administration's environmental research, development, and demonstration programs.

(Pub. L. 95-155, § 4, Nov. 8, 1977, 91 Stat. 1258.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4361b. Implementation by Administrator of Environmental Protection Agency of recommendations of "CHESS" Investigative Report; waiver; inclusion of status of implementation requirements in annual revisions of plan for research, development, and demonstration

The Administrator of the Environmental Protection Agency shall implement the recommendations of the report prepared for the House Committee on Science and Technology entitled "The Environmental Protection Agency Research Program with primary emphasis on the Community Health and Environmental Surveillance System (CHESS): An Investigative Report", unless for any specific recommendation he determines (1) that such recommendation has been implemented, (2) that implementation of such recommendation would not enhance the quality of the research, or (3) that implementation of such recommendation will require funding which is not available. Where such funding is not available, the Administrator shall request the required authorization or appropriation for such implementation. The Administrator shall report the status of such implementation in each annual revision of the five-year plan transmitted to the Congress under section 4361 of this title.

(Pub. L. 95-155, § 10, Nov. 8, 1977, 91 Stat. 1262.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4361c. Staff management

(a) Appointments for educational programs

(1) The Administrator is authorized to select and appoint up to 75 full-time permanent staff members in the Office of Research and Development to pursue full-time educational programs for the purpose of (A) securing an advanced degree or (B) securing academic training, for the purpose of making a career change in order to better carry out the Agency's research mission.

(2) The Administrator shall select and appoint staff members for these assignments according to rules and criteria promulgated by him. The Agency may continue to pay the salary and benefits of the appointees as well as reasonable and appropriate relocation expenses and tuition.

(3) The term of each appointment shall be for up to one year, with a single renewal of up to one year in appropriate cases at the discretion of the Administrator.

(4) Staff members appointed to this program shall not count against any Agency personnel ceiling during the term of their appointment.

(b) Post-doctoral research fellows

(1) The Administrator is authorized to appoint up to 25 Post-doctoral Research Fellows in accordance with the provisions of section 213.3102(aa) of title 5 of the Code of Federal Regulations.

(2) Persons holding these appointments shall not count against any personnel ceiling of the Agency.

(c) Non-government research associates

(1) The Administrator is authorized and encouraged to utilize research associates from outside the Federal Government in conducting the research, development, and demonstration programs of the Agency.

(2) These persons shall be selected and shall serve according to rules and criteria promulgated by the Administrator.

(d) Women and minority groups

For all programs in this section, the Administrator shall place special emphasis on providing opportunities for education and training of women and minority groups.

(Pub. L. 95-477, § 6, Oct. 18, 1978, 92 Stat. 1510.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4362. Interagency cooperation on prevention of environmental cancer and heart and lung disease

(a) Not later than three months after August 7, 1977, there shall be established a Task Force on Environmental Cancer and Heart and Lung Disease (hereinafter referred to as the "Task Force"). The Task Force shall include representatives of the Environmental Protection Agency, the National Cancer Institute, the National Heart, Lung, and Blood Institute, the National Institute of Occupational Safety and

Health, and the National Institute on Environmental Health Sciences, and shall be chaired by the Administrator (or his delegate).

(b) The Task Force shall—

(1) recommend a comprehensive research program to determine and quantify the relationship between environmental pollution and human cancer and heart and lung disease;

(2) recommend comprehensive strategies to reduce or eliminate the risks of cancer or such other diseases associated with environmental pollution;

(3) recommend research and such other measures as may be appropriate to prevent or reduce the incidence of environmentally related cancer and heart and lung diseases;

(4) coordinate research by, and stimulate cooperation between, the Environmental Protection Agency, the Department of Health, Education, and Welfare, and such other agencies as may be appropriate to prevent environmentally related cancer and heart and lung diseases; and

(5) report to Congress, not later than one year after August 7, 1977, and annually thereafter, on the problems and progress in carrying out this section.

(Pub. L. 95-95, title IV, § 402, Aug. 7, 1977, 91 Stat. 791.)

CODIFICATION

Section was enacted as part of the Clean Air Act Amendments of 1977, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4362a of this title.

§ 4362a. Task Force on Environmental Cancer and Heart and Lung Disease; membership of Director of National Center for Health Statistics and of head of Center for Disease Control

The Director of the National Center for Health Statistics and the head of the Center for Disease Control (or the successor to such entity) shall each serve as members of the Task Force on Environmental Cancer and Heart and Lung Disease established under section 4362 of this title.

(Pub. L. 95-623, § 9, Nov. 9, 1978, 92 Stat. 3455.)

CODIFICATION

Section was enacted as part of the Health Services Research, Health Statistics, and Health Care Technology Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4363. Continuing and long-term research and development program; establishment with separate identity; allocation of funds

(a) The Administrator of the Environmental Protection Agency shall establish a separately identified program to conduct continuing and long-term environmental research and development. Unless otherwise specified by law, at least 15 per centum of any funds appropriated to the Administrator for environmental research and development under section 2(a) of this Act or under any other Act shall be allocated for long-term environmental research and development under this section.

(b) Omitted

(Pub. L. 95-155, § 6, Nov. 8, 1977, 91 Stat. 1259.)

REFERENCES IN TEXT

Section 2(a) of this Act, referred to in subsec. (a), is Pub. L. 95-155, § 2(a), Nov. 8, 1977, 91 Stat. 1257, which was not classified to the Code.

CODIFICATION

Former subsec. (b) of this section, which authorized the Administrator, after consultation with the Science Advisory Board, to submit to the President and Congress, on or before Mar. 31, 1978, a report concerning the desirability and feasibility of establishing a national environmental laboratory, or a system of such laboratories, to assume or supplement the long-term environmental research functions created by subsec. (a) of this section, and to include in such report findings and recommendations concerning types of research to be conducted in such laboratory or laboratories, coordination of such research with existing federal research, methods to assure funding, and administrative and legislative actions necessary to facilitate the establishment of such laboratory or laboratories, was omitted from the Code as executed.

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4363a. Pollution control technologies demonstrations

(1) The Administrator shall continue to be responsible for conducting and shall continue to conduct full scale demonstrations of energy-related pollution control technologies as necessary in his judgment to fulfill the provisions of the Clean Air Act as amended [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act as amended [33 U.S.C. 1251 et seq.], and other pertinent pollution control statutes.

(2) Energy-related environmental protection projects which were authorized to be administered by the Environmental Protection Agency in fiscal year 1978 shall not be transferred administratively or through budget amendment to the Department of Energy, nor shall funding for future years for the Environmental Protection Agency for such projects under this Act be reduced as a result of any present or proposed administrative or budget transfer. No action shall be taken through administrative or budgetary means to diminish the ability of the Environmental Protection Agency to initiate such projects.

(Pub. L. 95-477, § 2(d), Oct. 18, 1978, 92 Stat. 1508.)

REFERENCES IN TEXT

The Clean Air Act as amended, referred to in par. (1), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act as amended, referred to in par. (1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

This Act, referred to in par. (2), is Pub. L. 95-477, Oct. 18, 1978, 92 Stat. 1507, known as the Environmental Research, Development, and Demonstration Authorization Act of 1979, which, to the extent classified to the Code, enacted sections 300j-3b, 4361c, 4363a, 4368, and 4369 of this title, amended section 300j-3a of this title, and enacted provisions set out as notes under sections 300j-3a and 4366 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4364. Expenditure of funds for research and development related to regulatory program activities

(a) Coordination, etc., with research needs and priorities of program offices and Environmental Protection Agency

The Administrator of the Environmental Protection Agency shall assure that the expenditure of any funds appropriated pursuant to this Act or any other provision of law for environmental research and development related to regulatory program activities shall be coordinated with and reflect the research needs and priorities of the program offices, as well as the overall research needs and priorities of the Agency, including those defined in the five-year research plan.

(b) Program offices subject to coverage

For purposes of subsection (a) of this section, the appropriate program offices are—

(1) the Office of Air and Waste Management, for air quality activities;

(2) the Office of Water and Hazardous Materials, for water quality activities and water supply activities;

(3) the Office of Pesticides, for environmental effects of pesticides;

(4) the Office of Solid Waste, for solid waste activities;

(5) the Office of Toxic Substances, for toxic substance activities;

(6) the Office of Radiation Programs, for radiation activities; and

(7) the Office of Noise Abatement and Control, for noise activities.

(Pub. L. 95-155, § 7, Nov. 8, 1977, 91 Stat. 1259.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 95-155, Nov. 8, 1977, 91 Stat. 1257, known as the Environmental Research, Development, and Demonstration Authorization Act of 1978, which to the extent classified to the Code enacted sections 300j-3a, 4361a, 4361b, and 4363 to 4367 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Former subsec. (c) of this section, which authorized the Administrator to submit to the President and the Congress, on or before Mar. 31, 1978, a report concerning the most appropriate means of assuring, on a continuing basis, that the research efforts of the Agency reflect the needs and priorities of the regulatory program offices, while maintaining a high level of scientific quality was omitted from the Code as executed.

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4365. Science Advisory Board

(a) Establishment by and advice to Administrator of Environmental Protection Agency

The Administrator of the Environmental Protection Agency shall establish a Science Advisory Board which shall provide such scientific advice as the Administrator requests.

(b) Membership; Chairman; meetings; qualifications of members

Such Board shall be composed of at least nine members, one of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman of the Board in consultation with the Administrator. Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section.

(c) Review and comment on plan for research, development, and demonstration and annual revisions; transmission to Congress

In addition to providing scientific advice when requested by the Administrator under subsection (a) of this section, the Board shall review and comment on the Administration's five-year plan for environmental research, development, and demonstration provided for by section 4361 of this title and on each annual revision thereof. Such review and comment shall be transmitted to the Congress by the Administrator, together with his comments thereon, at the time of the transmission to the Congress of the annual revision involved.

(d) Omitted

(e) Proposed environmental criteria document, standard, limitation, or regulation; functions respecting in conjunction with Administrator

(1) The Administrator, at the time any proposed criteria document, standard, limitation, or regulation under the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Resource Conservation and Recovery Act of 1976 [42 U.S.C. 6901 et seq.], the Noise Control

Act [42 U.S.C. 4901 et seq.], the Toxic Substances Control Act [15 U.S.C. 2601 et seq.], or the Safe Drinking Water Act [42 U.S.C. 300f et seq.], or under any other authority of the Administrator, is provided to any other Federal agency for formal review and comment, shall make available to the Board such proposed criteria document, standard, limitation, or regulation, together with relevant scientific and technical information in the possession of the Environmental Protection Agency on which the proposed action is based.

(2) The Board may make available to the Administrator, within the time specified by the Administrator, its advice and comments on the adequacy of the scientific and technical basis of the proposed criteria document, standard, limitation, or regulation, together with any pertinent information in the Board's possession.

(f) Utilization of technical and scientific capabilities of Federal agencies and national environmental laboratories for determining adequacy of scientific and technical basis of proposed criteria document, etc.

In preparing such advice and comments, the Board shall avail itself of the technical and scientific capabilities of any Federal agency, including the Environmental Protection Agency and any national environmental laboratories.

(g) Member committees and investigative panels; establishment; chairmenship

The Board is authorized to constitute such member committees and investigative panels as the Administrator and the Board find necessary to carry out this section. Each such member committee or investigative panel shall be chaired by a member of the Board.

(h) Appointment and compensation of secretary and other personnel; compensation of members

(1) Upon the recommendation of the Board, the Administrator shall appoint a secretary, and such other employees as deemed necessary to exercise and fulfill the Board's powers and responsibilities. The compensation of all employees appointed under this paragraph shall be fixed in accordance with chapter 51 and subchapter III of chapter 53 of title 5.

(2) Members of the Board may be compensated at a rate to be fixed by the President but not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5.

(i) Consultation and coordination with Scientific Advisory Panel

In carrying out the functions assigned by this section, the Board shall consult and coordinate its activities with the Scientific Advisory Panel established by the Administrator pursuant to section 136w(d) of title 7.

(Pub. L. 95-155, § 8, Nov. 8, 1977, 91 Stat. 1260.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (e)(1), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (e)(1), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Resource Conservation and Recovery Act of 1976, referred to in subsec. (e)(1), is Pub. L. 94-580, Oct. 21, 1976, 90 Stat. 2796, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The Noise Control Act, referred to in subsec. (e)(1), probably means the Noise Control Act of 1972, Pub. L. 92-574, Oct. 27, 1972, 86 Stat. 1234, as amended, which is classified principally to chapter 65 (§ 4901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4901 of this title and Tables.

The Toxic Substances Control Act, referred to in subsec. (e)(1), is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

The Safe Drinking Water Act, referred to in subsec. (e)(1), is Pub. L. 93-523, Dec. 16, 1974, 88 Stat. 1660, as amended, which is classified principally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title of 1974 Amendments note set out under section 201 of this title and Tables.

CODIFICATION

Former subsec. (d) of this section, which authorized the Board to conduct a review and submit a report to the Administrator, the President, and the Congress, not later than Oct. 1, 1978, concerning certain health effects research, including the procedures used in conducting such research, the reporting of the research results, review procedures implemented, subsequent use of such results, the findings and recommendations of the CHESS report to the House Committee on Science and Technology, which would focus attention on the procedural safeguards required to preserve the scientific integrity of such research and which would ensure subsequent use of such results, was omitted from the Code as executed.

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

TERMINATION OF ADVISORY BOARDS

Advisory Boards established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided for by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 7 section 136w.

§ 4366. Identification and coordination of research, development, and demonstration activities

(a) Consultation and cooperation of Administrator of Environmental Protection Agency with heads of Federal agencies; inclusion of activities in annual revisions of plan for research, etc.

The Administrator of the Environmental Protection Agency, in consultation and cooperation with the heads of other Federal agencies, shall take such actions on a continuing basis as may be necessary or appropriate—

(1) to identify environmental research, development, and demonstration activities, within and outside the Federal Government, which may need to be more effectively coordinated in order to minimize unnecessary duplication of programs, projects, and research facilities;

(2) to determine the steps which might be taken under existing law, by him and by the heads of such other agencies, to accomplish or promote such coordination, and to provide for or encourage the taking of such steps; and

(3) to determine the additional legislative actions which would be needed to assure such coordination to the maximum extent possible.

The Administrator shall include in each annual revision of the five-year plan provided for by section 4361 of this title a full and complete report on the actions taken and determinations made during the preceding year under this subsection, and may submit interim reports on such actions and determinations at such other times as he deems appropriate.

(b) Coordination of programs by Administrator

The Administrator of the Environmental Protection Agency shall coordinate environmental research, development, and demonstration programs of such Agency with the heads of other Federal agencies in order to minimize unnecessary duplication of programs, projects, and research facilities.

(Pub. L. 95-155, § 9, Nov. 8, 1977, 91 Stat. 1261.)

CODIFICATION

Former subsec. (c) of this section, which authorized the Council on Environmental Quality, in consultation with the Office of Science and Technology Policy, to conduct a joint study of all aspects of the coordination of environmental research and development and required the Chairman of the Council to report on the results of such study together with any recommendations deemed appropriate and to submit such report to the President and the Congress not later than May 31, 1978, and which required the President, not later than Sept. 30, 1978, to report to Congress on steps taken to implement the recommendations included in such report, was omitted from the Code as executed.

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

COORDINATION OF ENVIRONMENTAL RESEARCH, DEVELOPMENT, AND DEMONSTRATION EFFORTS; STUDY AND REPORT

Pub. L. 95-477, § 3(c), Oct. 18, 1978, 92 Stat. 1509, provided that:

"(1) There is authorized to be appropriated to the Environmental Protection Agency for the fiscal year 1979, $1,000,000, and for the fiscal year 1980, $1,000,000, for a study and report, to be conducted outside the Federal Government, on (A) coordination of the Federal Government's efforts in environmental research, development, and demonstration, and (B) the application of the results of such efforts to environmental problems.

"(2) The study shall be conducted under a contract let by the Administrator. Such contract shall (A) be developed in consultation with an interagency advisory committee whose membership includes representatives of the Office of Management and Budget and of all agencies conducting or using the results of environmental research, and (B) provide for an oversight and review role by the National Academy of Sciences.

"(3) The study shall conclude with a report to be submitted to the President, the Administrator, and the Congress within two years after the date of the enactment of this Act [Oct. 18, 1978]. The report shall include recommendations for action by the President, the Administrator, other agencies, or the Congress, as may be appropriate.

"(4) The report shall not be subject to any prior clearance or review (except as specifically provided in this subsection), nor shall any such prior clearance be a part of the contract let under paragraph (2)".

§ 4367. Reporting requirements of financial interests of officers and employees of Environmental Protection Agency

(a) Covered officers and employees

Each officer or employee of the Environmental Protection Agency who—

(1) performs any function or duty under this Act; and

(2) has any known financial interest in any person who applies for or receives grants, contracts, or other forms of financial assistance under this Act,

shall, beginning on February 1, 1978, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statement shall be available to the public.

(b) Implementation of requirements by Administrator

The Administrator shall—

(1) act within ninety days after November 8, 1977—

(A) to define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provision for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Exemption of positions by Administrator

In the rules prescribed under subsection (b) of this section, the Administrator may identify specific positions of a nonpolicymaking nature within the Administration and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Violations; penalties

Any officer or employee who is subject to, and knowingly violates, this section, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(Pub. L. 95-155, § 12, Nov. 8, 1977, 91 Stat. 1263.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a)(1), (2), is Pub. L. 95-155, Nov. 8, 1977, 91 Stat. 1257, known as the Environmental Research, Development, and Demonstration Authorization Act of 1978, which to the extent classified to the Code enacted sections 300j-3a, 4361a, 4361b, and 4363 to 4367 of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1978, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4368. Grants to qualified citizens groups

(1) There is authorized to be appropriated to the Environmental Protection Agency, for grants to qualified citizens groups in States and regions, $3,000,000.

(2) Grants under this section may be made for the purpose of supporting and encouraging participation by qualified citizens groups in determining how scientific, technological, and social trends and changes affect the future environment and quality of life of an area, and for setting goals and identifying measures for improvement.

(3) The term "qualified citizens group" shall mean a nonprofit organization of citizens having an area based focus, which is not single-issue oriented and which can demonstrate a prior record of interest and involvement in goal-setting and research concerned with improving the quality of life, including plans to identify, protect and enhance significant natural and cultural resources and the environment.

(4) A citizens group shall be eligible for assistance only if certified by the Governor in consultation with the State legislature as a bona-fide organization entitled to receive Federal assistance to pursue the aims of this program. The group shall further demonstrate its capacity to employ usefully the funds for the purposes of this program and its broad-based representative nature.

(5) After an initial application for assistance under this section has been approved, the Administrator may make grants on an annual basis, on condition that the Governor recertify the group and that the applicant submits to the Administrator annually—

(A) an evaluation of the progress made during the previous year in meeting the objectives for which the grant was made;

(B) a description of any changes in the objectives of the activities; and

(C) a description of the proposed activities for the succeeding one year period.

(6) A grant made under this program shall not exceed 75 per centum of the estimated cost of the project or program for which the grant is made, and no group shall receive more than $50,000 in any one year.

(7) No financial assistance provided under this section shall be used to support lobbying or litigation by any recipient group.

(Pub. L. 95-477, § 3(d), Oct. 18, 1978, 92 Stat. 1509.)

REFERENCES IN TEXT

This section, referred to in par. (5), means section 3 of Pub. L. 95-477, in its entirety, subsec. (d) of which enacted this section, subsecs. (a) and (b) of which were not classified to the Code, and subsec. (c) of which is set out as a note under section 4366 of this title.

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

§ 4369. Miscellaneous reports

(a) Availability to congressional committees

All reports to or by the Administrator relevant to the Agency's program of research, development, and demonstration shall promptly be made available to the Committee on Science and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate, unless otherwise prohibited by law.

(b) Transmittal of jurisdictional information

The Administrator shall keep the Committee on Science and Technology of the House of Representatives and the Committee on Environment and Public Works of the Senate fully and currently informed with respect to matters falling within or related to the jurisdiction of the committees.

(c) Comment by Government agencies and the public

The reports provided for in section 5910 of this title shall be made available to the public for comment, and to the heads of affected agencies for comment and, in the case of recommendations for action, for response.

(d) Transmittal of research information to the Department of Energy

For the purpose of assisting the Department of Energy in planning and assigning priorities in research development and demonstration activities related to environmental control technologies, the Administrator shall actively make available to the Department all information on research activities and results of research programs of the Environmental Protection Agency.

(Pub. L. 95-477, § 5, Oct. 18, 1978, 92 Stat. 1510.)

CODIFICATION

Section was enacted as part of the Environmental Research, Development, and Demonstration Authorization Act of 1979, and not as part of the National Environmental Policy Act of 1969 which comprises this chapter.

CHAPTER 56—ENVIRONMENTAL QUALITY IMPROVEMENT

§ 4374. Authorization of appropriations

There are hereby authorized to be appropriated for the operations of the Office of Environmental Quality and the Council on Environmental Quality not to exceed the following sums for the following fiscal years which sums are in addition to those contained in Public Law 91-190:

(a) $2,126,000 for the fiscal year ending September 30, 1979; and

(b) $3,000,000 for each of the fiscal years ending September 30, 1980, and September 30, 1981.

(As amended Pub. L. 95-300, June 26, 1978, 92 Stat. 342.)

AMENDMENTS

1978—Pub. L. 95-300 added cls. (a) and (b). Former cls. (a) to (d), which authorized appropriations of $2,000,000 for the fiscal year ending June 30, 1976, $500,000 for the transition period of July 1, 1976 to Sept. 30, 1976, $3,000,000 for the fiscal year ending Sept. 30, 1977, and $3,000,000 for the fiscal year ending Sept. 30, 1978, respectively, were struck out.

CHAPTER 59—NATIONAL URBAN POLICY AND NEW COMMUNITY DEVELOPMENT

§ 4501. Congressional statement of purpose

It is the policy of the Congress and the purpose of this chapter to provide for the development of a national urban policy and to encourage the rational, orderly, efficient, and economic growth, development, and redevelopment of our States, metropolitan areas, cities, counties, towns, and communities in predominantly rural areas which demonstrate a special potential for accelerated growth; to encourage the prudent use and conservation of energy and our natural resources; and to encourage and support development which will assure our communities and their residents of adequate tax bases, community services, job opportunities, and good housing in well-balanced neighborhoods in socially, economically, and physically attractive living environments.

(As amended Pub. L. 95-128, title VI, § 601(a)(2)-(5), Oct. 12, 1977, 91 Stat. 1143.)

AMENDMENTS

1977—Pub. L. 95-128 substituted "national urban policy" for "national urban growth policy", encouraged prudent use and conservation of energy, and provided for the assurance of the residents of the communities, and of good housing.

SHORT TITLE

Section 701(a) of Pub. L. 91-609, as amended Pub. L. 95-128, title VI, § 601(a)(1), Oct. 12, 1977, 91 Stat. 1142, provided that: "This title [title VII of Pub. L. 91-609 which enacted this chapter, amended sections 1453, 1460, and 1492, of this title, sections 371 and 1464 of Title 12, Banks and Banking, and section 461 of Title 40, Public Buildings, Property, and Works, and enacted provisions set out as notes under section 1453 of this title] may be cited as the 'National Urban Policy and New Community Development Act of 1970'."

PART A—DEVELOPMENT OF A NATIONAL URBAN POLICY

§ 4502. Congressional findings and declaration of policy

(a) The Congress finds that rapid changes in patterns of urban settlement, including change in population distribution and economic bases of urban areas, have created an imbalance between the Nation's needs and resources and seriously threaten our physical and social environment, and the financial viability of our cities, and that the economic and social development of the Nation, the proper conservation of our energy and other natural resources, and the achievement of satisfactory living standards depend upon the sound, orderly, and more balanced development of all areas of the Nation.

(b) The Congress further finds that Federal programs affect the location of population, economic growth, and the character of urban development; that such programs frequently conflict and result in undesirable and costly patterns of urban development and redevelopment which adversely affect the environment and wastefully use energy and other natural resources; and that existing and future programs must be interrelated and coordinated within a system of orderly development and established priorities consistent with a national urban policy.

(c) To promote the general welfare and properly apply the resources of the Federal Government in strengthening the economic and social health of all areas of the Nation and more adequately protect the physical environment and conserve energy and other natural resources, the Congress declares that the Federal Government, consistent with the responsibilities of State and local government and the private sector, must assume responsibility for the development of a national urban policy which shall incorporate social, economic, and other appropriate factors. Such policy shall serve as a guide in making specific decisions at the national level which affect the pattern of urban development and redevelopment and shall provide a framework for development of interstate, State, and local urban policy.

(d) The Congress further declares that the national urban policy should—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) encourage patterns of development and redevelopment which minimize disparities among States, regions, and cities;

[*See main edition for text of* (*4*) *to* (*7*)]

(8) facilitate increased coordination in the administration of Federal programs so as to encourage desirable patterns of urban development and redevelopment, encourage the prudent use of energy and other natural resources, and protect of [1] the physical environment.

(As amended Pub. L. 95-128, title VI, § 601(b), Oct. 12, 1977, 91 Stat. 1143.)

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[1] So in original. Probably should read "protect the physical environment".

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-128, § 601(b)(1), substituted "rapid changes in patterns of urban settlement, including change in population distribution and economic bases of urban areas, have created" for "the rapid growth of urban population and uneven expansion of urban development in the United States, together with a decline in farm population, slower growth in rural areas, and migration to the cities, has created" and included the threat to "social" environment and the financial viability of our cities, and conservation of "energy".

Subsec. (b). Pub. L. 95-128, § 601(b)(2), included findings respecting costly urban redevelopment and wasteful use of energy and struck out "growth" from the phrase "national urban growth policy".

Subsec. (c). Pub. L. 95-128, § 601(b)(3), included conservation of "energy", struck out "growth" from phrase "nation urban growth policy" in first sentence and substituted in second sentence "urban development and redevelopment" for "urban growth" and "urban policy" for "growth and stabilization policy".

Subsec. (d). Pub. L. 95-128, § 601(b)(4) to (6), struck out "growth" preceding "policy" in introductory text; substituted in par. (3) "encourage patterns of development and redevelopment which minimize" for "help reverse trends of migration and physical growth which reinforce"; and in par. (8) substituted "urban development and redevelopment" for "urban growth and stabilization" and "protect" for "the protection" and required the national urban policy to "encourage" prudent use of resources, including "energy".

§ 4503. National Urban Policy Report

(a) Transmittal to Congress; contents

The President shall transmit to the Congress during February 1978, and during February of every even-numbered year thereafter, a Report on National Urban Policy which shall contribute to the formulation of such a policy, and in addition shall include—

(1) information, statistics, and significant trends relating to the pattern of urban development for the preceding two years;

(2) a summary of significant problems facing the United States as a result of urban trends and developments affecting the well-being of urban areas;

(3) an examination of the housing and related community development problems experienced by cities undergoing a growth rate which equals or exceeds the national average;

(4) an evaluation of the progress and effectiveness of Federal efforts designed to meet such problems and to carry out the national urban policy;

(5) an assessment of the policies and structure of existing and proposed interstate planning and developments affecting such policy;

(6) a review of State, local, and private policies, plans, and programs relevant to such policy;

(7) current and foreseeable needs in the areas served by policies, plans, and programs designed to carry out such policy, and the steps being taken to meet such needs; and

(8) recommendations for programs and policies for carrying out such policy, including such legislation and administrative actions as may be deemed necessary and desirable.

(b) Supplementary reports

The President may transmit from time to time to the Congress supplementary reports on urban policy which shall include such supplementary and revised recommendations as may be appropriate.

(c) Advisory board

To assist in the preparation of the National Urban Policy Report and any supplementary reports, the President may establish an advisory board, or seek the advice from time to time of temporary advisory boards, the members of whom shall be drawn from among private citizens familiar with the problems of urban areas and from among Federal officials, Governors of States, mayors, county officials, members of State and local legislative bodies, and others qualified to assist in the preparation of such reports.

(As amended Pub. L. 95-128, title VI, § 601(c), Oct. 12, 1977, 91 Stat. 1143.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-128, § 601(c)(1), added preceding par. (1) provisions respecting transmittal of a Report on National Urban Policy to the Congress and struck out prior similar provisions which required the President to utilize the capacity of his office, adequately organized and staffed for the purpose, through an identified unit of the Domestic Council, and of the departments and agencies within the executive branch to collect, analyze, and evaluate such statistics, data, and other information (including demographic, economic, social, land use, environmental, and governmental information) as would enable the President to transmit to the Congress during the month of February 1972 and every other year thereafter a Report on Urban Growth for the preceding two calendar years.

Subsec. (a)(1) to (8). Pub. L. 95-128, § 601(c)(2) to (6), in amending the paragraphs, provided as follows:

par. (1), substituted ", statistics, and significant trends relating to the pattern of urban development for the preceding two years" for "and statistics, describing characteristics of urban growth and stabilization and identifying significant trends and developments";

par. (2), struck out "growth" following "urban" and inserted end text "affecting the well-being of urban areas";

par. (3), added provisions respecting problems experienced by cities with a growth rate equalling or exceeding the national average and redesignated former par. (3) as (4);

par. (4), redesignated former par. (3) as (4), and as so redesignated struck out "growth" preceding "policy", and redesignated former par. (4) as (5); and

pars. (5) to (8), redesignated former pars. (4) to (7) as (5) to (8), respectively.

Subsec. (b). Pub. L. 95-128, § 601(c)(7), substituted "urban policy" for "urban growth".

Subsec. (c). Pub. L. 95-128, § 601(c)(8), substituted "National Urban Policy Report" and "urban areas" for "Report on Urban Growth" and "urban growth".

PART B—DEVELOPMENT OF NEW COMMUNITIES

§ 4521. Agreements for financial aid

(a) Restrictions on financial aid

The Secretary may, until October 1, 1979, enter into agreements with private new community developers and State land development agencies to provide financial assistance, in amounts, not exceeding two-thirds of the estimated cost of such work, for planning new community development programs, including planning work which he determines will have special value in assuring that new community development programs (1) will be fully responsive to social or environmental problems related to the public purposes of new community development, or (2) will adequately provide for, or encourage the use of, new or advanced technology in support of program objectives.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 95-128, title II, § 208, Oct. 12, 1977, 91 Stat. 1130; Pub. L. 95-406, § 4, Sept. 30, 1978, 92 Stat. 880; Pub. L. 95-557, title III, § 306, Oct. 31, 1978, 92 Stat. 2097.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-557 substituted "October 1, 1979" for "November 1, 1978".

Pub. L. 95-406 substituted "November 1, 1978" for "October 1, 1978".

1977—Subsec. (a). Pub. L. 95-128 substituted "October 1, 1978" for "October 1, 1977".

CHAPTER 60—COMPREHENSIVE ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION PROGRAM

SUBCHAPTER V—GENERAL PROVISIONS

Sec.
4594. Contract authority in appropriation Acts [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 217a-1, 300*l*-2, 300m, 300m-3, 4542 of this title; title 7 section 2012; title 21 section 1192; title 38 section 4134.

§ 4541. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) alcohol is one of the most dangerous drugs and the drug most frequently abused in the United States;

(2) approximately ten million, or 7 percent, of the adults in the United States are alcoholics or problem drinkers;

(3) it is estimated that alcoholism and other alcohol related problems cost the United States over $43,000,000,000 annually in lost production, medical and public assistance expenditures, police and court costs, and motor vehicle and other accidents;

[*See main edition for text of* (*4*)]

(5) alcohol abuse is being discovered amoung growing numbers of youth;

(6) alcohol abuse and alcoholism have a substantial impact on the families of alcohol abusers and alcoholics and contributes to domestic violence;

(7) alcohol abuse and alcoholism, together with abuse of other legal and illegal drugs, present a need for prevention and intervention programs designed to reach the general population and members of high risk populations such as youth, women, the elderly, and families of alcohol abusers and alcoholics; and

(8) alcoholism is an illness requiring treatment and rehabilitation through the assistance of a broad range of community health and social services and with the cooperation of law enforcement agencies, employers, employee associations, and associations of concerned individuals.

(b) It is the policy of the United States and the purpose of this chapter to approach alcohol abuse and alcoholism from a comprehensive community care standpoint, and to meet the problems of alcohol abuse and alcoholism through—

[*See main edition for text of* (*1*)]

(2) the development of methods for diverting problem drinkers from criminal justice systems into prevention and treatment programs;

(3) the development and encouragement of prevention programs designed to combat the spread of alcoholism, alcohol abuse, and abuse of other legal and illegal drugs;

(4) the development and encouragement of effective occupational prevention and treatment programs within government and in cooperation with the private sector; and

(5) increased Federal commitment to research into the behavioral and biomedical etiology of, the treatment of, and the mental and physical health and social and economic consequences of, alcohol abuse and alcoholism.

(As amended Pub. L. 95-622, title II, § 268(a), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96-180, § 2, Jan. 2, 1980, 93 Stat. 1301.)

AMENDMENTS

1980—Subsec. (a)(2). Pub. L. 96-180, § 2(a), substituted current findings of number of alcoholics or problem drinkers in the country (approximately ten million or 7 percent of the adults) for 1974 findings of number of alcohol abusers and alcoholics of estimated number of ninety-five million drinkers in the Nation (minimum of nine million or 7 per centum of the adults).

Subsec. (a)(3). Pub. L. 96-180, § 2(a), substituted current findings respecting annual cost of over $43,000,000 to the United States for alcoholism and other related problems in lost production, motor vehicle and other accidents, and other items, for 1974 findings respecting minimum annual problem drinking costs of $15,000,000 to the national economy in lost working time and identical other items.

Subsec. (a)(6). Pub. L. 96-180, § 2(b)(1), inserted congressional finding respecting contribution of alcohol abuse and alcoholism to domestic violence.

Subsec. (a)(7). Pub. L. 96-180, § 2(b)(3), added par. (7). Former par. (7) redesignated (8).

Subsec. (a)(8). Pub. L. 96-180, § 2(b)(2), redesignated former par. (7) as (8) and enlisted cooperation of employers, employee associations, and associations of concerned individuals in treatment and rehabilitation of alcoholics.

Subsec. (b)(2). Pub. L. 96-180, § 2(c)(1), deleted "and" at the end of the paragraph.

Subsec. (b)(3). Pub. L. 96-180, § 2(c)(3), added par. (3). Former par. (3) redesignated (5).

Subsec. (b)(4). Pub. L. 96-180, § 2(c)(3), added par. (4).

Subsec. (b)(5). Pub. L. 96-180, § 2(c)(2), redesignated former par. (3) as (5).

1978—Subsec. (a). Pub. L. 95-622 added par. (6) and redesignated former par. (6) as (7).

SHORT TITLE OF 1980 AMENDMENT

Section 1(a) of Pub. L. 96-180 provided that: "This Act [which enacted section 4594 and amended sections 4541, 4551 to 4553, 4561, 4571 to 4573, 4576 to 4578, 4585, 4587, and 4588 of this title, and enacted provisions set out as notes under this section and section 4552 of this title] may be cited as the 'Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act Amendments of 1979'."

NATIONAL COMMISSION ON ALCOHOLISM AND OTHER ALCOHOL-RELATED PROBLEMS; ESTABLISHMENT; EXECUTIVE SECRETARY; INTERIM AND FINAL REPORTS OF STUDY; TERMINATION; AUTHORIZATION OF APPROPRIATIONS

Section 18 of Pub. L. 96-180 provided that:

"(a)(1) There is established a Commission to be known as the National Commission on Alcoholism and Other Alcohol-Related Problems (hereinafter in this section referred to as the 'Commission'). The Commission shall be composed of—

"(A) four Members of the Senate appointed by the President of the Senate upon the recommendation of the majority and minority leaders;

"(B) four Members of the House of Representatives appointed by the Speaker of the House of Representatives upon the recommendation of the majority and minority leaders;

"(C) nine public members appointed by the President; and

"(D) not more than four nonvoting members appointed by the President from individuals employed in the administration of programs of the Federal Government which affect the prevention and treatment of alcoholism and the rehabilitation of alcoholics and alcohol abusers.

At no time shall more than two members appointed under subparagraph (A), more that two of the members appointed under subparagraph (B), or more than five of the members appointed under subparagraph (C) be members of the same political party.

"(2)(A) The President shall designate one of the members of the Commission as Chairman, and one as Vice Chairman. Nine members of the Commission shall constitute a quorum, but a lesser number may conduct hearings. Members appointed under paragraph (1)(D) shall not be considered in determining a quorum of the Commission.

"(B) Members of the Commission shall serve without compensation, but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of the duties vested in the Commission.

"(C) The Commission shall meet at the call of the Chairman or at the call of the majority of the members thereof.

"(3)(A) The Commission may appoint, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, an executive secretary to assist the Commission in carrying out its functions.

"(B) The Secretary shall provide the Commission with such additional professional and clerical staff, such information, and the services of such consultants as the Secretary determines necessary for the Commission to carry out effectively its functions.

"(C) The Commission may secure directly from any department or agency of the United States information necessary to enable it to carry out its duties under this section. Upon request of the Chairman of the Commission, the head of such department or agency shall furnish such information to the Commission consistent with applicable laws and regulations with respect to the privacy of medical records.

"(b) The Commission shall conduct a study of alcoholism and alcohol-related problems and shall include in the study—

"(1) an assessment of unmet treatment and rehabilitation needs of alcoholics and their families;

"(2) an assessment of personnel needs in the fields of research, treatment, rehabilitation, and prevention;

"(3) an assessment of the integration and financing of alcoholism treatment and rehabilitation into health and social health care services within communities;

"(4) a study of the relationship of alcohol use to aggressive behavior and crime;

"(5) a study of the relationship of alcohol use to family violence;

"(6) a study of the relationship of alcoholism to illnesses, particularly those illnesses with a high stress component, among family members of alcoholics;

"(7) an evaluation of the effectiveness of prevention programs, including the relevance of alcohol control laws and regulations to alcoholism and alcohol-related problems;

"(8) a survey of the unmet research needs in the area of alcoholism and alcohol-related problems;

"(9) a survey of the prevalence of occupational alcoholism and alcohol abuse programs offered by Federal contractors; and

"(10) an evaluation of the needs of special and underserved population groups, including American Indians, Alaskan Natives, youth, the elderly, women, and the handicapped and assess the adequacy of existing services to fulfill such needs.

"(c) The Commission shall submit to the President and the Congress such interim reports as it deems advisable and shall within two years after the date on which funds first become available to carry out this section submit to the President and the Congress a final report which shall contain a detailed statement of its findings and conclusions and also such recommendations for legislation and administrative actions as it deems appropriate. The Commission shall cease to exist sixty days after the final report is submitted under this subsection.

"(d) The Secretary of Health, Education, and Welfare shall be responsible for the coordination of the activities of the Commission.

"(e) There are authorized to be appropriated for the purposes of this section $1,000,000 to remain available until the expiration of the Commission."

SUBCHAPTER I—NATIONAL INSTITUTE ON, AND INTERAGENCY COMMITTEE ON FEDERAL ACTIVITIES FOR, ALCOHOL ,ABUSE AND ALCOHOLISM; REPORTS AND RECOMMENDATIONS

§ 4551. National Institute on Alcohol Abuse and Alcoholism

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Underserved areas, program development; report to President and Congress

(1) The Director shall make special efforts to develop and coordinate prevention, treatment, research, and administrative policies and programs which focus on the needs of underserved populations.

(2) The Secretary shall include in the annual report to the President and the Congress required by section 4552(1) of this title a description of the actions taken by the Director under paragraph (1).

(As amended Pub. L. 96-180, § 3, Jan. 2, 1980, 93 Stat. 1302.)

AMENDMENTS

1980—Subsec. (d). Pub. L. 96-180 added subsec. (d).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 4552. Reports and recommendations

The Secretary shall—

(1) submit an annual report to Congress which shall include a description of the actions taken, services provided, and funds expended under this chapter and part C of the Community Mental Health Centers Act [42 U.S.C. 2688e et seq.], an evaluation of the effectiveness of such actions, services, and expenditures of funds, a description, prepared in consultation with the committee established under section 4553 of this title, of the extent to which Federal programs and departments are concerned and dealing effectively with the problems of alcohol abuse and alcoholism, and such other information as the Secretary considers appropriate;

[*See main edition for text of* (*2*)]

(3) submit such additional reports as may be requested by the President of the United States or by Congress; and

(4) submit to the President of the United States and to Congress such recommendations as will further the prevention, treatment, and control of alcohol abuse and alcoholism.

(As amended Pub. L. 96-180, § 4, Jan. 2, 1980, 93 Stat. 1302.)

AMENDMENTS

1980—Pub. L. 96-180 inserted in par. (1) "a description, prepared in consultation with the committee established under section 4553 of this title, of the extent to which Federal programs and departments are concerned and dealing effectively with the problems of alcohol abuse and alcoholism," following "expenditure of funds" and struck out par. (5) and provisions following par. (5), which required the report to Congress to be submitted on or before the end of each calendar year and to contain comments of the department or agency concerned with other programs when received within 30 days from date of submission for such comment.

BIRTH DEFECTS AND OTHER HEALTH HAZARDS OF ALCOHOL BEVERAGES AND CONSUMPTION; JOINT REPORT BY SECRETARIES OF HEALTH, EDUCATION, AND WELFARE AND THE TREASURY

Pub. L. 91-616, title III, § 334, as added by Pub. L. 96-180, § 19, Jan. 2, 1980, 93 Stat. 1307, provided that:

"(a) Not later than June 1, 1980, the Secretary of Health, Education, and Welfare, acting through the Assistant Secretary for Health, and the Secretary of the Treasury, acting through the Assistant Secretary for Enforcement and Operations, shall jointly report to the President and the Congress—

"(1) the extent and nature of birth defects associated with alcohol consumption by pregnant women,

"(2) the extent and nature of other health hazards associated with alcoholic beverages, and

"(3) the actions which should be taken by the Federal Government under the Federal Alcohol Administration Act [27 U.S.C. 201 et seq.], and the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.] with respect to informing the general public of such health hazards.

"(b) Subsection (a) shall not be construed to limit the authority of the Attorney General, the Secretary of the Treasury, or the Secretary of Health, Education, and Welfare under the Federal Alcohol Administration Act [27 U.S.C. 201 et seq.] or the Federal Food, Drug, and Cosmetic Act [21 U.S.C. 301 et seq.]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4551 of this title.

§ 4553. Interagency Committee on Federal Activities for Alcohol Abuse and Alcoholism

[*See main edition for text of* (*a*)]

(b) Chairman of Committee; membership; meetings

The Secretary or the Director of the National Institute on Alcohol Abuse and Alcoholism (or the Director's designee) shall serve as Chairman of the Committee, the membership of which shall include (1) appropriate scientific, medical, or technical representation from the Department of Transportation, the Department of Justice, the Department of Defense, the Department of the Treasury, the Department of Labor, the Department of Education, the Veterans' Administration, and such other Federal agencies and offices (including appropriate agencies and offices of the Department of Health, Education, and Welfare) as the Secretary determines administer programs directly affecting alcoholism and alcohol abuse, and (2) five individuals from the general public appointed by the Secretary from individuals who by virtue of their training or experience are particularly qualified to participate in the performance of the Committee's functions. The Committee shall meet at the call of the Chairman, but not less often than four times a year.

[*See main edition for text of* (*c*) *to* (*e*)]

(As amended Pub. L. 96-180, § 5, Jan. 2, 1980, 93 Stat. 1302.)

AMENDMENTS

1980—Subsec. (b). Pub. L. 96-180 required Committee membership to include representation from Departments of Treasury, Labor, and Education.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4552 of this title.

SUBCHAPTER II—ALCOHOL ABUSE AND ALCOHOLISM PREVENTION, TREATMENT, AND REHABILITATION PROGRAMS FOR GOVERNMENT AND OTHER EMPLOYEES

§ 4561. Programs for Government and other employees

(a) Development and maintenance by the Office of Personnel Management

The Office of Personnel Management shall be responsible for developing and maintaining, in cooperation with the Secretary and with other Federal agencies and departments, and in accordance with the provisions of subpart F of part III of title 5, appropriate prevention, treatment, and rehabilitation programs and services for alcohol abuse and alcoholism among Federal civilian employees, consistent with the purposes of this chapter. Such agencies and departments are encouraged to extend, to the extent feasible, these programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics. Such policies and services shall make optimal use of existing governmental facilities, services, and skills.

(b) Programs in State and local governments and private industry; model programs; cooperative agreements

(1) The Secretary, acting through the Institute, shall be responsible for fostering and encouraging similar alcohol abuse and alcoholism prevention, treatment, and rehabilitation programs and services in State and local governments and in private industry. To the extent feasible, such programs and services should be designed such that they apply to the families of employees and to employees who have family members who are alcoholics.

(2)(A) Consistent with such responsibility, the Secretary, acting through the Institute, shall develop a variety of model programs suitable for replication on a cost-effective basis in different types of business concerns and State and local governmental entities.

(B) The Secretary, acting through the Institute, shall disseminate information and materials relative to such model programs to single State agencies designated pursuant to section 4573 of this title, and shall, to the extent feasible, provide technical assistance to such agencies as requested.

(3) Model programs developed under paragraph (2) shall, in the case of business concerns and governmental entities which employ individuals represented by labor organizations, be designed for implementation through cooperative agreements between the concerns and entities and the organizations.

(4) To the extent feasible, model programs developed under paragraph (2) shall be capable of coordination with model programs developed pursuant to section 1180(b) of title 21.

[*See main edition for text of* (*c*) *and* (*d*)]

(As amended Pub. L. 96-180, § 6(a), (b)(1), Jan. 2, 1980, 93 Stat. 1302.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-180, § 6(a)(1)-(3), substituted "Office of Personnel Management" for "Civil Service Commission" and inserted provisions that require compliance with provisions of subpart F of part III of title 5 and encourage agencies and departments to extend the programs and services to the families of alcoholic employees and to employees who have family members who are alcoholics.

Subsec. (b). Pub. L. 96-180, § 6(b)(1), designated existing provisions as par. (1), made the Secretary responsible for encouragement of programs and services, required the programs and services to be designed for application to families of employees and to employees who have family members who are alcoholics, and added pars. (2) to (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4573 of this title; title 21 section 1180.

SUBCHAPTER III—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

PART A—GRANTS TO STATES

§ 4571. Authorization of appropriations

There are authorized to be appropriated $40,000,000 for the fiscal year ending June 30, 1971, $60,000,000 for the fiscal year ending June 30, 1972, $80,000,000 for each of the next two fiscal years, $80,000,000 for the fiscal year ending June 30, 1975, $80,000,000 for the fiscal year ending June 30, 1976, $70,000,000 for the fiscal year ending September 30, 1977, $77,000,000 for the fiscal year ending September 30, 1978, $85,000,000 for the fiscal year ending September 30, 1979, $60,000,000 for the fiscal year ending September 30, 1980, and $65,000,000 for the fiscal year ending September 30, 1981, for grants to States to assist them in planning, establishing, maintaining, coordinating, and evaluating projects for the development of more effective prevention, treatment, and rehabilitation programs to deal with alcohol abuse and alcoholism. For purposes of this part, the term "State" includes the District of Columbia, the Virgin Islands, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Trust Territory of the Pacific Islands, in addition to the fifty States.

(As amended Pub. L. 96-180, § 7, Jan. 2, 1980, 93 Stat. 1303.)

AMENDMENTS

1980—Pub. L. 96-180 authorized appropriation of $60,000,000 and $65,000,000 for fiscal years ending Sept. 30, 1980, and 1981.

§ 4572. State allotment

(a) Minimum allotment for any one state; determination of incidence of alcohol abuse within States

(1) For each fiscal year the Secretary shall, in accordance with regulations, allot the sums appropriated for such year pursuant to section 4571 of this title among the States on the basis of the relative population, financial need, and need for more effective prevention, treatment, and rehabilitation of alcohol abuse and alcoholism; except that no such allotment to any State (other than the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands) for any fiscal year shall, except as provided in paragraph (2), be less than the greater of (A) $200,000, or (B) the amount of such State's allotment for the fiscal year ending June 30, 1976, unless the amount appropriated under section 4571 of this title for allotments for the fiscal year ending June 30, 1976, was greater than the amount appropriated for the fiscal year for which the minimum allotment determination is being made, in which case the minimum allotment prescribed by this clause shall be an amount which bears the same ratio to the amount allotted for the fiscal year ending June 30, 1976, as the amount appropriated for the fiscal year for which the minimum allotment determination is being made bears to the amount appropriated for the fiscal year ending June 30, 1976. In determining the extent of a State's need for more effective

prevention, treatment, and rehabilitation of alcohol abuse and alcoholism, the Secretary shall (within 180 days after July 26, 1976) by regulation establish a methodology to assess and determine the incidence and prevalence of alcohol abuse within the States.

(2) If the amount appropriated under section 4571 of this title for any fiscal year is less than the amount required to make for such fiscal year the minimum allotment prescribed by paragraph (1) to each State with an approved State plan, the minimum allotment for such fiscal year for a State with an approved State plan shall be an amount which bears the same ratio to the minimum allotment prescribed by paragraph (1) for such State as the amount appropriated under section 4571 of this title for such fiscal year bears to the amount of appropriations required to make the minimum allotment, as so prescribed, to each State with an approved State plan.

[*See main edition for text of* (*b*) *to* (*d*)]

(e) Federal technical assistance; coordination with other funded activities

On the request of any State, the Secretary shall, to the extent feasible, make available technical assistance for the purposes of developing and improving systems for data collection; program management, accountability, and evaluation; certification, accreditation, or licensure of treatment facilities and personnel; monitoring compliance with the requirements of section 4581 of this title by hospitals and other facilities; and eliminating exclusions in health insurance coverage offered in the State which are based on alcoholism or alcohol abuse. Insofar as practicable, such technical assistance shall be provided in such a manner as to improve coordination between activities funded under this chapter and under the Drug Abuse Office and Treatment Act of 1972 [21 U.S.C. 1101 et seq.].

(As amended Pub. L. 95-83, title III, § 311(b), Aug. 1, 1977, 91 Stat. 397; Pub. L. 96-180, § 8, Jan. 2, 1980, 93 Stat. 1303.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e), in the original read "this Act", meaning Pub. L. 91-616, Dec. 31, 1970, 84 Stat. 1848, known as the "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970", which enacted this chapter and section 2688j-2 of this title and amended sections 218, 246, 2688h, and 2688t of this title.

The Drug Abuse Office and Treatment Act of 1972, now known as the Drug Abuse Prevention, Treatment, and Rehabilitation Act, referred to in subsec. (e), is Pub. L. 92-255, Mar. 21, 1972, 86 Stat. 65, as amended, which is classified principally to chapter 16 (§ 1101 et seq.) of Title 21, Food and Drugs. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 21 and Tables.

AMENDMENTS

1980—Subsec. (e). Pub. L. 96-180 added subsec. (e).

1977—Subsec. (a). Pub. L. 95-83, § 311(b), substituted provisions of cls. (A) and (B) respecting amount of minimum allotment for any one State for prior provision prescribing minimum allotment of $200,000 for any fiscal year; designated existing provisions as par. (1); and added par. (2).

§ 4573. State plans

(a) Submission; required contents

Any State desiring to participate in this part shall submit a State plan for carrying out its purposes. Such plan must—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) provide for the designation of a State advisory council which shall include representatives of nongovernmental organizations, of groups to be served with attention to assuring representation of minority and poverty groups, women, and the elderly, and of public agencies concerned with the prevention and treatment of alcohol abuse and alcoholism, and at least one representative of the Statewide Health Coordinating Council established pursuant to section 300m-3 of this title, to consult with the State agency in carrying out the plan;

[*See main edition for text of* (*4*)(*A*)]

(B) include in the survey conducted pursuant to subparagraph (A) an identification of the need for prevention and treatment of alcohol abuse and alcholism by women, by the elderly, and by individuals under the age of eighteen and for education, counseling, and treatment of the families of alcholic abusers and alcoholics and provide assurance that prevention and treatment programs within the State will be designed to meet such need; and

(C) provide assurances satisfactory to the Secretary that, insofar as practicable, the survey conducted pursuant to clause (A) is coordinated with and not duplicative of the drug abuse and dependence survey conducted pursuant to section 1176 of title 21;

[*See main edition for text of* (*5*) *to* (*11*)]

(12) provide assurance that the State agency will coordinate its planning with local alcoholism and alcohol abuse planning agencies, with State and local drug abuse planning agencies, and with other State and local health planning agencies;

[*See main edition for text of* (*13*) *and* (*14*)]

(15) provide that the State agency will review admissions to hospitals and outpatient facilities to assist the Secretary in determining the compliance of such hospitals and facilities with the requirement of section 4581 of this title and shall make periodic reports to the Secretary respecting such review;

(16) provide assurance that the State agency—

(A) will foster and encourage the development of alcohol abuse and alcoholism prevention, treatment, and rehabilitation programs and services in State and local governments and in private businesses and industry;

(B) will make available to all business concerns and governmental entities within such State information and materials concerning such model programs suitable for replication on a cost-effective basis as are developed pursuant to section 4561(b) of this title; and

(C) will furnish technical assistance as feasible to such business concerns and governmental entities; and

(17) contain such additional information and assurance as the Secretary may find necessary to carry out the provisions and purposes of this part.

Each State plan shall pertain to the twelve-month period of the State fiscal year which commences in the calendar year in which the plan is submitted and shall be submitted not later than July 31 of each calendar year.

(b) Approval of plan and modification

The Secretary shall approve any State plan and any modification thereof which complies with the provisions of subsection (a) of this section. A State plan submitted under subsection (a) may also contain provisions relating to drug abuse or mental health. The Secretary, acting through the National Institute on Alcohol Abuse and Alcoholism, shall establish procedures by which the Institute shall review each State plan submitted under subsection (a) and under which it shall complete its review of each such plan not later than September 15 of the calendar year in which the plan is submitted or not later than sixty days after the plan is received by the Institute, whichever is later.

(c) Conditions to approval

The Secretary shall by regulation require, as a condition to the approval of the State plan, that the State for which such plan was submitted report to the Secretary (in such form and manner as the Secretary shall prescribe) an assessment of the progress of the State in the implementation of its State plan and a plan of action for the next three years. To the extent feasible the report shall include a survey of the extent to which other State programs and political subdivisions throughout the State are dealing effectively with the problems related to alcohol abuse and alcoholism. After making an initial such report, a State shall make additional reports every third year thereafter in which it receives an allotment under this part. The reporting requirement shall first apply with respect to State plans submitted for allotments for fiscal years beginning after September 30, 1977.

(As amended Pub. L. 95-83, title III, § 311(a)(1), (2), Aug. 1, 1977, 91 Stat. 397; Pub. L. 95-622, title II, § 268(b), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96-180, § 9, Jan. 2, 1980, 93 Stat. 1303.)

AMENDMENT OF SUBSEC. (a)

Pub. L. 96-79, title I, §§ 115(j)(1), 129(a), Oct. 4, 1979, 93 Stat. 610, 629, provided that, effective Oct. 4, 1980, subsec. (a) of this section is amended by inserting after and below par. (16) "Such plan shall be consistent with the State health plan in effect for such State under section 300m-3(c) of this title." Par. (16) was redesignated (17) by Pub. L. 96-180, § 9(a)(5), Jan. 2, 1980, 93 Stat. 1303.

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-180, § 9(a)(1) to (5), inserted ", women and the elderly" after "minority and poverty groups" in par. (3) and ", by the elderly," after "by women" in par. (4)(B); added par. (4)(C); inserted in par. (12) ", with State and local drug abuse planning agencies," after "alcoholism and alcohol abuse planning agencies"; added par. (16); and redesignated as par. (17) prior par. (16).

Subsec. (c). Pub. L. 96-180, § 9(b), required report of a three year plan of action and inclusion of a survey of effectiveness of other State programs and efforts of political subdivisions in dealing with problems related to alcohol abuse and alcoholism.

1978—Subsec. (a)(4)(B). Pub. L. 95-622 inserted "and for education, counseling, and treatment of the families of alcoholic abusers and alcoholics" following "under the age of eighteen".

1977—Subsec. (a). Pub. L. 95-83, § 311(a)(1), added requirement that each plan to pertain to the twelve-month period of the State fiscal year which commences in the calendar year in which the plan is submitted and to be submitted not later than July 31 of each calendar year.

Subsec. (b). Pub. L. 95-83, § 311(a)(2), added provision permitting the plan to contain provisions relating to drug abuse or mental health and required establishment of review procedures, and prescribed period for completion of review.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4561, 4577 of this title; title 21 section 1176.

PART B—IMPLEMENTATION AND PROJECT GRANTS AND CONTRACTS

§ 4576. Special grants for implementation of the Uniform Alcoholism and Intoxication Treatment Act

(a) Grant period; State's costs; number

To assist States which have adopted the basic provisions of the Uniform Alcoholism and Intoxication Treatment Act (hereinafter in this section referred to as the "Uniform Act") to utilize fully the protections of the Uniform Act in their efforts to approach alcohol abuse and alcoholism from a community care standpoint, the Secretary, acting through the Institute, shall, during the period beginning July 1, 1974, and ending September 30, 1981, make grants to such States for the implementation of the Uniform Act. A grant under this section to any State may only be made for that State's costs (as determined in accordance with regulations which the Secretary shall promulgate not later than July 1, 1974) in implementing the Uniform Act for a period which does not exceed one year from the first day of the first month for which the grant is made. No State may receive more than six grants under this section.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 96-180, § 10, Jan. 2, 1980, 93 Stat. 1304.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-180 extended termination date for making grants to Sept. 30, 1981, from Sept. 30, 1979.

§ 4577. Grants and contracts for the prevention and treatment of alcohol abuse and alcoholism

(a) Projects and programs

The Secretary, acting through the Institute, may make grants to public and nonprofit private entities and may enter into contracts with public and private entities and with individuals—

(1) to conduct demonstration and evaluation projects, with a high priority on prevention and early intervention projects in occupational and educational settings and on modified community living and work-care arrangements such as halfway houses, recovery homes, and supervised home care,

(2) to support projects of a demonstrable value in developing methods for the effective coordination of all alcoholism treatment, training, prevention, and research resources available within a health service area established under section 300*l* of this title,

(3) to provide treatment and prevention services, with special emphasis on currently underserved populations, such as racial and ethnic minorities, native Americans, youth, the elderly, women, the handicapped, families of alcoholics, and victims of alcohol-related domestic violence,

(4) to provide education and training, which may include additional training to enable treatment personnel to meet certification requirements of public or private accreditation or licensure, or requirements of third-party payors, and

(5) to provide programs and services, including education and counseling services, in cooperation with law enforcement personnel, schools, courts, penal institutions, and other public agencies.

for the prevention and treatment of alcohol abuse and alcoholism and for the rehabilitation of alcohol abusers and alcoholics.

(b) Community participation

Projects and programs for which grants and contracts are made under this section shall (1) be responsive to special requirements of handicapped individuals in receiving such services; (2) whenever possible, be community based, seek (in the case of prevention and treatment services) to insure care of good quality in general community care facilities and under health insurance plans, and be integrated with, and provide for the active participation of, a wide range of public and nongovernmental agencies, organizations, institutions, and individuals; (3) where a substantial number of the individuals in the population served by the project or program are of limited English-speaking ability, utilize the services of outreach workers fluent in the language spoken by a predominant number of such individuals and develop a plan and make arrangements responsive to the needs of such population for providing services to the extent practicable in the language and cultural context most appropriate to such individuals, and identify an individual employed by the project or program, or who is available to the project or program on a full-time basis, who is fluent both in that language and English and whose responsibilities shall include providing guidance to the individuals of limited English speaking ability and to appropriate staff members with respect to cultural sensitivities and bridging linguistic and cultural differences; and (4) where appropriate utilize existing community resources (including community mental health centers).

(c) Applications; coordination in State; evaluation of projects and programs; review and recommendation by Council; criteria for approval

[*See main edition for text of (1) and (2)(A)*]

(B)(i) Except as provided in clause (ii), each application for a grant under this section shall be submitted by the Secretary to the National Advisory Council on Alcohol Abuse and Alcoholism for its review. The Secretary may approve an application for a grant under this section only if it is recommended for approval by such Council.

[*See main edition for text of (ii), (3)*]

(4) The Secretary shall encourage the submission of and give special consideration to applications under this section for programs and projects—

(A) for the prevention and treatment of alcohol abuse and alcoholism by women,

(B) for the prevention and treatment of alcohol abuse and alcoholism by the elderly,

(C) for the prevention and treatment of alcohol abuse and alcoholism by individuals under the age of eighteen.

[*See main edition for text of (5)*]

(As amended Pub. L. 95-83, title III, § 311(c), Aug. 1, 1977, 91 Stat. 398; Pub. L. 96-180, § 11, Jan. 2, 1980, 93 Stat. 1304.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-180, § 11(a), added par. (1), redesignated as pars. (2) to (5) former pars. (1) to (4), and substituted in par. (2) "support projects of a demonstrable value in developing" for "conduct demonstration and evaluation projects, including projects designed to develop" and in par. (3) "the elderly, women, the handicapped, families of alcoholics, and victims of alcohol-related domestic violence" for "female alcoholics, and individuals in geographic areas where such services are not otherwise adequately available".

Subsec. (b). Pub. L. 96-180, § 11(b), added cl. (1), redesignated as cls. (2) to (4) former cls. (1) to (3), and in cl. (2) inserted parenthetical phrase "(in the case of prevention and treatment services)" following "seek".

Subsec. (c)(4). Pub. L. 96-180, § 11(c), required the Secretary to encourage submission of applications, incorporated existing provisions in cls. (A) and (C), and inserted cl. (B).

1977—Subsec. (c)(2)(B)(i). Pub. L. 95-83 substituted "its" for "his".

§ 4578. Authorizations of appropriations

For purposes of sections 4576 and 4577 of this title, there are authorized to be appropriated $85,000,000 for the fiscal year ending September 30, 1977, $91,000,000 for the fiscal year ending September 30, 1978, $102,500,000 for the fiscal year ending September 30, 1979, $102,500,000 for the fiscal year ending September 30, 1980, and $115,000,000 for the fiscal year ending September 30, 1981. Of the funds appropriated under this section for the fiscal year ending September 30, 1980, at least 8 percent of the funds shall be obligated for grants for projects, programs, and services to prevent (through outreach, intervention, and education) the occurrence of alcoholism and alcohol abuse; and of the funds appropriated under this section for the next fiscal year at least 10 percent of the funds shall be obligated for such grants.

(As amended Pub. L. 96-180, § 12, Jan. 2, 1980, 93 Stat. 1304.)

AMENDMENTS

1980—Pub. L. 96-180 authorized appropriation of $102,500,000 and $115,000,000 and prescribed minimum of 8 and 10 percent of the funds for preventitive projects, programs, and services for fiscal years ending Sept. 30, 1980, and 1981.

PART C—ADMISSION TO HOSPITALS AND OUTPATIENT FACILITIES; CONFIDENTIALITY OF RECORDS

§ 4581. Admission of alcohol abusers and alcoholics to general hospitals and outpatient facilities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4572, 4573 of this title.

SUBCHAPTER IV—RESEARCH

§ 4585. Encouragement of research

(a) The Secretary, acting through the Institute, shall carry out a program of research, investigations, experiments, demonstrations, and studies, directly and by grant or contract, into—

(1) the social, behavioral, and biomedical etiology,

(2) prevention,

(3) treatment,

(4) mental and physical health consequences,

(5) social and economic consequences, and

(6) the impact on families,

of alcohol abuse and alcoholism.

(b) In carrying out the program described in subsection (a) of this section, the Secretary, acting through the Institute, is authorized to—

[*See main edition for text of (1) and (2)*]

(3) make grants to universities, hospitals, laboratories, and other public or nonprofit institutions, and to individuals for such research projects as are recommended by the National Advisory Council on Alcohol Abuse and Alcoholism and such Council shall give special consideration to projects relating to the relationship between alcohol abuse and domestic violence, the effects of alcohol use during pregnancy, the relationship between the abuse of alcohol and other drugs, and the effect on the incidence of alcohol abuse and alcoholism of social pressures, legal requirements respecting the use of alcoholic beverages, the cost of such beverages, and the economic status and education of users of such beverages;

[*See main edition for text of (4)*]

(5) promote the coordination of research programs conducted by the Institute, and similar programs conducted by the National Institute of Drug Abuse and by other departments, agencies, organizations, and individuals, including all National Institutes of Health research activities which are or may be related to the problems of individuals suffering from alcoholism or alcohol abuse or those of their families;

(6) conduct an intramural program of biomedical, behavioral, epidemiological, and social research, including research into the most effective means of treatment and service delivery, and including research involving human subjects, which is—

[*See main edition for text of (A) and (B), (7)*]

(8) provide to health officials, scientists, and appropriate public and other nonprofit institutions and organizations, technical advice and assistance on the application of statistical and other scientific research methods to experiments, studies, and surveys in health and medical fields;

[*See main edition for text of (9) and (10)*]

(As amended Pub. L. 95-622, title II, § 268(c), (d), Nov. 9, 1978, 92 Stat. 3437; Pub. L. 96-180, § 14, Jan. 2, 1980, 93 Stat. 1305.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-180, § 14(a), provided as to alcohol abuse and alcoholism provision in par. (1) for its social etiology, added par. (2) for its prevention, and redesignated as pars. (3) to (6) prior pars. (2) to (5).

Subsec. (b). Pub. L. 96-180, § 14(b), required in par. (3) the Council to give special consideration to relationship of alcohol use and abuse and domestic violence, pregnancy, etc.; extended in par. (5) coordination of research programs to programs conducted by the National Institute of Drug Abuse and similar programs of other departments; authorized in par. (6) intramural program of epidemiological and social research; and provided in par. (8) for technical advice and assistance on application of methods of scientific research.

1978—Subsec. (a). Pub. L. 95-622, § 268(c), in pars. (1) to (4) struck out "of" following "etiology", "treatment", "health consequences", and "economic consequences", respectively, added par. (5), and in provision following par. (5) substituted "of alcohol abuse" for "alcohol abuse".

Subsec. (b)(5). Pub. L. 95-622, § 268(d), inserted "or those of their families" following "individuals suffering from alcoholism or alcohol abuse".

§ 4587. Authorization of appropriations

There are authorized to be appropriated for carrying out the purposes of section 4585 and 4586 of this title $20,000,000 for the fiscal year ending September 30, 1977, $24,000,000 for the fiscal year ending September 30, 1978, $28,000,000 for the fiscal year ending September 30, 1979, $28,000,000 for the fiscal year ending September 30, 1980, and $28,000,000 for the fiscal year ending September 30, 1981.

(As amended Pub. L. 96-180, § 15, Jan. 2, 1980, 93 Stat. 1305.)

AMENDMENTS

1980—Pub. L. 96-180 authorized appropriation of $28,000,000 for fiscal years ending Sept. 30, 1980, and 1981.

§ 4588. National Alcohol Research Centers

(a) Designation; procedures applicable for approval of applications

The Secretary acting through the Institute may designate National Alcohol Research Centers for the purpose of interdisciplinary research relating to alcoholism and other biomedical, behavioral, and social issues related to alcoholism and alcohol abuse. No entity may be designated as a Center unless an application therefor has been submitted to, and approved by, the Secretary. Such an application shall be submitted in such manner and contain such information as the Secretary may reasonably require. The Secretary may not approve such an application unless—

(1) the application contains or is supported by reasonable assurances that—

[*See main edition for text of* (*A*)]

(B) the applicant has available to it sufficient facilities (including laboratory, reference, and data analysis facilities) to carry out the research plan contained in the application;

(C) the applicant has facilities and personnel to provide training in the prevention and treatment of alcoholism and other alcohol problems;

(D) the applicant has the capacity to train predoctoral and postdoctoral students for careers in research on alcoholism and other alcohol problems;

(E) the applicant has the capacity to conduct courses on alcohol problems and research on alcohol problems for undergraduate and graduate students, and for medical and osteopathic, nursing, social work, and other specialized graduate students; and

(F) the applicant has the capacity to conduct programs of continuing education in such medical, legal, and social service fields as the Secretary may require.

(2) the application contains a detailed five-year plan for research relating to alcoholism and other alcohol problems.

Insofar as practicable, the Secretary shall approve applications under this subsection in a manner which results in an equitable geographic distribution of Centers.

(b) Annual grants; amount; limitation on uses

The Secretary shall, under such conditions as the Secretary may reasonably require, make annual grants to Centers which have been designated under this section. No annual grant to any Center may exceed $1,500,000. No funds provided under a grant under this subsection may be used for the purchase or rental of any land or the rental, purchase, construction, preservation, or repair of any building. For the purposes of the preceding sentence, the term "construction" has the meaning given that term by section 292a(2) of this title.

(c) Authorization of appropriations

There are authorized to be appropriated to carry out the purposes of this section $6,000,000 for the fiscal year ending September 30, 1977, and for each of the next two succeeding fiscal years, $8,000,000 for the fiscal year ending September 30, 1980, and $9,000,000 for the fiscal year ending September 30, 1981.

(As amended Pub. L. 95-622, title I, § 110(d), Nov. 9, 1978, 92 Stat. 3420; Pub. L. 96-180, § 16, Jan. 2, 1980, 93 Stat. 1305.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-180, § 16(a), substituted: in first sentence "biomedical, behavioral, and social issues related to alcoholism and alcohol abuse" for "alcohol problems"; in par. (1)(B) "facilities (including laboratory, reference, and data analysis facilities) to carry out the research plan contained in the application" for "laboratory facilities and reference services (including reference services that will afford access to scientific alcohol literature)"; and in par. (1)(E) "medical and osteopathic, nursing, social work, and other specialized graduate students; and" for "medical and osteopathic students and physicians;", and added par. (1)(F).

Subsec. (b). Pub. L. 96-180, § 16(b), increased annual grant limitation to $1,500,000 from $1,000,000.

Subsec. (c). Pub. L. 96-180, § 16(c), authorized appropriation of $8,000,000 and $9,000,000 for fiscal years ending Sept. 30, 1980, and 1981.

1978—Subsec. (a). Pub. L. 95-622 added provision following par. (2) relating to approval of applications under this subsection by the Secretary in a manner which results in equitable geographic distribution of Centers.

§ 4594. Contract authority in appropriation Acts

The authority of the Secretary to enter into contracts under this chapter shall be effective for any fiscal year only to such extent or in such amounts as are provided in advance by appropriation Acts.

(Pub. L. 91-616, title VI, § 604, as added Pub. L. 96-180, § 17, Jan. 2, 1980, 93 Stat. 1306.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 91-616, Dec. 31, 1970, 84 Stat. 1848, known as the "Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act of 1970", which enacted this chapter and section 2688j-2 of this title and amended sections 218, 246, 2688h, and 2688t of this title.

CHAPTER 62—INTERGOVERNMENTAL PERSONNEL PROGRAM

§ 4701. Congressional findings and declaration of policy

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4722, 4723, 4728, 4743 of this title.

SUBCHAPTER II—STRENGTHENING STATE AND LOCAL PERSONNEL ADMINISTRATION

§§ 4722 to 4726

TRANSFER OF FUNCTIONS

All functions vested by statue in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4728. Transfer of functions

[*See main edition for text of* (*a*)]

(b) Standards for systems of personnel administration

In accordance with regulations of the Office of Personnel Management, Federal agencies may require as a condition of participation in assistance programs, systems of personnel administration consistent with personnel standards prescribed by the Office for positions engaged in carrying out such programs. The standards shall—

(1) include the merit principles in section 4701 of this title;

(2) be prescribed in such a manner as to minimize Federal intervention in State and local personnel administration.

(c) Powers and duties of Commission

The Commission shall—

(1) provide consultation and technical advice and assistance to State and local governments to aid them in complying with standards prescribed by the Commission under subsection (a) of this section; and

(2) advise Federal agencies administering programs of grants or financial assistance as to the application of required personnel administration standards, and recommend and coordinate the taking of such actions by the Federal agencies as the Commission considers will most effectively carry out the purpose of this subchapter.

(d) Transfer of personnel, property, records, and funds; time of transfer

So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds of any Federal agency employed, used, held, available, or to be made available in connection with the functions, powers, and duties vested in the Commission by this section as the Director of the Management and Budget shall determine shall be transferred to the Commission at such time or times as the Director shall direct.

(e) Modification or supersedure of personnel standards

Personnel standards prescribed by Federal agencies under laws and regulations referred to in subsection (a) of this section shall continue in effect until modified or superseded by standards prescribed by the Commission under subsection (a) of this section.

(f) Systems of personnel administration; innovation and diversity in design, execution, and management

Any standards or regulations established pursuant to the provisions of this section shall be such as to encourage innovation and allow for diversity on the part of State and local governments in the design, execution, and management of their own individual systems of personnel administration.

(g) Interpretation of certain provisions; limitation

Nothing in this section or in section 4722 or 4723 of this title shall be construed to—

(1) authorize any agency or official of the Federal Government to exercise any authority, direction, or control over the selection, assignment, advancement, retention, compensation, or other personnel action with respect to any individual State or local employee;

(2) authorize the application of personnel standards on a merit basis to the teaching personnel of educational institutions or school systems;

(3) prevent participation by employees or employee organizations in the formulation of policies and procedures affecting the conditions of their employment, subject to the laws and ordinances of the State or local government concerned;

(4) require or request any State or local government employee to disclose his race, religion, or national origin, or the race, religion, or national origin, of any of his forebears;

(5) require or request any State or local government employee, or any person applying for employment as a State or local government employee, to submit to any interrogation or examination or to take any psychological test or any polygraph test which is designed to elicit from him information concerning his personal relationship with any person connected with him by blood or marriage, or concerning his religious beliefs or practices, or concerning his attitude or conduct with respect to sexual matters; or

(6) require or request any State or local government employee to participate in any way in any activities or undertakings unless such activities or undertakings are related to the performance of official duties to which he is or may be assigned or to the development of skills, knowledge, or abilities which qualify him for the performance of such duties.

(h) Grants-in-aid; abolition of certain requirements

Effective one year after October 13, 1978, all statutory personnel requirements established as a condition of the receipt of Federal grants-in-aid by State and local governments are hereby abolished, except—

(1) requirements prescribed under laws and regulations referred to in subsection (a) of this section;

(2) requirements that generally prohibit discrimination in employment or require equal employment opportunity;

(3) the Davis-Bacon Act [40 U.S.C. 276a—276a-5]; and

(4) chapter 15 of title 5, relating to political activities of certain State and local employees.

(As amended Pub. L. 95-454, § 602(a)(2), (3), Oct. 13, 1978, 92 Stat. 1188, 1189.)

REFERENCES IN TEXT

Section 2019(e)(2) of title 7, referred to in subsec. (a)(1), is a reference to section 2019 of title 7 prior to the general amendment of that section made by Pub. L. 95-113, § 1301, Sept. 29, 1977, 91 Stat. 969. Provisions formerly contained in section 2019(e)(2) of title 7 are now covered by section 2020(e)(6) of title 7.

The Davis-Bacon Act [40 U.S.C. 276a—276a-5], referred to in subsec. (h)(3), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-454, § 602(a)(2), added subsec. (b). Former subsec. (b) redesignated (c).

Subsecs. (c) to (g). Pub. L. 95-454, § 602(a)(2), redesignated former subsecs. (b) to (f) as (c) to (g), respectively. Former subsec. (g) redesignated (h).

Subsec. (h). Pub. L. 95-454, § 602(a)(2), (3), redesignated former subsec. (g) as (h), and in subsec. (h) as so redesignated, substituted provisions respecting abolition of certain requirements respecting grants-in-aid, for provisions setting forth effective date of this section as 60 days after Jan. 5, 1971.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 300m-1 of this title; title 7 section 2020.

SUBCHAPTER III—TRAINING AND DEVELOPING STATE AND LOCAL EMPLOYEES

§§ 4742 to 4746

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SUBCHAPTER IV—GENERAL PROVISIONS

§ 4762. Definitions

For the purpose of this chapter—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and a territory or possession of the United States, and includes interstate and Federal-interstate agencies but does not include the governments of the political subdivisions of a State;

[*See main edition for text of* (*4*) *and* (*5*)]

(As amended Pub. L. 95-454, title VI, § 602(d), Oct. 13, 1978, 92 Stat. 1189.)

AMENDMENTS

1978—Par. (3). Pub. L. 95-454 added reference to the Trust Territory of the Pacific Islands.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§§ 4763 to 4765

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4766. Distribution of grants

[*See main edition for text of* (*a*)]

(b) Weighted formula; minimum allocation; reallocation; "State" defined

[*See main edition for text of* (*1*)]

(2) The amount allocated for each State under paragraph (1) of this subsection shall be further allocated by the Commission to meet the needs of both the State government and the local governments within the State on a weighted formula taking into consideration such factors as the number of State and local government employees and the amount of State and local government expenditures. The Commission shall determine the categories of employees and expenditures to be included or excluded, as the case may be, in the number of employees and amount of expenditures. The minimum allocation for meeting needs of local governments in each State (other than the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands) shall be 50 per centum of the amount allocated for the State under paragraph (1) of this subsection.

[*See main edition for text of* (*3*) *and* (*4*)]

(5) For the purposes of this subsection, "State" means the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 95-454, title VI, § 602(e), Oct. 13, 1978, 92 Stat. 1189.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-454 in pars. (2) and (5) added references to the Commonwealth of Puerto Rico, Guam, American Samoa, and the Virgin Islands.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as an Effective Date of 1978 Amendment note under section 1101 of Title 5, Government Organization and Employees.

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§§ 4767, 4768

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director ofthe Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 4771. Method of payment; installments; advances or reimbursement; adjustments

TRANSFER OF FUNCTIONS

All functions vested by statute in the United States Civil Service Commission were transferred to the Director of the Office of Personnel Management (except as otherwise specified) by Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

CHAPTER 63—LEAD-BASED PAINT POISONING PREVENTION

SUBCHAPTER I—GRANTS FOR DETECTION AND TREATMENT OF LEAD-BASED PAINT POISONING

§ 4801. Repealed. Pub. L. 95-626, title II, § 208(b), Nov. 10, 1978, 92 Stat. 3588

Section, Pub. L. 91-695, title I, § 101, Jan. 13, 1971, 84 Stat. 2078; Pub. L. 93-151, § 1, Nov. 9, 1973, 87 Stat. 565; Pub. L. 94-317, title II, 204(a), June 23, 1976, 90 Stat. 705, related to the development of local programs with respect to detection and treatment of lead-based paint poisoning.

EFFECTIVE DATE OF REPEAL

Repeal of section by Pub. L. 95-626 effective Oct. 1, 1979.

SUBCHAPTER II—GRANTS FOR ELIMINATION OF LEAD-BASED PAINT POISONING

§ 4811. Repealed. Pub. L. 95-626, title II, § 208(b), Nov. 10, 1978, 92 Stat. 3588

Section, Pub. L. 91-695, title II, § 201, Jan. 13, 1971, 84 Stat. 2078; Pub. L. 93-151, § 2, Nov. 9, 1973, 87 Stat. 565, related to the development of local programs for the elimination of lead-based paint poisoning.

EFFECTIVE DATE OF REPEAL

Repeal of section by Pub. L. 95-626 effective Oct. 1, 1979.

SUBCHAPTER III—FEDERAL DEMONSTRATION AND RESEARCH PROGRAM; FEDERAL HOUSING ADMINISTRATION REQUIREMENTS

§ 4821. Development of program; consultation; nature of program; safe level of lead; report to Congress

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER IV—PROHIBITION AGAINST FUTURE USE OF LEAD-BASED PAINT

§ 4831. Use of lead-based paint

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER V—GENERAL PROVISIONS

§§ 4841, 4842

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§§ 4844, 4845. Repealed. Pub. L. 95-626, title II, § 208(b), Nov. 10, 1978, 92 Stat. 3588

Section 4844, Pub. L. 91-695, title V, § 504, as added Pub. L. 93-151, § 7(e), Nov. 9, 1973, 87 Stat. 567, related to the eligibility of certain State agencies with respect to grants made under former section 4801 and 4811 of this title.

Section 4845, Pub. L. 91-695, title V, § 505, as added Pub. L. 93-151, § 7(e), Nov. 9, 1973, 87 Stat. 568, provided for the establishment of a National Childhood Lead Based Paint Poisoning Advisory Board.

EFFECTIVE DATE OF REPEAL

Repeal of sections by Pub. L. 95-626 effective Oct. 1, 1979.

§ 4846. State laws superseded, and null and void

[*See main edition for text of section*]

(Pub. L. 91-695, title V, § 504, formerly § 506, as added Pub. L. 93-151, § 7(e), Nov. 9, 1973, 87 Stat. 568, and renumbered Pub. L. 95-626, title II, § 208(b), Nov. 10, 1978, 92 Stat. 3588.)

PRIOR PROVISIONS

A prior section 504 of Pub. L. 91-695 was classified to section 4844 of this title and was repealed by Pub. L. 95-626.

CHAPTER 65—NOISE CONTROL

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 4365 of this title; title 15 section 2706; title 16 section 228g.

§ 4901. Congressional findings and statement of policy

SHORT TITLE

Pub. L. 95-609, § 1, Nov. 8, 1978, 92 Stat. 3079, provided: "That this Act [amending sections 4905, 4910, 4913, 4918, 6901, 6903, 6907, 6913, 6922, 6923, 6925, to 6928, 6947, 6961, 6962, 6964, 6972, 6973, 6977, and 6981 to 6984 of this title and section 1431 of Title 49, Transportation, and enacting provision set out as a note under section 1431 of Title 49] may be cited as the 'Quiet Communities Act of 1978'."

FEDERAL COMPLIANCE WITH POLLUTION CONTROL STANDARDS

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

§ 4905. Noise emission standards for products distributed in commerce

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Contents of regulations; appropriate consideration of other standards; participation by interested persons; revision

(1) Any regulation prescribed under subsection (a) or (b) of this section (and any revision thereof) respecting a product shall include a noise emission standard which shall set limits on noise emissions from such product and shall be a standard which in the Administrator's judgment, based on criteria published under section 4904 of this title, is requisite to protect the public health and welfare, taking into account the magnitude and conditions of use of such product (alone or in combination with other noise sources), the degree of noise reduction achievable through the application of the best available technology, and the cost of compliance. In establishing such a standard for any product, the Administrator shall give appropriate consideration to standards under other laws designed to safeguard the health and welfare of persons, including any standards under the National Traffic and Motor Vehicle Safety Act of 1966 [15 U.S.C. 1381 et seq.], the Clean Air Act [42 U.S.C. 7401 et seq.], and the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.]. Any such noise emission standards shall be a performance standard. In addition, any regulation under subsection (a) or (b) of this section (and any revision thereof) may contain testing procedures necessary to assure compliance with the emission standard in such regulation, and may contain provisions respecting instructions of the manufacturer for the maintenance, use, or repair of the product.

[*See main edition for text of* (*2*) *and* (*3*)]

(d) Warranty by manufacturer of conformity of product with regulations; transfer of cost obligation from manufacturer to dealer prohibited

[*See main edition for text of* (*1*) *and* (*2*)]

(3) If a manufacturer includes in any advertisement a statement respecting the cost or value of noise emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 311 of the Clean Air Act [42 U.S.C. 7611].

[*See main edition for text of* (*e*)]

(f) Publication of notice of receipt of revision petitions and proposed revised regulations

At any time after the promulgation of regulations respecting a product under this section, a State or political subdivision thereof may petition the Administrator to revise such standard on the grounds that a more stringent standard under subsection (c) of this section is necessary to protect the public health and welfare. The Administration shall publish notice of receipt of such petition in the Federal Register and shall within ninety days of receipt of such petition respond by (1) publication of proposed revised regulations in accordance with subsection (c)(3) of this section, or (2) publication in the Federal Register of a decision not to publish such proposed revised regulations at that time, together with a detailed explanation for such decision.

(As amended Pub. L. 95-609, § 5, Nov. 8, 1978, 92 Stat. 3081.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (c)(1), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

CODIFICATION

Subsecs. (c)(1) and (d)(3) are set out in this supplement to reflect the redesignation of the Clean Air Act as section 7401 et seq. of this title, and section 311 of the Clean Air Act as section 7611 of this title.

AMENDMENTS

1978—Subsec. (f). Pub. L. 95-609 added subsec. (f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4902, 4903, 4907, 4909, 4912, 4913, 4914, 4915, 4916, 4917 of this title; title 15 section 2002.

§ 4907. Labeling

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4902, 4909, 4912, 4913, 4915 of this title.

§ 4910. Enforcement

(a) Criminal penalties

(1) Any person who willfully or knowingly violates paragraph (1), (3), (5), or (6) of subsection (a) of section 4909 of this title shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who violates paragraph (1), (3), (5), or (6) of subsection (a) of section 4909 of this title shall be subject to a civil penalty not to exceed $10,000 per day of such violation.

[*See main edition for text of* (b) *to* (e)]

(As amended Pub. L. 95-609, § 4, Nov. 8, 1978, 92 Stat. 3081.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-609 redesignated existing provisions as par. (1) and added par. (2).

§ 4913. Quiet communities, research, and public information

To promote the development of effective State and local noise control programs, to provide an adequate Federal noise control research program designed to meet the objectives of this chapter, and to otherwise carry out the policy of this chapter, the Administrator shall, in cooperation with other Federal agencies and through the use of grants, contracts, and direct Federal actions—

(a) develop and disseminate information and educational materials to all segments of the public on the public health and other effects of noise and the most effective means for noise control, through the use of materials for school curricula, volunteer organizations, radio and television programs, publication, and other means;

(b) conduct or finance research directly or with any public or private organization or any person on the effects, measurement, and control of noise, including but not limited to—

(1) investigation of the psychological and physiological effects of noise on humans and the effects of noise on domestic animals, wildlife, and property, and the determination of dose/response relationships suitable for use in decisionmaking, with special emphasis on the nonauditory effects of noise;

(2) investigation, development, and demonstration of noise control technology for products subject to possible regulation under sections 4905 and 4907 of this title and section 1431 of title 49;

(3) investigation, development, and demonstration of monitoring equipment and other technology especially suited for use by State and local noise control programs;

(4) investigation of the economic impact of noise on property and human activities; and

(5) investigation and demonstration of the use of economic incentives (including emission charges) in the control of noise;

(c) administer a nationwide Quiet Communities Program which shall include, but not be limited to—

(1) grants to States, local governments, and authorized regional planning agencies for the purpose of—

(A) identifying and determining the nature and extent of the noise problem within the subject jurisdiction;

(B) planning, developing, and establishing a noise control capacity in such jurisdiction, including purchasing initial equipment;

(C) developing abatement plans for areas around major transportation facilities (including airports, highways, and rail yards) and other major stationary sources of noise, and, where appropriate, for the facility or source itself; and,

(D) evaluating techniques for controlling noise (including institutional arrangements) and demonstrating the best available techniques in such jurisdiction;

(2) purchase of monitoring and other equipment for loan to State and local noise control programs to meet special needs or assist in the beginning implementation of a noise control program or project;

(3) development and implementation of a quality assurance program for equipment and monitoring procedures of State and local noise control programs to help communities assure that their data collection activities are accurate;

(4) conduct of studies and demonstrations to determine the resource and personnel needs of States and local governments required for the establishment and implementation of effective noise abatement and control programs; and

(5) development of education and training materials and programs, including national and regional workshops, to support State and local noise abatement and control programs;

except that no actions, plans or programs hereunder shall be inconsistent with existing Federal authority under this chapter to regulate sources of noise in interstate commerce;

(d) develop and implement a national noise environmental assessment program to identify trends in noise exposure and response, ambient levels, and compliance data and to determine otherwise the effectiveness of noise abatement actions through the collection of physical, social, and human response data;

(e) establish regional technical assistance centers which use the capabilities of university and private organizations to assist State and local noise control programs;

(f) provide technical assistance to State and local governments to facilitate their development and enforcement of noise control, including direct onsite assistance of agency or other personnel with technical expertise, and preparation of model State or local legislation for noise control; and

(g) provide for the maximum use in programs assisted under this section of senior citizens and persons eligible for participation in programs under the Older Americans Act [42 U.S.C. 3001 et seq.].

(As amended Pub. L. 95-609, § 2, Nov. 8, 1978, 92 Stat. 3079.)

References in Text

The Older Americans Act, referred to in subsec. (g), probably means the Older Americans Act of 1965, Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

Amendments

1978—Pub. L. 95-609 completely revised and restructured existing provisions, adding provisions relating to authorized use of grants and direct action, investigation of economic impact of noise, administration of Quiet Communities Program, development of noise assessment program, establishment of regional centers, technical assistance to State and local governments, and use by senior citizens of these programs.

§ 4916. Railroad noise emission standards

Codification

The Interstate Commerce Act, referred to in subsec. (b), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which was classified to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

§ 4917. Motor carrier noise emission standards

Codification

The Interstate Commerce Act, referred to in subsec. (b), is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which was classified to chapters 1 (§ 1 et seq.), 8 (§ 301 et seq.), 12 (§ 901 et seq.), 13 (§ 1001 et seq.), and 19 (1231 et seq.) of Title 49, Transportation. The Act was repealed by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1467, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. For distribution of former sections of Title 49 into the revised Title 49, see Table at the beginning of Title 49.

Paragraphs (14), (15), and (17) of section 203(a) of the Interstate Commerce Act (49 U.S.C. 303(a)), referred to in subsec. (d), were repealed (see above) and enacted in section 10102(12)-(14) of Title 49.

§ 4918. Authorization of appropriations

There are authorized to be appropriated to carry out this chapter (other than for research and development) $15,000,000 for the fiscal year ending September 30, 1979.

(As amended Pub. L. 95-609, § 6, Nov. 8, 1978, 92 Stat. 3081.)

Amendments

1978—Pub. L. 95-609 substituted provisions authorizing appropriations of $15,000,000 for 1979 for provisions authorizing appropriations for fiscal years 1973 to 1977 and deleted restriction on expenditures for research and development.

CHAPTER 66—DOMESTIC VOLUNTEER SERVICES

SUBCHAPTER IV—ADMINISTRATION AND COORDINATION

Sec.
5063. Reduction of paperwork [New].
5064. Review of project renewals [New].

Chapter Referred to in Other Sections

This chapter is referred to in section 6063 of this title; title 20 sections 1077, 1078, 1087dd.

SUBCHAPTER I—NATIONAL VOLUNTEER ANTIPOVERTY PROGRAMS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 294d, 5044, 5055, 5081 of this title.

Part A—Volunteers in Service to America

§ 4951. Congressional statement of purpose

Short Title of 1979 Amendment

Pub. L. 96-143, § 1, Dec. 13, 1979, 93 Stat. 1074, provided: "That this Act [which enacted sections 5063 and 5064 of this title, amended sections 4953, 4955, 4958, 4973, 4974, 4992, 5021, 5043, 5044, 5050, 5055, 5057, 5058, 5060, 5081, and 5084 of this title, enacted provisions set out as notes under sections 4992 and 5084 of this title, and amended provisions set out as a note under section 4955 of this title] may be cited as the 'Domestic Volunteer Service Act Amendments of 1979'."

§ 4953. Assignment of volunteers

[*See main edition for text of* (*a*)]

(b) Home community services of teams of low-income community volunteers and nationally recruited specialist volunteers; individual plans for low-income community volunteers; updating and review of individual plans

The Director, wherever feasible and appropriate, shall assign low-income community volunteers to serve in their home communities in teams with nationally recruited specialist volunteers. Not later than 30 days after the assignment of any such community volunteer, the Director shall insure that each such volunteer is provided an individual plan designed to provide an opportunity for job advancement or for transition to a situation leading to gainful employment. One hundred and twenty days prior to the completion of such community volunteer's term of service, the Director shall insure that such plan is updated and reviewed with the volunteer. The Director shall offer to provide each volunteer enrolled for a period of full-time service of not less than one year under this subchapter, and, upon the request of such volunteer, provide such volunteer with an individual and updated plan as described in the preceding two sentences.

[*See main edition for text of* (c)]

(d) Program or project submittal to Governor; commencement and termination of service

Volunteers under this part shall not be assigned to duties or work in a program or project in any State unless such program or project has been submitted to the Governor or other chief executive officer of the State concerned, and such Governor or other chief executive officer has not, within 45 days of the date of such submission, notified the Director in writing, supported by a statement of reasons, that such Governor or other chief executive officer disapproves such program or project. In the event of a timely request in writing, supported by a statement of reasons, by the Governor or other chief executive officer of the State concerned, the Director shall terminate a program or project or the assignment of a volunteer to a program or project not later than 30 days after the date such request is received by the Director, or at such later date as is agreed upon by the Director and such Governor or other chief executive officer.

(As amended Pub. L. 96-143, § 2, Dec. 13, 1979, 93 Stat. 1074.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-143, § 2(a), substituted "Not later than 30 days after" for "Prior to" and added provisions that the Director offer to provide each volunteer enrolled for a period of full-time service of not less than one year under this subchapter, and, upon the request of such volunteer, provide such volunteer with an individual and updated plan as described in the preceding two sentences.

Subsec. (d). Pub. L. 96-143, § 2(b), inserted "in a program or project" following "work" and "or project" following "program" and added provisions requiring notification by a Governor or other chief executive officer to the Director that such Governor or other chief executive officer has disapproved a program or project under this section and requiring the Director to terminate a program or project under this section in the event of a timely request by the Governor or other chief executive officer not later than 30 days after the date such request is received or at such date agreed upon by the Director and such Governor or other chief executive officer.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4972, 4974, 4992 of this title.

§ 4954. Terms and periods of service

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4972, 4973, 4992 of this title.

§ 4955. Support services

(a) Stipend; limitation; volunteer leaders; payment upon completion of term; advancement of accrued stipend; beneficiary of deceased volunteer

[*See main edition for text of (1)*]

(2) Stipends shall be payable only upon completion of a period of service, except that under such circumstances as the Director shall determine, in accordance with regulations which the Director shall prescribe, the accrued stipend, or any part of the accrued stipend, may be paid to the volunteer, or, on behalf of the volunteer, to members of the volunteer's family or others during the period of the volunteer's service. In the event of the death of a volunteer during service, the amount of any unpaid stipend shall be paid in accordance with the provisions of section 5582 of title 5.

[*See main edition for text of (b)*]

(As amended Pub. L. 96-143, § 3, Dec. 13, 1979, 93 Stat. 1074.)

AMENDMENTS

1979—Subsec. (a)(2). Pub. L. 96-143 substituted "under such circumstances as the Director shall determine, in accordance with regulations which the director shall prescribe, the accrued stipend, or any part of the accrued stipend, may be paid to the volunteer, or, on behalf of the volunteer, to members of the volunteer's family or others during the period of the volunteer's service" for "in extraordinary circumstances the Director may from time to time advance all or a portion of the accrued stipend to or on behalf of a volunteer".

ADDITIONAL APPROPRIATIONS AUTHORIZATION

Section 5(b) of Pub. L. 94-130, as amended by Pub. L. 96-143, § 17, Dec. 13, 1979, 93 Stat. 1082, provided that: "There are authorized to be appropriated, in addition to the sums authorized to be appropriated pursuant to section 501 of such Act [section 5081 of this title], such additional sums as may be necessary to carry out the amendments made by subsection (a) of this section [to subsec. (a)(1) of this section]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4973, 4992 of this title.

§ 4958. Limitation on funds appropriated for grants and contracts for direct cost of supporting volunteers in programs or projects

(a) Of funds appropriated for the purpose of this part under section 5081 of this title, not more than 16 per centum for the fiscal year ending September 30, 1977, and for each fiscal year thereafter, may be obligated for the direct cost of supporting volunteers in programs or projects carried out pursuant to grants and contracts made under section 5042(12) of this title. During the fiscal year ending September 30, 1980—

(1) in no event may in excess of $5,800,000 be used pursuant to grants and contracts under this part for the direct cost of supporting such volunteers; and

(2) funds obligated pursuant to such grants and contracts for such cost may be used to support no greater number of years of volunteer service than the number of such years supported during the fiscal year ending September 30, 1979, pursuant to grants and contracts for such cost.

(b) No funds shall be obligated under this part pursuant to grants or contracts made after December 13, 1979, for new projects for the direct cost of supporting volunteers unless the recipient of each such grant or contract has been selected through a competitive process which includes—

(1) public announcements of the availability of funds for such grants or contracts, general criteria for the selection of new recipients, and a description of the application process and the application review process; and

(2) a requirement that each applicant for any such grant or contract identify, with sufficient particularity to assure that the assignments of volunteers under such grants and contracts will carry out the purpose of this

part, the particular poverty or poverty-related human, social, or environmental problems on which the grant or contract will focus, and any such grant or contract shall specifically so identify such problems.

(As amended Pub. L. 96-143, § 4, Dec. 13, 1979, 93 Stat. 1075.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-143, § 4, designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, substituted "16" for "20", inserted "During the fiscal year ending September 30, 1980", and added pars. (1) and (2).

Subsec. (b). Pub. L. 96-143, § 4(b), added subsec. (b).

PART B—SERVICE-LEARNING PROGRAMS

§ 4973. Special conditions

(a) Academic credit

Volunteers serving under this part shall be enrolled for periods of service as provided for in subsection (b) of section 4954 of this title, except that volunteers serving in the University Year for ACTION program may be enrolled for periods of service of not less than the duration of an academic year, but volunteers enrolled for less than 12 months shall not receive stipends under section 4955(a)(1) of this title. Volunteers serving under this part may receive academic credit for such service in accordance with the regulations of the sponsoring institution of higher education.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 96-143, § 5, Dec. 13, 1979, 93 Stat. 1075.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-143 substituted "except that volunteers serving in the University Year for ACTION program may be enrolled for periods of service of not less than the duration of an academic year, but volunteers enrolled for less than 12 months shall not receive stipends under section 4955(a)(1) of this title. Volunteers serving under this part" for "and".

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 4974. Special service-learning programs

(a) Financial assistance limitation for programs and projects described in section 4953(a) and (c) of this title

Of the funds appropriated for the operation of programs under this part, up to 22 per centum may be used, notwithstanding any other provisions of this part, to encourage and enable students in secondary, secondary vocational, and post-secondary schools to participate in service-learning programs on an in- or out-of-school basis in assignments of a character and on such terms and conditions as described in subsections (a) and (c) of section 4953 of this title. In any fiscal year in which the funds appropriated for the purposes of the University Year for ACTION program under section 4972 of this title exceed $4,000,000, the limitation provided in the preceding sentence shall not apply with respect to that portion of such appropriation which exceeds $4,000,000.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 96-143, § 6, Dec. 13, 1979, 93 Stat. 1075.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-143 substituted "22" for "10" and "$4,000,000" for "$6,700,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5081 of this title.

PART C—SPECIAL VOLUNTEER PROGRAMS

§ 4992. Authority to establish and operate special volunteer programs or demonstration programs

(a) Youthful offender incarceration alternatives; veterans educational opportunities; drug abusers counseling; assistance to victims of domestic violence; periods of service; identification of segments of poverty community which could benefit from volunteer and other antipoverty efforts

(1) The Director is authorized to conduct or make grants or contracts, or both, for special volunteer programs in urban and rural areas or demonstration programs (such as but not limited to a program to provide alternatives to the incarceration of youthful offenders; a program to promote educational opportunities for veterans; a program to provide community-based peer group outreach and counseling for drug abusers, a program of assistance to victims of domestic violence, a program to provide technical and management assistance to distressed communities, a program designed to provide personal and group financial counseling to low-income and fixed-income individuals (utilizing volunteers with specialized or technical expertise), and a Helping Hand program) designed to stimulate and initiate improved methods of providing volunteer services, to encourage wider volunteer participation on a full-time, part-time, or short-term basis to further the purpose of this part, and to identify particular segments of the poverty community which could benefit from volunteer and other antipoverty efforts. In carrying out programs authorized by this part, the Director is authorized to provide for the recruitment, selection, and training of volunteers.

(2) For purposes of this subsection, the term "Helping Hand" program means a program utilizing person-to-person services to reduce the necessity for institutionalization (in hospitals, mental institutions, nursing homes, other extended-care settings, and other facilities) and to ameliorate residential isolation (through senior centers, half-way house facilities, and other residential settings) of older persons, handicapped persons, and other affected persons, stressing interactions between persons from various age groups, particularly young and old, and carried out in coordination with the appropriate State system for the protection and advocacy of the rights of persons with developmental disabilities established pursuant to section 6012 of this title.

[*See main edition for text of* (*b*)]

(c) Allowances, supports, services, and stipends for part-time and full-time volunteers

(1) The Director, in accordance with regulations which the Director shall prescribe, may provide to volunteers enrolled for periods of part-time service of not less than 20 hours per week for not less than 26 consecutive weeks under this part such allowances, support, and services as are described in section 4955(b) of this title and as the Director determines are necessary to carry out the purpose of this part, and shall apply the provisions of sections 4954(c) and 4955(b) of this title to the service of volunteers enrolled for full-time service under this part.

(2) The Director, in accordance with regulations which the Director shall prescribe with respect to volunteers enrolled for periods of full-time service of not less than one year under this part—

(A) may provide to such volunteers such stipends, in total amounts not in excess of stipends provided under section 4955(a) of this title to volunteers serving under part A of this subchapter, as the Director determines are necessary to carry out the purpose of this part; and

(B) to the extent that the terms and conditions of the service of such volunteers are of similar character to the terms and conditions of the service of volunteers enrolled under part A of this subchapter, shall apply to the service of such volunteers enrolled under this part the provisions of sections 4953(b) relating to low-income community volunteers, 4953(d), 4954(d), and 4955(a) of this title to the extent such provisions are applied to the service of volunteers enrolled under such part A.

(As amended Pub. L. 96-143, § 7(a)-(c), Dec. 13, 1979, 93 Stat. 1075, 1076.)

Amendments

1979—Subsec. (a). Pub. L. 96-143, § 7(a), (b), designated existing provisions as par. (1) and, in par. (1) as so designated, inserted "in urban and rural areas" following "volunteer programs" and ", a program of assistance to victims of domestic violence, a program to provide technical and management assistance to distressed communities, a program designed to provide personal and group financial counseling to low-income and fixed-income individuals (utilizing volunteers with specialized or technical expertise), and a Helping Hand program" following "drug abusers", added provisions authorizing the Director to provide for the recruitment, selection, and training of volunteers in carrying out programs authorized by this part, and added par. (2).

Subsec. (c). Pub. L. 96-143, § 7(c), added provisions permitting support payments to part-time volunteers enrolled for at least 20 hours of service per week for at least 26 consecutive weeks and provisions applying sections 4953(b), (d), 4954(d), and 4955(a) of this title to full-time full-year volunteers whose service is similar in character to that of VISTA volunteers.

Report on Programs, Activities, Grants, and Contracts Resulting from Amendment by Section 7 of Pub. L. 96-143

Section 7(d) of Pub. L. 96-143 provided that: "Not later than 18 months after funds are first made available to carry out activities under the amendments to part C of title I of the Act [this part] made by this section, the Director of the ACTION Agency shall submit to the appropriate committees of the Congress a report on programs, activities, grants, and contracts so carried out, including a description of all programs established and contracts and grants made under such amended provisions, the amounts of funds obligated for such programs, activities, grants, and contracts under such amended provisions, and the specific arrangements for the conduct of evaluations of such programs, activities, grants, and contracts pursuant to section 417 of the Act [section 5057 of this title]."

Ex. Ord. No. 12034. Appointment of Former ACTION Cooperative Volunteers to the Civilian Career Service

Ex. Ord. No. 12034, Jan. 10, 1978, 43 F.R. 1917, provided:

By virtue of the authority vested in me by Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

Section 1. Any person who is certified by the Director of ACTION as having served satisfactorily as a full-time ACTION Community Volunteer (including Criminal Justice Volunteers, Volunteers in Justice, and VETREACH Volunteers) for a period of service of at least one year under Part C of Title I of the Domestic Volunteer Service Act of 1973 (Public Law 93-113) [part C of subchapter I of this chapter], and who was enrolled as a Volunteer in such program prior to October 1, 1976, shall be eligible for noncompetitive appointment to the Civilian Career Service in the same manner as that provided for Peace Corps Volunteers by Executive Order No. 11103 of April 10, 1963 [set out as a note under section 2504 of Title 22, Foreign Relations and Intercourse].

Sec. 2. This Order shall be effective 60 days after the date of signature and its applicability to persons who have completed their volunteer service on or before that date shall begin on such effective date.

Jimmy Carter.

Section Referred to in Other Sections

This section is referred to in section 5081 of this title.

SUBCHAPTER II—NATIONAL OLDER AMERICAN VOLUNTEER PROGRAMS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 3013, 5041, 5058, 5061 of this title.

Part A—Retired Senior Volunteer Program

§ 5001. Grants and contracts for volunteer service projects

(a) Approval of programs; rules and regulations

In order to help retired persons to avail themselves of opportunities for volunteer service in their community, the Director is authorized to make grants to State agencies (established or designated pursuant to section 3025(a)(1) of this title) or grants to or contracts with other public and nonprofit private agencies and organizations to pay part or all of the costs for the development or operation, or both, of volunteer service programs under this section, if he determines, in accordance with regulations he shall prescribe, that—

[*See main edition for text of* (*1*) *to* (*4*); (*b*)]

(c) Conditions upon award of grant or contract

The Director shall not award any grant or contract under this part for a project in any

State to any agency or organization unless, if such State has a State agency established or designated pursuant to section 3025(a)(1) of this title, such agency itself is the recipient of the award or such agency has been afforded at least forty-five days in which to review the project application and make recommendations thereon.

(d) Volunteer service as employment

Notwithstanding any other provision of law, volunteer service under this part shall not be deemed employment for any purpose which the Director finds is not fully consistent with the provisions and in furtherance of the purpose of this part.

(As amended Pub. L. 95-478, title IV, § 402(a), Oct. 18, 1978, 92 Stat. 1556.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-478, § 402(a)(1), substituted reference to section "3025(a)(1)" for "3024(a)(1)" of this title.

Subsec. (c). Pub. L. 95-478, § 402(a)(1), (2), substituted reference to section "3025(a)(1)" for "3024(a)(1)" of this title and decreased the period for review to "forty-five" from "sixty" days.

Subsec. (d). Pub. L. 95-402(a)(3), added subsec. (d).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

PART B—FOSTER GRANDPARENT PROGRAM AND OLDER AMERICAN COMMUNITY SERVICE PROGRAMS

§ 5011. Grants and contracts for individual service projects

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Domestic Volunteer Service; allowances, stipends, and other support

The Director, in accordance with regulations he shall prescribe, may provide to persons serving as volunteers under this part, such allowances, stipends, and other support as he determines are necessary to carry out the purpose of this part. Any stipend or allowance provided under this subsection shall not be less than $2 per hour, except that (1) no increase in the stipend or allowance shall be made pursuant to this sentence unless the funds appropriated for carrying out this part are sufficient to maintain for the fiscal year in question a number of participants to serve under this part at least equal to the number of such participants serving during the preceding fiscal year, and (2) in the event that sufficient appropriations for any fiscal year are not available to increase any such stipend or allowance provided to $2 per hour, the Director shall increase the stipend or allowance to such amount as appropriations for such year permit consistent with clause (1) of this exception.

(f) Additional definitions

For the purposes of this part, the terms "low-income person" and "person of low income" mean (1) any person whose income is not more than 125 percent of the poverty line set forth in section 2971d of this title; and (2) any person considered a poor or low-income person under section 5061(4) of this title, with special consideration for participation in projects under this part provided to persons described in clause (2).

(As amended Pub. L. 95-478, title IV, § 402(b), Oct. 18, 1978, 92 Stat. 1557.)

AMENDMENTS

1978—Subsecs. (e), (f). Pub. L. 95-478 added subsecs. (e) and (f).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 5012. Conditions of grants and contracts; "community action agency" defined

(a)(1) In carrying out this part, the Director shall insure that individuals receiving assistance in any project are older persons of low income who are no longer in the regular work force.

(2)(A) The Director shall award a grant or contract under this part for a project to be carried out over an area in a State more comprehensive than one community, to the State agency established or designated pursuant to section 3025(a)(1) of this title, unless (i) the State has not established or designated such an agency; or (ii) such agency has been afforded at least 45 days to (I) review the project application made by a prospective grantee or contractor other than such agency for a project to be carried out in such State; and (II) make recommendations thereon. In the event that such an established or designated State agency is not awarded the grant or contract, any application approved for a project in such State shall contain or be supported by satisfactory assurances that the project has been developed, and will, to the extent feasible, be conducted, in consultation with, or with the participation of, such agency.

(B) The Director shall award a grant or contract under this part for a project to be carried out entirely in a community served by a community action agency, to such agency unless such agency and the State agency established or designated pursuant to section 3025(a)(1) of this title have been afforded at least 45 days to (i) review the project application made by a prospective grantee or contractor other than either such agency for a project to be carried out in such community; and (ii) make recommendations thereon. In the event that such a community action agency or such an established or designated State agency is not awarded the grant or contract, any application approved for a project to be carried out entirely in such community shall contain or be supported by satisfactory assurances that the project has been developed, and will, to the extent feasible, be conducted, in consultation with, or with the participation of, such community action agency.

(3) Repealed. Pub. L. 95-478, title IV, § 402(c), Oct. 18, 1978, 92 Stat. 1557

[*See main edition for text of* (*b*)]

(As amended Pub. L. 95-478, title IV, § 402(c), Oct. 18, 1978, 92 Stat. 1557.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-478 incorporated existing text in provisions designated as subpar. (A), deleted provision for carrying out projects throughout the State, and prohibits awards of grants or contracts where there is no State agency either established or designated or the State agency has the application under review before making recommendations concerning the project, and added subpar. (B) covering subject matter of former par. (3).

Subsec. (a)(3). Pub. L. 95-478 struck out par. (3) provisions for the foster grandparent program and older American community service program for projects to be carried out entirely in a community served by a community action agency, now covered in par. (2)(B).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

PART C—GENERAL PROVISIONS

§ 5021. Coordination with other Federal programs

In carrying out this subchapter, the Director shall consult with the Community Services Administration, the Departments of Labor and Health, Education, and Welfare, and any other Federal agencies administering relevant programs with a view to achieving optimal coordination with such other programs, and shall promote the coordination of projects under this subchapter with other public or private programs or projects carried out at State and local levels. Such Federal agencies shall cooperate with the Director in disseminating information about the availability of assistance under this subchapter and in promoting the identification and interest of low-income and other older persons whose services may be utilized in projects under this subchapter.

(As amended Pub. L. 96-143, § 18(b), Dec. 13, 1979, 93 Stat. 1083.)

AMENDMENTS

1979—Pub. L. 96-143 substituted "Community Services Administration" for "Office of Economic Opportunity".

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

SUBCHAPTER III—NATIONAL VOLUNTEER PROGRAMS TO ASSIST SMALL BUSINESSES AND PROMOTE VOLUNTEER SERVICE BY PERSONS WITH BUSINESS EXPERIENCE

§§ 5031, 5032. Repealed. Pub. L. 95-510, § 102(a), Oct. 24, 1978, 92 Stat. 1781

Section 5031, Pub. L. 93-113, title III, § 301, Oct. 1, 1973, 87 Stat. 404, set out the Congressional statement of purpose in enacting this subchapter.

Section 5032, Pub. L. 93-113, title III, § 302, Oct. 1, 1973, 87 Stat. 404, related to the authority of the Director to establish, coordinate and operate national volunteer programs. See section 637 of Title 15, Commerce and Trade.

EFFECTIVE DATE OF REPEAL

Repeal of sections effective Oct. 1, 1979, see section 105 of Pub. L. 95-510, set out as an Effective Date of 1978 Amendment note under section 634 of Title 15, Commerce and Trade.

SUBCHAPTER IV—ADMINISTRATION AND COORDINATION

§ 5041. ACTION Agency; establishment; officials of ACTION Agency: Director, Deputy Director, Associate Director and Deputy Associate Directors for Domestic and Anti-Poverty Operations, Associate Director for International Operations, and Assistant Directors; appointment, compensation, and functions

PEACE CORPS ESTABLISHED AS AGENCY WITHIN ACTION AGENCY

For establishment of the Peace Corps as an agency within ACTION Agency, see section 1-101 of Ex. Ord. No. 12137, May 16, 1979, 44 F.R. 29023, eff. May 16, 1979, set out as a note under section 2501 of Title 22, Foreign Relations and Intercourse.

COORDINATION BETWEEN DIRECTORS OF PEACE CORPS AND ACTION AGENCY

For requirement that the Directors of ACTION Agency and Peace Corps consult and coordinate to assure that the functions of the Director of the Peace Corps under the Peace Corps Act, 22 U.S.C. 2501 et seq., are carried out consistently with the functions of the Director of ACTION Agency under this chapter, see section 1-112 of Ex. Ord. No. 12137, May 16, 1979, 44 F.R. 29023, eff. May 16, 1979, set out as a note under section 2501 of Title 22, Foreign Relations and Intercourse.

§ 5042. Authority of Director

ADDITIONAL FUNCTIONS OF DIRECTOR

For additional functions of the Director of ACTION Agency relating to mitigating community problems, fostering voluntary action, initiating proposals for more effective application of voluntary action in federal programs, and making grants for voluntary action programs, see section 1-601 of Ex. Ord. No. 12137, May 16, 1979, 44 F.R. 29023, eff. May 16, 1979, set out as a note under section 2501 of Title 22, Foreign Relations and Intercourse.

§ 5043. Political activities

(a) Funds use prohibition; "election" and "Federal office" defined

No part of any funds appropriated to carry out this chapter, or any program administered by the ACTION Agency, shall be used to finance, directly or indirectly, any activity designed to influence the outcome of any election to Federal office, or the outcome of any election to any State or local public office, or any voter registration activity, or to pay the salary of any officer or employee of the ACTION Agency, who, in his official capacity as such an officer or employee, engages in any such activity. As used in this section, the term "election" (when referring to an election for Federal office) has the same meaning given such term by section 431(1) of title 2, and the term "Federal office" has the same meaning given such term by section 431(3) of title 2.

(b) Prohibition on program identification

(1) Programs assisted under this chapter shall not be carried on in a manner involving the use

of funds, the provision of services, or the employment or assignment of personnel in a manner supporting or resulting in the identification of such programs with (A) any partisan or non-partisan political activity or any other political activity associated with a candidate, or contending faction or group, in an election for public or party office, (B) any activity to provide voters or prospective voters with transportation to the polls or similar assistance in connection with any such election, or (C) any voter registration activity.

(2) No funds appropriated to carry out this chapter shall be used by any program assisted under this chapter in any activity for the purpose of influencing the passage or defeat of legislation or proposals by initiative petition, except—

(A) in any case in which a legislative body, a committee of a legislative body, or a member of a legislative body requests any volunteer in, or employee of, such a program to draft, review, or testify regarding measures or to make representations to such legislative body, committee, or member; or

(B) in connection with an authorization or appropriations measure directly affecting the operation of the program.

(c) Enforcement; rules and regulations

The Director, after consultation with the Office of Personnel Management, shall issue rules and regulations to provide for the enforcement of this section, which shall include provisions for summary suspension of assistance for no more than thirty days until notice and an opportunity to be heard can be provided or other action necessary to permit enforcement on an emergency basis.

(As amended Pub. L. 96-143, §§ 8, 18(c)(1), Dec. 13, 1979, 93 Stat. 1077, 1083; Pub. L. 96-187, title I, § 112(e)(1), Jan. 8, 1980, 93 Stat. 1366.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-187 substituted "section 431(1) of title 2" and "section 431(3) of title 2" for "section 431(a) of title 2" and "section 431(c) of title 2", respectively.

Pub. L. 96-143, § 8(a), inserted "or the outcome of any election to any State or local public office," following "Federal office," and "(when referring to an election for Federal office)" preceding "has the same meaning".

Subsec. (b). Pub. L. 96-143, § 8(b), designated existing provisions as par. (1), cls. (1) to (3) thereof as cls. (A) to (C), and last sentence thereof as subsec. (c) and added par. (2).

Subsec. (c). Pub. L. 96-143, §§ 8(b)(3), 18(c)(1), designated as subsec. (c) provisions formerly contained in last sentence of subsec. (b) and, as so designated, substituted "Office of Personnel Management" for "Civil Service Commission".

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-187 effective on Jan. 8, 1980, see section 301(a) of Pub. L. 96-187, set out as an Effective Date of 1980 Amendment note under section 431 of Title 2, The Congress.

§ 5044. Special limitations

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Government assistance; eligibility; special limitations

(1) Notwithstanding any other provision of law except as may be provided expressly in limitation of this subsection, payments to volunteers under this chapter shall not in any way reduce or eliminate the level of or eligibility for assistance or services any such volunteers may be receiving under any governmental program, except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 (29 U.S.C. 201 et seq.) or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater.

(2) Notwithstanding any other provision of law, a person enrolled for full-time service as a volunteer under subchapter I of this chapter who was otherwise entitled to receive assistance or services under any governmental program prior to such volunteer's enrollment shall not be denied such assistance or services because of such volunteer's failure or refusal to register for, seek, or accept employment or training during the period of such service.

(As amended Pub. L. 96-143, § 9, Dec. 13, 1979, 93 Stat. 1077.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (g)(1), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

AMENDMENTS

1979—Subsec. (g). Pub. L. 96-143 designated existing provisions as par. (1) and, in par. (1) as so designated, inserted ", except that this paragraph shall not apply in the case of such payments when the Director determines that the value of all such payments, adjusted to reflect the number of hours such volunteers are serving, is equivalent to or greater than the minimum wage then in effect under the Fair Labor Standards Act of 1938 or the minimum wage, under the laws of the State where such volunteers are serving, whichever is the greater" following "governmental program" and added par. (2).

§ 5050. Coordination with other programs

The Director shall take necessary steps to coordinate volunteer programs authorized under this chapter with one another, with community action programs, and with other related Federal, State, and local programs. The Director shall also consult with the heads of other Federal, State, and local agencies responsible for programs related to the purposes of this chapter with a view to encouraging greater use of volunteer services in those programs and establishing in connection with them systematic procedures for the recruitment, referral, or necessary preservice orientation or training of volunteers serving pursuant to this chapter. The Director, in consultation with the Director of the Office of Personnel Management and the Secretaries of Labor, Commerce, and the Treasury and officials of other appropriate departments and agencies, shall take all appropriate steps to encourage State and local governments, charitable and service organizations, and private employers (1) to take into account experience in volunteer work in the consideration of applicants for employment; and (2) to make provisions for the listing and description of volunteer work on all employment application forms.

(As amended Pub. L. 96-143, § 10, Dec. 13, 1979, 93 Stat. 1078.)

Amendments

1979—Pub. L. 96-143 added provisions requiring the Director in consultation with the Director of the Office of Personnel Management and the Secretaries of Labor, Commerce, and the Treasury and officials of other appropriate departments and agencies to take steps to encourage employers to review the consideration they give volunteer service in the information requested on their standard application forms.

§ 5054. Distribution of benefits between rural and urban areas

Rural Program Report

Section 16 of Pub. L. 96-143 provided that: "Not later than February 1, 1980, the Director of the ACTION Agency shall submit to the appropriate committees of the Congress a report specifying the special needs and circumstances to be addressed in designing programs under the Domestic Volunteer Service Act of 1973 [this chapter] for implementation in rural areas. Such report shall include a detailed statement of the manner in which the Director intends to address such needs and circumstances, together with a timetable for designing and implementing such programs."

§ 5055. Application of Federal law

[*See main edition for text of* (*a*)]

(b) Specific Federal legislation

Individuals enrolled as volunteers for periods of full-time service, or, as the Director deems appropriate in accordance with regulations, for periods of part-time service of not less than 20 hours per week for not less than 26 consecutive weeks, under subchapter I of this chapter shall, with respect to such service or training, (1) for the purposes of subchapter III of chapter 73 of title 5, be deemed persons employed in the executive branch of the Federal Government, (2) for the purposes of the Internal Revenue Code of 1954 (26 U.S.C. 1 et seq.) and title II of the Social Security Act (42 U.S.C. 401 et seq.), be deemed employees of the United States, and any service performed by an individual as a volunteer (including training) shall be deemed to be performed in the employ of the United States, (3) for the purposes of the Federal Tort Claims provisions of title 28, be deemed employees of the United States, (4) for the purposes of subchapter I of chapter 81 of title 5 (relative to compensation to Federal employees for work injuries), shall be deemed civil employees of the United States within the meaning of the term "employee" as defined in section 8101 of title 5, and the provisions of that subchapter shall apply except as follows: (A) in computing compensation benefits for disability or death, the annual rate of pay of a volunteer enrolled for a period of full-time service under such subchapter I of this chapter shall be deemed to be that received under the entrance salary for a grade GS-7 employee, and the annual rate of pay of a volunteer enrolled for a period of part-time service under such subchapter I of this chapter shall be deemed to be such entry salary or an appropriate portion thereof as determined by the Director, and subsection (a) and (b) of section 8113 of title 5 shall apply, and (B) compensation for disability shall not begin to accrue until the day following the date on which the injured volunteer is terminated, and (5) be deemed employees of the United States for the purposes of section 5584 of title 5 (and stipends and allowances paid under this chapter shall be considered as pay for such purposes).

(c) Subsequent government employment

Any period of service of a volunteer enrolled in a program for a period of service of at least one year under part A of subchapter I of this chapter, and any period of full-time service of a volunteer enrolled in a program for a period of service of at least one year under part B or C of subchapter I of this chapter, shall be credited in connection with subsequent employment in the same manner as a like period of civilian employment by the United States Government—

[*See main edition for text of* (*1*)]

(2) except as otherwise determined by the President, for the purposes of determining seniority, reduction in force, and layoff rights, leave entitlement, and other rights and privileges based upon length of service under the laws administered by the Office of Personnel Management, the Foreign Service Act of 1946 [22 U.S.C. 801 et seq.], and every other Act establishing or governing terms and conditions of service of civilian employees of the United States Government: *Provided,* That service of a volunteer shall not be credited toward completion of any probationary or trial period or completion of any service requirement for career appointment.

[*See main edition for text of* (*d*) *and* (*e*)]

(f) Civil actions

(1) The remedy—

(A) against the United States provided by sections 1346(b) and 2672 of title 28 or

(B) through proceedings for compensation or other benefits from the United States as provided by any other law, where the availability of such benefits precludes a remedy under section 1346(b) or 2672 of such title 28,

for damages for personal injury, including death, allegedly arising from malpractice or negligence of a physician, dentist, podiatrist, optometrist, nurse, physician assistant, expanded-function dental auxiliary, pharmacist, or paramedical (for example, medical and dental technicians, nursing assistants, and therapists) or other supporting personnel in furnishing medical care or treatment while in the exercise of such person's duties as a volunteer enrolled under subchapter I of this chapter shall be exclusive of any other civil action or proceeding by reason of the same subject matter against such person (or such person's estate) whose action or omission gave rise to such claim.

(2) The Attorney General of the United States shall defend any civil action or proceeding brought in any court against any person referred to in paragraph (1) of this subsection (or such person's estate) for any such damage or injury. Any such person against whom such civil action or proceeding is brought shall deliver, within such time after date of service or knowledge of service as determined by the Attorney General, all process served upon such person or an attested true copy thereof to such person's immediate supervisor or to whomever is designated by the Director to receive such papers, and such person shall promptly furnish copies of the pleading and process therein to the United States attorney for the district embracing the place wherein the proceeding is brought and to the Attorney General.

(3) Upon a certification by the Attorney General that the defendant was acting in the scope of such person's volunteer assignment at the time of the incident out of which the suit arose, any such civil action or proceeding commenced in a State court shall be removed without bond at any time before trial by the Attorney General to the district court of the United States of the district and division embracing the place wherein it is pending and the proceeding deemed a tort action brought against the United States under the provisions of title 28 and all references thereto. After removal the United States shall have available all defenses to which it would have been entitled if the action had originally been commenced against the United States. Should a district court of the United States determine on a hearing on a motion to remand held before a trial on the merits that the volunteer whose act or omission gave rise to the suit was not acting within the scope of such person's volunteer assignment, the case shall be remanded to the State court.

(4) The Attorney General may compromise or settle any claim asserted in such civil action or proceeding in the manner provided in section 2677 of title 28 and with the same effect.

(As amended Pub. L. 96-143, §§ 11, 18(c)(2), Dec. 13, 1979, 93 Stat. 1078, 1083.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b)(5), in the original read "this Act" meaning Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 396, as amended, known as the Domestic Volunteer Service Act of 1973, which enacted this chapter, amended section 3067 of this title and section 8332 of Title 5, Government Organization and Employees, repealed sections 2991, 2992 to 2992b, 2993 to 2993b, 2994 to 2994d, and 3044 to 3044e of this title, and enacted provisions set out as notes under sections 4951 and 5041 of this title.

GS-7, referred to in subsec. (b)(4), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-143, § 11(a), substituted in provisions preceding cl. (1) "as volunteers for periods of full-time service, or, as the Director deems appropriate in accordance with regulations, for periods of part-time service of not less than 20 hours per week for not less than 26 consecutive weeks, under subchapter I of this chapter" for "in programs under subchapter I of this chapter for periods of service of at least one year" and in cl. (4)(A) "the annual rate of pay of a volunteer enrolled for a period of full-time service under such subchapter I of this chapter shall be deemed to be that received under the entrance salary for a grade GS-7 employee, and the annual rate of pay of a volunteer enrolled for a period of part-time service under such subchapter I of this chapter shall be deemed to be such entry salary or an appropriate portion thereof as determined by the Director" for "the monthly pay of a volunteer shall be deemed that received under the entrance salary for a grade GS-7 employee" and added cl. (5).

Subsec. (c)(2). Pub. L. 96-143, § 18(c)(2), substituted "Office of Personnel Management" for "Civil Service Commission".

Subsec. (f). Pub. L. 96-143, § 11(b), added subsec. (f).

EX. ORD. NO. 11561. DELEGATION OF AUTHORITY

Ex. Ord. No. 11561, Sept. 25, 1970, 35 F.R.: 14981, as amended by Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055.

By virtue of the authority vested in me by section 301 of title 3 of the United States Code, and as President of the United States, the authority conferred upon the President by that portion of section 833(c)(2) of the Economic Opportunity Act of 1964 (42 U.S.C. 2994b(c)(2)) [former section 2994b(c)(2) of this title, now subsec. (c)(2) of this section] which reads "except as otherwise determined by the President" is hereby delegated as follows: (1) To the Office of Personnel Management to the extent that such authority is with respect to the laws administered by the Commission, and (2) to the Secretary of State to the extent that such authority is with respect to the Foreign Service Act of 1946, as amended [section 801 et seq. of Title 22, Foreign Relations and Intercourse].

§ 5057. Nondiscrimination

(a) The Director shall not provide financial assistance for any program under this chapter unless the grant, contract, or agreement with respect to such program specifically provides that no person with responsibilities in the operation of such program will discriminate with respect to any such program because of race, creed, belief, color, national origin, sex, age, handicap, or political affiliation. For purposes of this subsection, and for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (Public Law 94-135, title III; 42 U.S.C. 6101 et seq.), any program, project, or activity to which volunteers are assigned under this chapter shall be deemed to be receiving Federal financial assistance.

[*See main edition for text of* (b)]

(c)(1) The Director shall apply the nondiscrimination policies and authorities set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), in title V of the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.), and in the Age Discrimination Act of 1975 (Public Law 94-135, title III; 42 U.S.C. 6101 et seq.) to applicants for enrollment for service as volunteers, and to volunteers serving, under this chapter and the Peace Corps Act (22 U.S.C. 2501 et seq.). Any remedies available to individuals under such laws, other than the right of appeal to the Civil Service Commission authorized by section 717 of the Civil Rights Act of 1964 [42

U.S.C. 2000e-16], and transferred to the Equal Employment Opportunity Commission by Reorganization Plan Number 1 of 1978, shall be available to such applicants or volunteers.

(2) Not later than 90 days after December 13, 1979, the Director, after consultation with the Equal Employment Opportunity Commission with regard to the application of the policies set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16) and with the Interagency Coordinating Council, established by section 507 of the Rehabilitation Act of 1973 [29 U.S.C. 794c], and the Interagency Committee on Handicapped Employees, established by section 501(a) of the Rehabilitation Act of 1973 (29 U.S.C. 791(a)), with regard to the application of the policies set forth in title V of the Rehabilitation Act of 1973 (29 U.S.C. 791 et seq.), and, not later than 90 days after the Secretary of Health, Education, and Welfare or the Secretary of Health and Human Resources,[1] as the case may be, publishes final general regulations to carry out the Age Discrimination Act of 1975 (Public Law 94-135, title III; 42 U.S.C. 6101 et seq.), and after consultation with the Secretary with regard to the application of the policies set forth in such Act, shall prescribe regulations establishing the procedures for the application of such policies and the provision of such remedies so as to promote the enrollment and service of persons as volunteers without regard to the discriminatory factors described in such laws.

(As amended Pub. L. 96-143, § 12, Dec. 13, 1979, 93 Stat. 1079.)

References in Text

The Civil Rights Act of 1964, referred to in subsec. (a), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended. Title VI of the Civil Rights Act of 1964 is classified generally to subchapter V (§ 2000d et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

The Age Discrimination Act of 1975, referred to in subsec. (a) and (c), is Pub. L. 94-135, title III, Nov. 28, 1975, 78 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (c), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended. Title V of the Rehabilitation Act of 1973 is classified generally to subchapter V (§ 790 et seq.) of chapter 16 of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

The Peace Corps Act, referred to in subsec. (c)(1), is Pub. L. 87-293, Sept. 22, 1961, 75 Stat. 612, as amended, which is classified principally to chapter 34 (§ 2501 et seq.) of Title 22, Foreign Relations and Intercourse. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 22 and Tables.

Reorganization Plan Number 1 of 1978, referred to in subsec. (c)(1), is set out in the Appendix to Title 5, Government Organization and Employees.

Amendments

1979—Subsec. (a). Pub. L. 96-143, § 12(a), inserted "handicap," following "age," and added provisions requiring that for purposes of this subsection, and for purposes of title VI of the Civil Rights Act of 1964, section 794 of title 29, and the Age Discrimination Act of 1975, any program, project, or activity to which volunteers are assigned under this chapter be deemed to be receiving Federal financial assistance.

Subsec. (c). Pub. L. 96-143, § 12(b), added subsec. (c).

§ 5058. Eligibility for other benefits

Notwithstanding any other provision of law, no payment for supportive services or reimbursement of out-of-pocket expenses made to persons serving pursuant to subchapter II of this chapter shall be subject to any tax or charge or be treated as wages or compensation for the purposes of unemployment, temporary disability, retirement, public assistance, or similar benefit payments, or minimum wage laws. This section shall become effective with respect to all payments made after October 1, 1973.

(As amended Pub. L. 96-143, § 18(a)(2), Dec. 13, 1979, 93 Stat. 1083.)

Amendments

1979—Pub. L. 96-143 substituted "subchapter II of this chapter" for "subchapters II and III of this chapter".

§ 5060. Requirements for prescribing regulations

(a) Definitions

For purposes of this section—

(1) the term "regulation" means any rule, regulation, guideline, interpretation, order, or requirement of general applicability prescribed by the Director pursuant to this chapter; and

(2) the term "Committees" means the Committee on Education and Labor of the House of Representatives and the Committee on Labor and Human Resources of the Senate.

(b) Citations

Regulations prescribed by the Director or by any other officer of the ACTION Agency, in connection with, or affecting, the administration of any program carried out under this chapter shall contain, immediately following each substantive provision of such regulations, citations to the particular section or sections of statutory law or other legal authority upon which such provision is based.

(c) Publication in Federal Register; effective date; opportunity to comment

(1) Except as provided in paragraph (2)(B) of this subsection, no proposed regulation prescribed pursuant to this chapter for the administration of any program carried out under this chapter may take effect until 30 calendar days after it is published in the Federal Register.

(2)(A) During the 30-day period before the date upon which such regulation is to be effective, the Director shall, in accordance with the provisions of section 553 of title 5, offer any interested party an opportunity to make comment upon, and take exception to, such regulation and shall reconsider any such regulation upon which comment is made or to which exception is taken.

(B) If the Director determines that the 30-day requirement in paragraph (1) of this subsection would cause undue delay in the implementation of a regulation, thereby causing substantial hardship for the intended beneficiaries of any program carried out under this chapter, the Director may waive the application of such requirement and shall immediately submit a notice of such determination and waiver, including a statement of the reasons therefor, to the Committees.

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[1] So in original. Probably should be "Services,".

(d) Transmission of copy of regulation to Congress; hardship exception

Concurrently with the publication in the Federal Register of any final regulation, a copy of such final regulation shall be transmitted to the Speaker of the House of Representatives and the President of the Senate. Except as is provided in the following sentence, no such final regulation may take effect until 45 calendar days after such transmission. If the Director determines that such 45-day requirement would cause undue delay in the implementation of the regulation, thereby causing substantial hardship for the intended beneficiaries of any program carried out under this chapter, the Director may waive the application of such requirement and shall promptly submit a notice of such determination and waiver, including a statement of the reasons therefor, to the Committees.

(e) Schedule of final regulations

Not later than 60 days after the date of the enactment of any Act affecting the administration of any program carried out under this chapter, the Director shall submit to the Committees a schedule in accordance with which the Director has planned to prescribe final regulations implementing such Act or part of such Act. Such schedule shall provide that all such final regulations shall be prescribed not later than 180 days after the submission of such schedule. Except as is provided in the following sentence, all such final regulations shall be prescribed in accordance with such schedule. If the Director determines that, due to circumstances unforeseen at the time of the submission of any such schedule, the schedule submitted pursuant to this subsection cannot be met, the Director shall submit a notice of such determination, including a statement of the reasons therefor, to the Committees and shall submit a new schedule which shall then be considered, for the purposes of this subsection, as the schedule originally submitted in connection with the enactment of the Act involved.

(As amended Pub. L. 96-143, § 13(a), Dec. 13, 1979, 93 Stat. 1080.)

AMENDMENTS

1979—Pub. L. 96-143 substituted provisions relating to requirements for prescribing regulations for provisions requiring all rules, regulations, guidelines, instructions, and application forms published or promulgated pursuant to this chapter to be published in the Federal Register at least 30 days prior to their effective date.

§ 5061. Definitions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5011 of this title.

§ 5063. Reduction of paperwork

In order to reduce unnecessary, duplicative, or disruptive demands for information, the Director, in consultation with other appropriate agencies and organizations, shall continually review and evaluate all requests for information made under this chapter and take such action as may be necessary to reduce the paperwork required under this chapter. The Director shall request only such information as the Director deems essential to carry out the purposes and provisions of this chapter.

(Pub. L. 93-113, title IV, § 423, as added Pub. L. 96-143, § 14(a), Dec. 13, 1979, 93 Stat. 1081.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act" meaning Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 396, as amended, known as the Domestic Volunteer Service Act of 1973, which enacted this chapter, amended section 3067 of this title and section 8332 of Title 5, Government Organization and Employees, repealed sections 2991, 2992 to 2992b, 2993 to 2993b, 2994 to 2994d, and 3044 to 3044e of this title, and enacted provisions set out as notes under sections 4951 and 5041 of this title.

§ 5064. Review of project renewals

If the executive authority of any State or local government submits to the Director, not later than 30 days before the expiration of any contract or grant to carry out any project under this chapter, a statement which objects to the renewal of such contract or grant, then the Director shall (1) review such statement and take it into account in determining whether to renew such contract or grant; and (2) submit to such executive authority a written statement of reasons regarding the Director's determination with respect to such renewal and specifically with respect to any objection so submitted.

(Pub. L. 93-113, title IV, § 424, as added Pub. L. 96-143, § 14(a), Dec. 13, 1979, 93 Stat. 1081.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act" meaning Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 396, as amended, known as the Domestic Volunteer Service Act of 1973, which enacted this chapter, amended section 3067 of this title and section 8332 of Title 5, Government Organization and Employees, repealed sections 2991, 2992 to 2992b, 2993 to 2993b, 2994 to 2994d, and 3044 to 3044e of this title, and enacted provisions set out as notes under sections 4951 and 5041 of this title.

SUBCHAPTER V—AUTHORIZATION OF APPROPRIATIONS

§ 5081. National Volunteer Antipoverty Programs

(a) There are authorized to be appropriated $37,600,000 for the fiscal year ending June 30, 1974, and such sums as may be necessary each for the fiscal years ending June 30, 1975, June 30, 1976, September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, and September 30, 1981, for the purpose of carrying out subchapter I of this chapter. In each such year, of the sums appropriated pursuant to this section for the purpose of carrying out subchapter I of this chapter not less than $29,600,000 shall be expended on programs designed to eliminate poverty and poverty-related human, social, and environmental problems. Of this amount not less than $22,300,000 shall be expended on programs authorized under part A of subchapter I of this chapter in each such fiscal year.

(b) Any sums authorized to be appropriated for subchapter I of this chapter in excess of $37,600,000 shall be reflected in a commensurate increase in the sums to be made available for part A of such subchapter.

(c)(1) Of the funds appropriated for each of the fiscal years 1980 and 1981 for the purpose of carrying out subchapter I of this title (A) not less than $28,000,000 shall first be available for carrying out the VISTA program under part A of such subchapter, and (B) of the funds appropriated for each such fiscal year for the purpose of carrying out such subchapter which are in excess of $28,000,000 (i) not less than $2,300,000 for fiscal year 1980 and not less than $1,600,000 for fiscal year 1981 shall be available for carrying out the University Year for ACTION program under part B of such subchapter, and (ii) not less than $500,000 for each such fiscal year shall be available for carrying out service-learning programs under section 4974 of this title.

(2) Of the funds appropriated for each of the fiscal years 1980 and 1981 for the purpose of carrying out part C of subchapter I of this chapter which are in excess of $2,500,000 but not in excess of $10,000,000, not less than 50 per centum for each such fiscal year shall be available for carrying out the fixed-income counseling and Helping Hand programs under section 4992 of this title.

(As amended Pub. L. 96-143, § 15(a), (b), Dec. 13, 1979, 93 Stat. 1082.)

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-143, § 15(a), inserted "September 30, 1979, September 30, 1980, and September 30, 1981," following "September 30, 1978," and substituted "this section for the purpose of carrying out subchapter I of this chapter" for "this subchapter".

Subsec. (c). Pub. L. 96-143, § 15(b), added subsec. (c).

§ 5082. National Older Americans Volunteer Programs

(a) There are authorized to be appropriated $17,500,000 for the fiscal year ending June 30, 1974, $20,000,000 each for the fiscal year ending June 30, 1975, and for the fiscal year ending June 30, 1976, respectively, $6,000,000 for the period beginning July 1, 1976, and ending September 30, 1976, $22,000,000 for each of the fiscal years ending September 30, 1977, and September 30, 1978, $25,000,000 for the fiscal year ending September 30, 1979, $30,000,000 for the fiscal year ending September 30, 1980, and $35,000,000 for the fiscal year ending September 30, 1981, to be used for the purpose of carrying out programs under part A of subchapter II of this chapter.

[*See main edition for text of* (*b*)(*1*)]

(2) If the sums authorized to be appropriated under paragraph (1) of this subsection are not appropriated and made available in full for each such fiscal year, then such sums as are appropriated and made available for each such fiscal year shall be allocated so that—

[*See main edition for text of* (*A*) *and* (*B*)]

There are further authorized to be appropriated $55,000,000 for the fiscal year ending September 30, 1979, $62,500,000 for the fiscal year ending September 30, 1980, and $70,000,000 for the fiscal year ending September 30, 1981, for the purpose of carrying out programs under part B of such subchapter.

(As amended Pub. L. 95-478, title IV, § 402(d), Oct. 18, 1978, 92 Stat. 1558.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-478, § 402(d)(1), authorized appropriations of $25,000,000; $30,000,000; and $35,000,000 for fiscal years ending Sept. 30, 1979, through 1981.

Subsec. (b)(2). Pub. L. 95-478, § 402(d)(2), authorized appropriations of $55,000,000; $62,500,000; and $70,000,000 for fiscal years ending Sept. 30, 1979, through 1981, for carrying out part B programs of the subchapter.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 5083. Repealed. Pub. L. 95-510, § 102(b), Oct. 24, 1978, 92 Stat. 1781

Section, Pub. L. 93-113, title V, § 503, Oct. 1, 1973, 87 Stat. 415; Pub. L. 94-293, § 6(b), May 27, 1976, 90 Stat. 526, authorized appropriations for national volunteer programs to assist small businesses and promote volunteer service by persons with business experience.

EFFECTIVE DATE OF REPEAL

Repeal of section effective Oct. 1, 1979, see section 105 of Pub. L. 95-510, set out as an Effective Date of 1978 Amendment note under section 634 of Title 15, Commerce and Trade.

§ 5084. Administration and coordination

There are authorized to be appropriated each for the fiscal years ending June 30, 1974, June 30, 1975, June 30, 1976, September 30, 1977, September 30, 1978, September 30, 1979, September 30, 1980, and September 30, 1981, respectively, such sums as may be necessary for the administration of this chapter as authorized in subchapter IV of this chapter.

(As amended Pub. L. 96-143, § 15(c), Dec. 13, 1979, 93 Stat. 1082.)

AMENDMENTS

1979—Pub. L. 96-143 inserted "September 30, 1979, September 30, 1980, and September 30, 1981," following "September 30, 1978,".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 20 section 3142.

CHAPTER 67—CHILD ABUSE PREVENTION AND TREATMENT AND ADOPTION REFORM

SUBCHAPTER I—CHILD ABUSE PREVENTION AND TREATMENT

SUBCHAPTER II—ADOPTION OPPORTUNITIES [NEW]

Sec.
5111. Congressional findings and declaration of purpose.
5112. Model adoption legislation and procedures.
  (a) Issuance and publication of proposals based on recommendations of panel; comments by interested individuals, etc. and consultations; issuance and publication of final version; prohibition against conflict with interstate compacts.
  (b) Panel; appointment, membership, functions, etc.
  (c) Encouragement and facilitation of enactment of comprehensive adoption assistance legislation and establishment of model provisions.
5113. Information and service functions by appropriate administrative arrangement; establishment in Department of Health, Education, and Welfare; implementation authorities.
5114. Study and report of unlicensed or unregulated adoption placements.
5115. Authorization of appropriations.

SUBCHAPTER I—CHILD ABUSE PREVENTION AND TREATMENT

§ 5101. National Center on Child Abuse and Neglect

(a) Establishment

The Secretary of Health, Education, and Welfare (hereinafter referred to in this subchapter as the "Secretary") shall establish an office to be known as the National Center on Child Abuse and Neglect (hereinafter referred to in this subchapter as the "Center").

(b) Functions

The Secretary, through the Center, shall—

(1) Annual research summary

compile, analyze, publish, and disseminate a summary annually of recently conducted and currently conducted research on child abuse and neglect;

(2) Information clearinghouse

develop and maintain an information clearinghouse on all programs, including private programs, showing promise of success, for the prevention, identification, and treatment of child abuse and neglect;

(3) Training materials for personnel.

compile, publish, and disseminate training materials for personnel who are engaged or intend to engage in the prevention, identification, and treatment of child abuse and neglect;

(4) Technical assistance

provide technical assistance (directly or through grant or contract) to public and nonprofit private agencies and organizations to assist them in planning, improving, developing, and carrying out programs and activities relating to the prevention, identification, and treatment of child abuse and neglect;

(5) Research into causes, prevention, identification, and treatment

conduct research into the causes of child abuse and neglect, and into the prevention, identification, and treatment thereof;

(6) Study

make a complete and full study and investigation of the national incidence of child abuse and neglect, including a determination of the extent to which incidents of child abuse and neglect are increasing in number or severity; and

(7) Plan

in consultation with Federal agencies serving on the Advisory Board on Child Abuse and Neglect (established by section 5105 of this title), prepare a comprehensive plan for seeking to bring about maximum coordination of the goals, objectives, and activities of all agencies and organizations which have responsibilities for programs and activities related to child abuse and neglect, and submit such plan to such Advisory Board not later than twelve months after April 24, 1978.

The Secretary shall establish research priorities for making grants or contracts under clause (5) of this subsection and, not less than sixty days before establishing such priorities, shall publish in the Federal Register for public comment a statement of such proposed priorities.

(c) Grant and contract authority

The Secretary may carry out his functions under subsection (b) of this section either directly or by way of grant or contract. Grants may be made under subsection (b)(5) of this section for periods of not more than three years. Any such grant shall be reviewed at least annually by the Secretary, utilizing peer review mechanisms to assure the quality and progress of research conducted under such grant.

(d) Staff and resource availability to Center

The Secretary shall make available to the Center such staff and resources as are necessary for the Center to carry out effectively its functions under this subchapter.

(As amended Pub. L. 95-266, title I, § 101, Apr. 24, 1978, 92 Stat. 205.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-266, § 101(1), in cls. (1) and (3) added requirement of dissemination of annual summary and training materials, respectively, and added cl. (7).

Subsec. (c). Pub. L. 95-266, § 101(2), added provisions relating to duration and review of grants under subsec. (b)(5) of this section.

Subsec. (d). Pub. L. 95-266, § 101(3), added subsec. (d).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SHORT TITLE OF 1978 AMENDMENT

Section 1 of Pub. L. 95-266 provided: "That this Act [enacting sections 5111 to 5115 of this title and amending this section and sections 5102 to 5105 of this title] may be cited as the 'Child Abuse Prevention and Treatment and Adoption Reform Act of 1978'."

SHORT TITLE

Section 1 of Pub. L. 93-247 provided: "That this Act [this subchapter] may be cited as the "Child Abuse Prevention and Treatment Act'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5104, 5105 of this title.

§ 5102. Definitions

For purposes of this subchapter the term "child abuse and neglect" means the physical or mental injury, sexual abuse or exploitation, negligent treatment, or maltreatment of a child under the age of eighteen, or the age specified by the child protection law of the State in question, by a person who is responsible for the child's welfare under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary.

(As amended Pub. L. 95-266, title I, § 102, Apr. 24, 1978, 92 Stat. 206.)

AMENDMENTS

1978—Pub. L. 95-266 added "or exploitation" following "sexual abuse" and ", or the age specified by the child protection law of the State in question," following "eighteen".

§ 5103. Demonstration programs and projects

(a) Grants and contracts; scope of activities

The Secretary, through the Center, is authorized to make grants to, and enter into contracts with, public agencies or nonprofit private organizations (or combinations thereof) for demonstration or service programs and projects designed to prevent, identify, and treat child abuse and neglect. Grants or contracts under this subsection may be—

(1) for training programs for professional and paraprofessional personnel in the fields of medicine, law, education, social work, and other relevant fields who are engaged in, or intend to work in, the field of the prevention, identification, and treatment of child abuse and neglect; and training programs for children, and for persons responsible for the welfare of children, in methods of protecting children from child abuse and neglect;

(2) for the establishment and maintenance of centers, serving defined geographic areas, staffed by multidisciplinary teams of personnel trained in the prevention, identification, and treatment of child abuse and neglect cases, to provide a broad range of services related to child abuse and neglect, including direct support and supervision of satellite centers and attention homes, as well as providing advice and consultation to individuals, agencies, and organizations which request such services;

(3) for furnishing services of teams of professional and paraprofessional personnel who are trained in the prevention, identification, and treatment of child abuse and neglect cases, on a consulting basis to small communities where such services are not available; and

(4) for such other innovative programs and projects, including programs and projects for parent self-help, and for prevention and treatment of drug-related child abuse and neglect, that show promise of successfully preventing or treating cases of child abuse and neglect as the Secretary may approve.

(b) Grants to States; qualifications for assistance; reduction of awards; compliance of social security provisions with certain requirements

(1) The Secretary, through the Center, is authorized to make grants to the States for the purpose of assisting the States in developing, strengthening, and carrying out child abuse and neglect prevention and treatment programs.

(2) In order for a State to qualify for assistance under this subsection, such State shall—

[*See main edition for text of* (*A*) *to* (*G*)]

(H) provide that the aggregate of support for programs or projects related to child abuse and neglect assisted by State funds shall not be reduced below the level provided during fiscal year 1973, and set forth policies and procedures designed to assure that Federal funds made available under this subchapter for any fiscal year will be so used as to supplement and, to the extent practicable, increase the level of State funds which would, in the absence of Federal funds, be available for such programs and projects;

[*See main edition for text of* (*I*)]

(J) to the extent feasible, insure that parental organizations combating child abuse and neglect receive preferential treatment.

If a State has failed to obligate funds awarded under this subsection within eighteen months after the date of award, the next award under this subsection made after the expiration of such period shall be reduced by an amount equal to the amount of such unobligated funds unless the Secretary determines that extraordinary reasons justify the failure to so obligate.

[*See main edition for text of* (*3*); (*c*) *to* (*e*)]

(As amended Pub. L. 95-266, title I, § 103, Apr. 24, 1978, 92 Stat. 206.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-266, § 103(1), in the introductory material added "or service" following "demonstration", in cl. (1) struck out "the development and establishment of" preceding "training programs for professionals", and struck out material following cl. (4) which related to use of appropriated funds for carrying out provisions.

Subsec. (b)(1). Pub. L. 95-266, § 103(2)(A), substituted provisions authorizing the Secretary to make grants through the Center, for provision setting forth minimum and maximum amounts for grants in any fiscal year, and struck out "for the payment of reasonable and necessary expenses" following "to the States".

Subsec. (b)(2). Pub. L. 95-266, § 103(2)(B), added provision following cl. (J) relating to failure of a State to obligate awarded funds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5104 of this title.

§ 5104. Authorization of appropriations and funding requirements for child abuse and neglect and sexual abuse programs or projects

(a) There are hereby authorized to be appropriated for the purposes of this subchapter $15,000,000 for the fiscal year ending June 30, 1974, $20,000,000 for the fiscal year ending June 30, 1975, $25,000,000 for the fiscal year ending June 30, 1976, and for the succeeding fiscal year, $25,000,000 for the fiscal year ending September 30, 1978, $27,500,000 for the fiscal year ending September 30, 1979, and $30,000,000 each for the fiscal years ending September 30, 1980, and September 30, 1981, respectively. Of the funds appropriated for any fiscal year under this section, not less than 50 per centum shall be used for making grants or contracts under sections 5101(b)(5) of this title (relating to research) and 5103(a) of this title (relating to demonstration or service projects), giving special consideration to continued Federal funding of child abuse and neglect programs or projects (previously funded by the Department of Health, Education, and Welfare) of national or regional scope and demonstrated effectiveness, of not less than 25 per centum shall be used for making grants or contracts under section 5103(b)(1) of this title (relating to grants to States) for the fiscal years ending September 30, 1978, and September 30, 1979, respectively, and not less than 30 per centum shall be used for making grants or contracts under section 5103(b)(1) of this title (relating to grants to States) for each of the fiscal years ending September 30, 1980, and September 30, 1981, respectively.

(b)(1) There are authorized to be appropriated $3,000,000 for the fiscal year ending September 30, 1978, $3,500,000 for the fiscal year ending September 30, 1979, and $4,000,000 each for the fiscal years ending September 30, 1980, and September 30, 1981, respectively, for the purpose of making grants and entering into contracts (under sections 5101(b)(5) of this title (relating to research), 5103(a) of this title (relating to demonstration or services projects), and 5103(b)(1) of this title (relating to grants to States)) for programs and projects (including the support of not less than three Centers for the provision of treatment, and personnel training, and other related services) designed to prevent, identify, and treat sexual abuse of children, including programs involving the treatment of family units, programs for the provision of treatment and related services to persons who have committed acts of sexual abuse against children, and programs for the training of personnel.

(2) Of the sums appropriated under this subsection, not more than 10 per centum shall be expended under section 5101(b)(5) of this title (relating to research).

(3) As used in this subsection, the term—

(A) "sexual abuse" includes the obscene or pornographic photographing, filming, or depiction of children for commericial purposes, or the rape, molestation, incest, prostitution, or other such forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations prescribed by the Secretary; and

(B) "child" or "children" means any individual who has not attained the age of eighteen.

(4)(A) Nothing contained in the provisions of this subsection shall be construed as prohibiting the use of funds appropriated under subsection (a) of this section for programs and projects described in subsection (b) of this section, nor be construed to prohibit programs or projects receiving funds under subsection (a) of this section from receiving funds under subsection (b) of this section.

(B) No funds shall be obligated or expended under this subsection unless an amount at least equal to the amount of funds appropriated in fiscal year 1977 has been appropriated for programs and projects under subsection (a) of this section for any succeeding fiscal year.

(As amended Pub. L. 95-266, title I, § 104, Apr. 24, 1978, 92 Stat. 206.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-266, § 104, designated existing provisions as subsec. (a) and, as so designated, added provisions authorizing appropriations for the fiscal year ending Sept. 30, 1978, through the fiscal year ending Sept. 30, 1981, and provisions setting forth funding requirements for child abuse and neglect programs and projects.

Subsec. (b). Pub. L. 95-266, § 104(2), added subsec. (b).

§ 5105. Advisory Board on Child Abuse and Neglect

(a) Appointment; membership; representation from Federal agencies and general public; functions

The Secretary shall, within sixty days after January 31, 1974, appoint an Advisory Board on Child Abuse and Neglect (hereinafter referred to as the "Advisory Board"), which shall be composed of representatives from Federal agencies with responsibility for programs and activities related to child abuse and neglect, including the Office of Child Development, the Office of Education, the National Institute of Education, the National Institute of Mental Health, the National Institute of Child Health and Human Development, the Social and Rehabilitation Service, and the Health Services Administration, and not less than three members from the general public with experience or expertise in the field of child abuse and neglect. The Advisory Board shall assist the Secretary in coordinating programs and activities related to child abuse and neglect planned, administered, or assisted under this subchapter with such programs and activities planned, administered, or assisted by the Federal agencies whose representatives are members of the Advisory Board. The Advisory Board shall also assist the Secretary in the development of Federal Standards for child abuse and neglect prevention and treatment programs and projects.

(b) Review and submission of plan to President and Congress

The Advisory Board shall review the comprehensive plan submitted to it by the Center pursuant to section 5101(b)(7) of this title, make such changes as it deems appropriate, and submit to the President and the Congress a final such plan not later than eighteen months after April 24, 1978.

(c) Compensation; travel expenses and per diem

Members of the Advisory Board, other than those regularly employed by the Federal Government, while serving on business of the Advisory Board, shall be entitled to receive compensation at a rate not in excess of the daily equivalent payable to a GS-18 employee under section 5332 of title 5, including travel-time; and, while so serving away from their homes or regular places of business, they may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of such title for persons in the Government service employed intermittently.

(As amended Pub. L. 95-266, title I, § 105, Apr. 24, 1978, 92 Stat. 207.)

References in Text

GS-18, referred to in subsec. (c), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

Amendments

1978—Subsec. (a). Pub. L. 95-266, § 105(1), (2), added requirement for representation from the general public, and "planned," preceding "administered" in two places.

Subsec. (b). Pub. L. 95-266, § 105(3), substituted provisions relating to review of the plan by the Advisory Board and submission to the President and Congress of a final plan, for provisions relating to a report by the Advisory Board on assisted programs, etc., and submission to the President and Congress.

Subsec. (c). Pub. L. 95-266, § 105(3), substituted provisions setting forth compensation and travel expense allowance authorizations for members of the Board, for provisions authorizing use of appropriated funds for required report.

Transfer of Functions

For transfer of functions and offices (relating to education) of the Secretary and Department of Health, Education, and Welfare to the Secretary and Department of Education, and termination of certain offices and positions, see sections 3441 and 3503 of Title 20, Education.

Section Referred to in Other Sections

This section is referred to in section 5101 of this title.

§ 5106. Coordination of Federal programs; regulations; arrangements

The Secretary shall promulgate regulations and make such arrangements as may be necessary or appropriate to ensure that there is effective coordination between programs related to child abuse and neglect under this subchapter and other such programs which are assisted by Federal funds.

(Pub. L. 93-247, § 7, Jan. 31, 1974, 88 Stat. 8.)

Codification

Section is set out in this supplement to reflect the change in the translation of "this Act" from "this chapter" to "this subchapter" as a result of the enactment of the Child Abuse Prevention and Treatment and Adoption Reform Act of 1978, which amended this subchapter and added subchapter II of this chapter.

SUBCHAPTER II—ADOPTION OPPORTUNITIES [NEW]

§ 5111. Congressional findings and declaration of purpose

The Congress hereby finds that many thousands of children remain in institutions or foster homes solely because of legal and other barriers to their placement in permanent, adoptive homes; that the majority of such children are of school age, handicapped, or both; that adoption may be the best alternative for assuring the healthy development of such children; that there are qualified persons seeking to adopt such children who are unable to do so because of barriers to their placement; and that, in order both to enhance the stability and love of the child's home environment and to avoid wasteful expenditures of public funds, such children should not be maintained in foster care or institutions when adoption is appropriate and families for them can be found. It is, therefore, the purpose of this subchapter to facilitate the elimination of barriers to adoption and to provide permanent and loving home environments for children who would benefit by adoption, particularly children with special needs by—

(1) promoting the establishment of model adoption legislation and procedures in the States and territories of the United States in order to eliminate jurisdictional and legal obstacles to adoption; and

(2) providing a mechanism for the Department of Health, Education, and Welfare to (A) promote quality standards for adoption services (including pre-placement, post-placement, and post-adoption counseling and standards to protect the rights of children in need of adoption), and (B) provide for a national adoption and foster care information data gathering and analysis system and a national adoption information exchange system to bring together children who would benefit by adoption and qualified prospective adoptive parents who are seeking such children.

(Pub. L. 95-266, title II, § 201, Apr. 24, 1978, 92 Stat. 208.)

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 5112. Model adoption legislation and procedures

(a) Issuance and publication of proposals based on recommendations of panel; comments by interested individuals, etc., and consultations; issuance and publication of final version; prohibition against conflict with interstate compacts

Not later than eighteen months after April 24, 1978, the Secretary of Health, Education, and Welfare (hereinafter referred to as the "Secretary") shall issue, based on the recommendations of the panel described in subsection (b) of this section, proposed model adoption legislation and procedures and publish such proposal in the Federal Register for comment. After soliciting and giving due consideration to the comments of interested individuals, groups, and organizations and consulting further with such panel, the Secretary shall issue and publish model adoption legislation and procedures which shall not conflict with the provisions of any interstate compact in operation pursuant to which States are making, supervising, or regulating placements of children.

(b) Panel; appointment, membership, functions, etc.

(1) Not later than ninety days after April 24, 1978, the Secretary shall appoint a panel (hereinafter referred to as the "panel") to be composed of not less than eleven nor more than seventeen members generally representative of public and voluntary organizations, agencies, and persons interested and with expertise and experience in facilitating the achievement of the purposes of this subchapter (including, but not limited to, national, State, and local child welfare organizations, including those representative of minorities, and adoptive parent organizations). The panel shall (A) review current conditions, practices, and laws relating to adoption, with special reference to their effect on facilitating or impeding the location of suitable adoptive homes for children who would benefit by adoption and the completion of suitable adoptions for such children; and (B) not later than twelve months after the date on which the members of the panel have been appointed, propose to the Secretary model (including adoption assistance agreement) legislation and procedures relating to adoption designed to facilitate adoption by families of all economic levels.

(2) The panel shall be terminated thirty days after the Secretary publishes the final model legislation and procedures pursuant to subsection (a) of this section.

(3) Members of the panel, other than those regularly employed by the Federal Government, while serving on business of the panel shall be entitled to receive compensation at a rate not in excess of the daily equivalent of the rate payable to a GS-18 employee under section 5322 [1] of title 5, including traveltime; and, while so serving away from their homes or regular places of business, they may be allowed travel expenses (including per diem in lieu of subsistence) as authorized by section 5703 of such title for persons in the Government service employed intermittently.

(c) Encouragement and facilitation of enactment of comprehensive adoption assistance legislation and establishment of model provisions

The Secretary shall take such steps as he or she deems necessary to encourage and facilitate the enactment in each State of comprehensive adoption assistance legislation and the establishment in each State of the model legislation and procedures published pursuant to subsection (a) of this section.

(Pub. L. 95-266, title II, § 202, Apr. 24, 1978, 92 Stat. 208.)

REFERENCES IN TEXT

GS-18, referred to in subsec. (b)(3), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

§ 5113. Information and service functions by appropriate administrative arrangement; establishment in Department of Health, Education, and Welfare; implementation authorities

(a) The Secretary shall establish in the Department of Health, Education, and Welfare an appropriate administrative arrangement to provide a centralized focus for planning and coordinating of all departmental activities affecting adoption and foster care and for carrying out the provisions of this subchapter. The Secretary shall make available such consultant services and personnel, together with appropriate adminstrative expenses, as are necessary for carrying out such purposes.

(b) In connection with carrying out the provisions of subsection (a) of this section, the Secretary shall—

(1) provide (directly or by grant to or contract with public or private nonprofit agencies and organizations) for the establishment and operation of a national adoption and foster care data gathering and analysis system utilizing data collected by States pursuant to requirements of law;

(2) conduct (directly or by grant to or contract with public or private nonprofit agencies or organizations) an education and training program on adoption, and prepare, publish, and disseminate (directly or by grant to or contract with public or private nonprofit agencies and organizations) to all interested parties, public and private agencies and organizations (including, but not limited to, hospitals, health care and family planning clinics, and social services agencies), and governmental bodies, information and education and training materials regarding adoption and adoption assistance programs;

(3) notwithstanding any other provision of law, provide (directly or by grant to or contract with public or private nonprofit agencies or organizations) for (A) the operation of a national adoption information exchange system (including only such information as is necessary to facilitate the adoptive placement of children, utilizing computers and data processing methods to assist in the location of children who would benefit by adoption and in the placement in adoptive homes of children awaiting adoption); and (B) the coordination of such system with similar State and regional systems;

(4) provide (directly or by grant to or contract with public or private nonprofit agencies or organizations, including parent groups) for the provision of technical assistance in the planning, improving, developing, and carrying out of programs and activities relating to adoption; and

(5) consult with other appropriate Federal departments and agencies in order to promote maximum coordination of the services and

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[1] So in original. Probably should be "5332".

benefits provided under programs carried out by such departments and agencies with those carried out by the Secretary, and provide for the coordination of such aspects of all programs within the Department of Health, Education, and Welfare relating to adoption.

(Pub. L. 95-266, title II, § 203, Apr. 24, 1978, 92 Stat. 209.)

Change of Name

The Secretary and Department of Health, Education, and Welfare was redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

§ 5114. Study and report of unlicensed or unregulated adoption placements

The Secretary shall provide for a study (the results of which shall be reported to the appropriate committees of the Congress not later than eighteen months after April 24, 1978) designed to determine the nature, scope, and effects of the interstate (and, to the extent feasible, intrastate) placement of children in adoptive homes (not including the homes of stepparents or relatives of the child in question) by persons or agencies which are not licensed by or subject to regulation by any governmental entity.

(Pub. L. 95-266, title II, § 204, Apr. 24, 1978, 92 Stat. 210.)

§ 5115. Authorization of appropriations

There are authorized to be appropriated $5,000,000 for the fiscal year ending September 30, 1978, and such sums as may be necessary for the succeeding three fiscal years to carry out this subchapter.

(Pub. L. 95-266, title II, § 205, Apr. 24, 1978, 92 Stat. 211.)

CHAPTER 68—DISASTER RELIEF

Chapter Referred to in Other Sections

This chapter is referred to in sections 1382a, 3030, 3231, 4003, 7704 of this title; title 7 sections 1421, 1427, 1427a, 1961; title 12 section 1715*l*; title 15 section 636; title 16 section 1536; title 23 section 125; title 26 sections 165, 5064, 5708; title 33 section 701s; title 38 section 1820.

SUBCHAPTER I—FINDINGS, DECLARATIONS, AND DEFINITIONS

§ 5121. Congressional findings and declarations

Delegation of Functions

Functions of the President under the Disaster Relief Acts of 1970 and 1974, with certain exceptions, were delegated to the Director of the Federal Emergency Management Agency, see sections 4-201 and 4-203 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 2251 of Title 50 Appendix, War and National Defense.

Executive Order No. 11749

Ex. Ord. No. 11749, Dec. 10, 1973, 38 F.R. 34177, which related to the consolidation of functions assigned to the Secretary of Housing and Urban Development, was revoked by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 2251 of Title 50 Appendix, War and National Defense.

Executive Order No. 11795

Ex. Ord. No. 11795, July 11, 1974, 39 F.R. 25939, as amended, which related to the delegation of certain functions of the President of the United States, was revoked by Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 2251 of Title 50 Appendix, War and National Defense.

SUBCHAPTER III—DISASTER ASSISTANCE ADMINISTRATION

§ 5142. Federal assistance

Section Referred to in Other Sections

This section is referred to in title 7 section 2014.

§ 5153. Priority to certain applications for public facility and public housing assistance

References in Text

The Appalachian Regional Development Act of 1965, referred to in subsec. (a)(7), is Pub. L. 89-4, Mar. 9, 1965, 79 Stat. 5, as amended, which was classified generally to § 1 et seq. of Title 40, App., Public Buildings, Property, and Works, and was terminated, with the exception of section 201 of such Act, on Oct. 1, 1979, pursuant to section 405 of the Act. For complete classification of this Act to the Code, see Tables.

SUBCHAPTER IV—FEDERAL DISASTER ASSISTANCE PROGRAMS

§ 5171. Federal facilities

Section Referred to in Other Sections

This section is referred to in title 16 section 1536.

§ 5172. Repair and restoration of damaged facilities

Section Referred to in Other Sections

This section is referred to in sections 3232, 5151, 5154, 5172, 5175, 5189 of this title; title 16 section 1536.

§ 5184. Community disaster loans

Community Emergency Drought Relief

Pub. L. 95-31, title I, May 23, 1977, 91 Stat. 169, provided:

"That this Act be cited as the 'Community Emergency Drought Relief Act of 1977'.

"Sec. 101. (a) Upon the application of any State, political subdivision of a State, Indian tribe, or public or private nonprofit organization, the Secretary of Commerce is authorized to make grants and loans to applicants in drought impacted areas for projects that implement short-term actions to augment community water supplies where there are severe problems due to water shortages. Such assistance may be for the improvement, expansion, or construction of water supplies, and purchase and transportation of water, which in the opinion of the Secretary of Commerce will make a substantial contribution to the relief of an existing or threatened drought condition in a designated area.

"(b) The Secretary of Commerce may designate any area in the United States as an emergency drought impact area if he or she finds that a major and continuing adverse drought condition exists and is expected to continue, and such condition is causing significant hardships on the affected areas.

"(c) Eligible applicants shall be those States or political subdivisions of States with a population of ten thousand or more, Indian tribes, or public or private nonprofit organizations within areas designated pursuant to subsection (b) of this section.

"(d) Projects assisted under this Act shall be only those with respect to which assurances can be given to the satisfaction of the Secretary of Commerce that the work can be completed by April 30, 1978, or within such extended time as the Secretary may approve in exceptional circumstances.

"Sec. 102. Grants hereunder shall be in an amount not to exceed 50 per centum of allowable project costs. Loans shall be for a term not to exceed 40 years at a per annum interest rate of 5 per centum and shall be on such terms and conditions as the Secretary of Commerce shall determine. In determining the amount of a grant assistance for any project, the Secretary of Commerce may take into consideration such factors as are established by regulation and are consistent with the purposes of this Act.

"Sec. 103. In extending assistance under this Act the Secretary shall take into consideration the relative needs of applicant areas for the projects for which assistance is requested, and the appropriateness of the project for relieving the conditions intended to be alleviated by this Act.

"Sec. 104. The Secretary of Commerce shall have such powers and authorities under this Act as are vested in the Secretary by sections 701 and 708 of the Public Works and Economic Development Act of 1965, as amended [sections 3211 and 3218 of this title], with respect to that Act [section 3121 et seq. of this title].

"Sec. 105. The National Environmental Protection Act of 1969, as amended [section 4321 et seq. of this title], shall be implemented to the fullest extent consistent with but subject to the time constraints imposed by this Act, and the Secretary of Commerce when making the final determination regarding an application for assistance hereunder shall give consideration to the environmental consequences determined within that period.

"Sec. 106. (a) There is hereby authorized to be appropriated for the fiscal year ending September 30, 1977, $225,000,000 of which sum $150,000,000 is to be for the loan program herein, including administration thereof, and $75,000,000 of which is to be used for the grant program herein, including administration thereof, and such additional amounts for the fiscal year ending September 30, 1978, as may be reasonably needed for administrative expenses in monitoring and closing out the program authorized by the Act. Funds authorized by this Act shall be obligated by December 31, 1977.

"(b) Funds available to the Secretary for this Act shall be available for expenditure for drought impact projects conducted heretofore by eligible applicants during fiscal year 1977 if such projects are found to be compatible with the broad purposes of this Act."

SUBCHAPTER V—MISCELLANEOUS

§ 5202. Authorization of appropriations

Except as provided by the amendment made by section 501, there are authorized to be appropriated to the President such sums as may be necessary to carry out this chapter through the close of September 30, 1980.

(As amended Pub. L. 95-51, § 1, June 20, 1977, 91 Stat. 233.)

References in Text

The amendment made by section 501, referred to in text, means the enactment of subchapter VIII (§ 3231 et seq.) of chapter 38 of this title section 501 of Pub. L. 93-288.

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 93-288, May 22, 1974, 88 Stat. 143. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

Amendments

1977—Pub. L. 95-51 substituted "September 30, 1980" for "June 30, 1977".

CHAPTER 69—COMMUNITY DEVELOPMENT

Sec.
5318. Urban development action grants [New].
  (a) Grants to severely distressed cities and urban counties for prescribed purposes.
  (b) Criteria and standards; regulations.
  (c) Applications; contents; citizen participation plan; public hearings.
  (d) Application requirements of section 5304(a) for section 5306 allocation and distribution of funds applicable to this section.
  (e) Selection criteria.
  (f) Activities of urban development action program.
  (g) Consultation of Secretary with other Federal agencies and coordination of assistance.
  (h) Annual reviews and audits; administrative action appropriate to findings; recapture or deduction of expended funds prohibited.
  (i) Relocation.
  (j) Allocation of funds based upon balance among program objectives.
  (k) Minimum percentage of funds for use of certain noncentral cities.
  (*l*) Criteria of nonsubstitution of grants for available non-Federal funds.
  (m) Waiver or reduction of requirement of closely settled unit of general local government.
5319. Community participation in programs [New].

Chapter Referred to in Other Sections

This chapter is referred to in sections 1439, 1440, 1452b, 2985b, 3013 of this title; title 12 sections 1464, 1701u, 1701x; title 40 sections 461, 484b.

§ 5301. Congressional findings and declaration of purpose

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Decent housing, suitable living environment, and economic opportunities for persons of low and moderate income; community development activities which may be supported by Federal assistance

The primary objective of this chapter is the development of viable urban communities, by providing decent housing and a suitable living environment and expanding economic opportunities, principally for persons of low and moderate income. Consistent with this primary objective, the Federal assistance provided in this chapter is for the support of community development activities which are directed toward the following specific objectives—

[*See main edition for text of* (*1*) *to* (*5*)]

(6) the reduction of the isolation of income groups within communities and geographical areas and the promotion of an increase in the diversity and vitality of neighborhoods through the spatial deconcentration of housing opportunities for persons of lower income and the revitalization of deteriorating or deteriorated neighborhoods to attract persons of higher income;

(7) the restoration and preservation of properties of special value for historic, architectural, or esthetic reasons; and

(8) the alleviation of physical and economic distress through the stimulation of private investment and community revitalization in areas with population outmigration or a stagnating or declining tax base.

It is the intent of Congress that the Federal assistance made available under this chapter not be utilized to reduce substantially the amount of local financial support for community development activities below the level of such support prior to the availability of such assistance.

(d) Consolidation of complex and overlapping Federal assistance programs into consistent system of Federal aid

It is also the purpose of this chapter to further the development of a national urban growth policy by consolidating a number of complex and overlapping programs of financial assistance to communities of varying sizes and needs into a consistent system of Federal aid which—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) fosters the undertaking of housing and community development activities in a coordinated and mutually supportive manner by Federal agencies and programs, as well as by communities.

(As amended Pub. L. 95-128, title I, § 101, Oct. 12, 1977, 91 Stat. 1111.)

Amendments

1977—Subsec. (c)(8). Pub. L. 95-128, § 101(a), added par. (8).

Subsec. (d)(4). Pub. L. 95-128, § 101(b), provided that the development activities be undertaken by Federal agencies and programs as well as by communities.

Effective Date of 1977 Amendment

Section 114 of Pub. L. 95-128 provided that: "The amendments made by this title [enacting section 5318 of this title, amending sections 1452b, 5301 to 5308, and 5313 of this title and section 461 of Title 40, Public Buildings, Property, and Works, and enacting provisions set out as a note under section 5313 of this title] shall become effective October 1, 1977."

Short Title of 1979 Amendment

Section 1(a) of Pub. L. 96-153, Dec. 21, 1979, 93 Stat. 1101, provided: "That this Act [enacting section 1735f-7 of Title 12, Banks and Banking, section 1719a of Title 15, Commerce and Trade, and section 1437k of this title, amending section 5315 of Title 5, Government Organization and Employees, sections 90, 1426, 1431, 1451, 1452, 1455, 1464, 1701q, 1701s, 1701z-1, 1701z-11, 1703, 1706e, 1709, 1709-1, 1713, 1715e, 1715h, 1715k, 1715*l*, 1715m, 1715v, 1715y, 1715z, 1715z-1, 1715z-1a, 1715z-6, 1715z-7, 1715z-9, 1715z-10, 1717, 1728, 1735c, 1748h-1, 1748h-2, 1749bb, 1749aaa, 1749bbb, 1757, 1787, and 1821 of Title 12, sections 1701, 1702, 1703, 1708, 1709, 1711, 1715, and 1717 of Title 15, section 461 of Title 40, Public Buildings, Property, and Works, and sections 1437a, 1437c, 1437d, 1437f, 1437g, 1439, 1452b, 1471, 1472, 1474, 1479, 1480, 1483, 1484, 1485, 1486, 1487, 1490a, 1490c, 3533a, 3541, 4026, 4056, 4127, 5302, 5303, 5304, 5306, 5318, 5419, 8107, 8123, 8124, and 8146 of this title, and enacting provisions set out as notes under sections 1701, 1701q, 1701s, 1703, 1709, 1723e, and 1728 of Title 12, section 1701 of Title 15, and sections 1437a, 1437f, and 5304 of this title] may be cited as the 'Housing and Community Development Amendments of 1979'."

Short Title of 1978 Amendment

Pub. L. 95-557, § 1, Oct. 31, 1978, 92 Stat. 2080, provided that: "This Act [enacting sections 3541, 5319, 8001 to 8010, 8101 to 8107, 8121 to 8124, and 8141 to 8146 of this title and sections 1701z-9 to 1701z-13, 1715z-1a, 1715z-1b, 1735f-6, of Title 12, Banks and Banking, amending sections 1437a, 1437c, 1437e, 1437f, 1437g, 1441c, 1452b, 1476, 1480, 1483 to 1487, 1490a, 1490c, 1490e, 3371, 3535, 4026, 4056, 4127, 4521, 5304, 5305, 5307, 5318 and 5425, of this title, sections 1454, 1701j-2, 1701q, 1701z-1, 1703, 1706e, 1709, 1709-1, 1713, 1715h, 1715*l*, 1715n, 1715y, 1715z, 1715z-1, 1715z-5, 1715z-6, 1715z-9, 1715z-10, 1715z-11, 1715w, 1717, 1720, 1735c, 1748h-1, 1748h-2, 1749bb, 1749aaa, 1749bbb, and 1749bbb-3 of Title 12, section 1702 of Title 15, Commerce and Trade, and sections 461 and 484b of Title 40, Public Buildings, Property, and Works, and enacting provisions set out as notes under sections 1437c, 1437f, 1441, 1476, 1480, 5313, 8001, 8101, 8121, and 8141 of this title and sections 1454, 1701z-6, 1701z-9, 1709, 1715z-1, and 1723e of Title 12] may be cited as the 'Housing and Community Development Amendments of 1978'."

Short Title of 1977 Amendment

Section 1 of Pub. L. 95-128 provided that: "This Act [which enacted sections 3540 and 5318 of this title and sections 2901 to 2905 of Title 12, Banks and Banking, amended sections 1437c, 1437f, 1437g, 1439, 1452b, 1471, 1472, 1476, 1479, 1483 to 1485, 1487, 1490a, 1490c, 1490h, 3533, 4003, 4013, 4026, 4056, 4103 to 4106, 4127, 4501 to 4503, 4521, 5301 to 5308, 5313, 5403, and 5409 of this title, sections 355, 1430, 1454, 1464, 1701q, 1701x, 1701z-1, 1703, 1706e, 1709, 1709-1, 1715h, 1715k to 1715m, 1715w, 1715y, 1715z, 1715z-1, 1715z-3, 1715z-7, 1715z-9, 1715z-10, 1717, 1723a, 1723e, 1748h-1, 1748h-2, 1749bb, and 1749aaa of Title 12, and section 461 of Title 40, Public Buildings, Property, and Works, and enacting provisions set out as notes under sections 1421b, 1437d, 1490h, 4501, 5301, and 5313 of this title and sections 1715z-1, 1723e of Title 12] may be cited as the 'Housing and Community Development Act of 1977'."

Section Referred to in Other Sections

This section is referred to in section 5305 of this title.

§ 5302. General provisions

(a) Definitions

As used in this chapter—

(1) The term "unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State; Guam, the Northern Mariana Islands, the Virgin Islands, and American Samoa, or a general purpose political subdivision thereof; a combination of such political subdivisions recognized by the Secretary; the District of Columbia; and the Trust Territory of the Pacific Islands. Such term also includes a State or a local public body or agency (as defined in section 4512 of this title), community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 4513 of this title or title IV of the Housing and Urban Development Act of 1968 [42 U.S.C. 3901 et seq.].

[*See main edition for text of* (*2*) *and* (*3*)]

(4) The term "metropolitan city" means (A) a city within a metropolitan area which is the

central city of such area, as defined and used by the Office of Management and Budget, or (B) any other city, within a metropolitan area, which has a population of fifty thousand or more; except that any city which has been classified as a metropolitan city under clause (B) of this paragraph shall continue to be so classified until the decennial census indicates that the population of such city is less than fifty thousand.

(5) The term "city" means (A) any unit of general local government which is classified as a municipality by the United States Bureau of the Census or (B) any other unit of general local government which is a town or township and which, in the determination of the Secretary, (i) possesses powers and performs functions comparable to these associated with municipalities, (ii) is closely settled, and (iii) contains within its boundaries no incorporated places as defined by the United States Bureau of the Census which have not entered into cooperation agreements with such town or township to undertake or to assist in the undertaking of essential community development and housing assistance activities.

(6) The term "urban county" means any county within a metropolitan area which (A) is authorized under State law to undertake essential community development and housing assistance activities in its unincorporated areas, if any, which are not units of general local government, and either (B) has a combined population of two hundred thousand or more (excluding the population of metropolitan cities therein) in such unincorporated areas and in its included units of general local government (i) in which it has authority to undertake essential community development and housing assistance activities and which do not elect to have their population excluded or (ii) with which it has entered into cooperation agreements to undertake or to assist in the undertaking of essential community development and housing assistance activities or (C) has a population in excess of one hundred thousand, a population density of at least five thousand persons per square mile, and contains within its boundaries no incorporated places as defined by the United States Bureau of Census.

[*See main edition for text of* (*7*) *to* (*9*)]

(10) The term "age of housing" means the number of existing housing units constructed in 1939 or earlier based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(11) The term "extent of growth lag" means the number of persons who would have been residents in a metropolitan city or urban county, in excess of the current population of such metropolitan city or urban county, if such metropolitan city or urban county had had a population growth rate between 1960 and the date of the most recent population count referable to the same point or period in time equal to the population growth rate for such period of all metropolitan cities.

(12) The term "housing stock" means the number of existing housing units based on data compiled by the United States Bureau of the Census and referable to the same point or period in time.

(13) The term "adjustment factor" means the ratio between the age of housing in the metropolitan city or urban county and the predicted age of housing in such city or county.

(14) The term "predicted age of housing" means the arithmetic product of the housing stock in the metropolitan city or urban county multiplied times the ratio between the age of housing in all metropolitan areas and the housing stock in all metropolitan areas.

(15) The term "adjusted age of housing" means the arithmetic product of the age of housing in the metropolitan city or urban county multiplied times the adjustment factor.

(16) The term "Indian tribe" means any Indian tribe, band, group, and nation, including Alaska Indians, Aleuts, and Eskimos, and any Alaskan Native Village, of the United States, which is considered an eligible recipient under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) [25 U.S.C. 450 et seq.] or under the State and Local Fiscal Assistance Act of 1972 (Public Law 92-512) [31 U.S.C. 1221 et seq.].

(17) The term "Federal grant-in-aid program" means a program of Federal financial assistance other than loans and other than the assistance provided by this chapter.

(18) The term "program period" means the period beginning January 1, 1975, and ending June 30, 1975, and the period covering each fiscal year thereafter.

(19) The term "Community Development Program" means a program described in section 5304(a)(2) of this title.

(20) The term "Secretary" means the Secretary of Housing and Urban Development.

[*See main edition for text of* (*b*) *and* (*c*)]

(d) Local governments, exclusion from urban county population; notice

An urban county designated under subsection (a)(6)(B)(i) of this section shall notify, prior to a date set by the Secretary for each year, all incorporated units of general local government the populations of which are included in the population of such urban county for purposes of this section of their opportunity to exclude their population from such urban county. Any unit of general local government which has not elected to have its population so excluded shall have its population included within the population of such urban county for purposes of this section until it, on its own initiative, elects to exclude its population by notifying the urban county on or before a date set by the Secretary.

(As amended Pub. L. 95-128, title I, § 102, Oct. 12, 1977, 91 Stat. 1111; Pub. L. 96-153, title I, § 103(f), Dec. 21, 1979, 93 Stat. 1102.)

REFERENCES IN TEXT

The Indian Self-Determination and Education Assistance Act as amended, referred to in subsec. (a)(16), is Pub. L. 93-638, Jan. 4, 1975, 88 Stat. 2203, as amended, which is classified principally to subchapter II (§ 450 et seq.) of chapter 14 of Title 25, Indians. For complete classification of this Act to the Code, see Short Title note set out under section 450 of Title 25 and Tables.

The State and Local Fiscal Assistance Act of 1972, referred to in subsec. (a)(16), is title I of Pub. L. 92-512, Oct. 20, 1972, 86 Stat. 919, as amended, which is classified principally to chapter 24 (§ 1221 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 1221 of Title 31 and Tables.

AMENDMENTS

1979—Subsec. (a)(1). Pub. L. 96-153 added reference to Northern Mariana Islands in the definition of unit of general local government.

1977—Subsec. (a)(1). Pub. L. 95-128, § 102(a)(1), excluded from the term "unit of general local government" Indian tribes, bands, groups, and nations, including Alaska Indians, Aleuts, and Eskimos of the United States.

Subsec. (a)(4). Pub. L. 95-128, § 102(a)(2), clarified the term "metropolitan city" to continue the classification of any city classified as a metropolitan city under cl. (B) as such city until the decennial census indicates the population of such city is less than fifty thousand.

Subsec. (a)(5). Pub. L. 95-128, § 102(a)(3), limited the meaning of the term "city" to a town or township without any incorporated places within its boundaries which have entered into cooperation agreements with such town or township to undertake or to assist in the undertaking of essential community development and housing assistance activities.

Subsec. (a)(6). Pub. L. 95-128, § 102(a)(4), inserted "either" preceding "(B)" and added cl. (C).

Subsec. (a)(10) to (16). Pub. L. 95-128, § 102(a)(6), added pars. (10) to (16). Former pars. (10) to (13) redesignated (17) to (20).

Subsec. (a)(17) to (20). Pub. L. 95-128, § 102(a)(5), redesignated former pars. (10) to (13) as (17) to (20).

Subsec. (d). Pub. L. 95-128, § 102(b), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as an Effective Date of 1977 Amendment note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5318 of this title.

§ 5303. Grants for State, tribal, and local Community Development Programs

(a) Authority of Secretary; authorization of appropriations; appropriation of nonappropriated funds; allocation of appropriated amounts

(1) The Secretary is authorized to make grants to States and units of general local government and Indian tribes to help finance Community Development Programs approved in accordance with the provisions of this chapter. There are authorized to be appropriated for these purposes not to exceed $3,500,000,000 for the fiscal year 1978, not to exceed $3,650,000,000 for the fiscal year 1979, and not to exceed $3,800,000,000 for the fiscal year 1980. Any amount authorized for any fiscal year under this section but not appropriated for such year may be appropriated for any succeeding fiscal year.

(2) Of the amounts approved in appropriations Acts pursuant to paragraph (1), $50,000,000 for each of the fiscal years 1975 and 1976, $200,000,000 for the fiscal year 1977 (not more than 50 per centum of which amount may be used under section 5306(d)(1) of this title), $350,000,000 for the fiscal year 1978 (of which not more than $175,000,000 may be used under such section), $265,000,000 for the fiscal year 1979 (of which not more than $25,000,000 may be used under such section), and $275,000,000 for the fiscal year 1980 (none of which may be used under such section) shall be added to the amount available for allocation under section 5306(d) of this title and shall not be subject to the provisions of section 5307 of this title.

(b) Additional authorization of appropriations for general local government units requiring supplemental assistance; requirement of prior appropriation of a minimum amount

In addition to the amounts made available under subsection (a) of this section, and for the purpose of facilitating an orderly transition to the program authorized under this chapter, there are authorized to be appropriated not to exceed $50,000,000 for each of the fiscal years 1975 and 1976, and not to exceed $100,000,000 for each of the fiscal years 1977, 1978, 1979, and 1980, for grants under this chapter for the financial settlement and, to the extent feasible, the completion of projects and programs assisted under the categorical programs terminated in section 5316(a) of this title, primarily urban renewal projects assisted under the Housing Act of 1949 [42 U.S.C. 1441 et seq.], to units of general local government which require supplemental assistance which cannot be provided through the operation of the allocation provisions of section 5306 of this title. No funds shall be made available under this subsection (1) for fiscal year 1978 unless the amount appropriated under subsection (a) of this section for fiscal year 1978 is at least $3,500,000,000; (2) for fiscal year 1979 unless the amount appropriated under subsection (a) of this section for fiscal year 1979 is at least $3,650,000,000; or (3) for fiscal year 1980 unless the amount appropriated under subsection (a) of this section for fiscal year 1980 is at least $3,800,000,000.

(c) Supplemental urban development action grant assistance; requirement of prior appropriation of a minimum amount

There is authorized to be appropriated for supplemental grant assistance under section 5318 of this title a sum not to exceed $400,000,000 for each of the fiscal years 1978 and 1979, and not to exceed $675,000,000 for the fiscal year 1980, except that no funds shall be made available for such purpose (1) for fiscal year 1978 unless the amount appropriated under subsections (a) and (b) of this section for fiscal year 1978 is at least $3,600,000,000; (2) for fiscal year 1979 unless the amount appropriated under subsections (a) and (b) of this section for fiscal year 1979 is at least $3,750,000,000; or (3) for fiscal year 1980 unless the amount appropriated under subsections (a) and (b) of this section for fiscal year 1980 is at least $3,900,000,000.

(d) Availability of unexpended appropriations

Sums appropriated pursuant to this section shall remain available until expended.

(e) Submission to Congress of requests for additional appropriations

To assure program continuity and orderly planning, the Secretary shall submit to the Congress timely requests for additional authorizations for the fiscal years 1978 through 1980.

(As amended Pub. L. 95-128, title I, § 103, Oct. 12, 1977, 91 Stat. 1113; Pub. L. 96-153, title I, § 103(a), (b), Dec. 21, 1979, 93 Stat. 1101, 1102.)

REFERENCES IN TEXT

The Housing Act of 1949, referred to in subsec. (b), is act July 15, 1949, ch. 338, 63 Stat. 413, as amended, which is classified principally to chapter 8A (§ 1441 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1441 of this title and Tables.

AMENDMENTS

1979—Subsec. (a)(2). Pub. L. 96-153, § 103(b), increased the authorization of appropriation from $250,000,000 to $275,000,000 for the fiscal year 1980.

Subsec. (c). Pub. L. 96-153, § 103(a), increased the authorization of appropriation for 1980 from $400,000,000 to $675,000,000.

1977—Subsec. (a)(1). Pub. L. 95-128, § 103(a), (b), authorized: grants to Indian tribes, appropriation authorizations for fiscal years 1978 through 1980, and unappropriated funds to be appropriated for any succeeding fiscal year; and deleted provisions which: prescribed $8,400,000,000 as the limitation on amount of obligations incurred, authorized appropriation of $2,500,000,000 for fiscal year 1975, increased to $5,450,000,000 and $8,400,000,000 for fiscal years 1976 and 1977 for liquidation of obligations, and made available for liquidation of contracts entered into hereunder appropriations for grants under title VII of the Housing Act of 1961 and sections 3102 and 3103 of this title, and supplemental grants under title I of the Demonstration Cities and Metropolitan Development Act of 1966, not otherwise obligated prior to Jan. 1, 1975.

Subsec. (a)(2). Pub. L. 95-128, § 103(c), inserted use of additional money authorization provisions for fiscal years 1978 through 1980.

Subsec. (b). Pub. L. 95-128, § 103(d), authorized appropriations for fiscal years 1978 through 1980, substituted "for the financial settlement and, to the extent feasible, the completion of projects and programs assisted under the categorical programs terminated in section 5316(a) of this title, primarily urban renewal projects assisted under the Housing Act of 1949, to units of general local government which require supplemental assistance which cannot be provided" for "to units of general local government having urgent community development needs which cannot be met" and inserted provision respecting requirement of prior appropriation of a minimum amount.

Subsec. (c). Pub. L. 95-128, § 103(e), added subsec. (c). Former subsec. (c) redesignated (d).

Subsecs. (d), (e). Pub. L. 95-128, § 103(e), redesignated former subsecs. (c) and (d) as (d) and (e).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as an Effective Date of 1977 Amendment note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5306, 5307, 5312, 5316, 5318 of this title.

§ 5304. Procedures for award of grants

(a) Application; contents; statements of assurances

No grant may be made pursuant to section 5306 or section 5318 of this title unless an application shall have been submitted to the Secretary in which the applicant—

(1) sets forth a summary of a three-year community development plan which identifies community development and housing needs, demonstrates a comprehensive strategy for meeting those needs, and specifies both short- and long-term community development objectives which have been developed in accordance with areawide development planning and national urban growth policies;

(2) formulates a program which (A) includes the activities to be undertaken to meet its community development needs and objectives, together with the estimated costs and general location of such activities, (B) indicates resources other than those provided under this chapter which are expected to be made available toward meeting its identified needs, including activities designed to revitalize neighborhoods for the benefit of low- and moderate-income persons, and objectives, and (C) takes into account appropriate environmental factors;

(3) describes a program designed to—

(A) eliminate or prevent slums, blight, and deterioration where such conditions or needs exist;

(B) provide improved community facilities and public improvements, including the provision of supporting health, social, and similar services where necessary and appropriate and in a manner to insure fully opportunity for participation by, and benefits to, the handicapped; and

(C) improve conditions for low- and moderate-income persons residing in or expected to reside in the community as a result of existing or projected employment opportunities in the community (and those elderly persons residing in or expected to reside in the community), or as estimated in a community accepted State or regional housing opportunity plan approved by the Secretary, and foster neighborhood development in order to induce higher-income persons to remain in, or return to, the community;

(4) submits a housing assistance plan which—

(A) accurately surveys the condition of the housing stock in the community and assesses the housing assistance needs of lower-income persons (including elderly and handicapped persons, large families, owners of homes requiring rehabilitation assistance, and persons displaced or to be displaced) residing in or expected to reside in the community as a result of existing or projected employment opportunities in the community (and those elderly persons residing in or expected to reside in the community), or as estimated in a community accepted State or regional housing opportunity plan approved by the Secretary, and identifies housing stock which is in a deteriorated condition, including the impact of conversion of rental housing to condominium or cooperative ownership on such needs,

(B) specifies a realistic annual goal for the number of dwelling units or lower-income persons to be assisted, including (i) the relative proportion of new, rehabilitated, and existing dwelling units, including existing rental and owner occupied dwelling units to be upgraded and thereby preserved, (ii) the sizes and types of housing projects and assistance best suited to the needs of lower-income persons in the community, and (iii) in the case of subsidized rehabilitation, adequate provisions to assure that a preponderance of persons assisted should be of low- and moderate-income, and

(C) indicates the general locations of proposed housing for lower-income persons, with the objective of (i) furthering the revitalization of the community, including the restoration and rehabilitation of stable neighborhoods to the maximum extent possible, and the reclamation of the housing stock where feasible through the use of a broad range of techniques for housing restoration by local government, the private sector, or community organizations, including provision of a reasonable opportunity for tenants displaced as a result of such activities to relocate in their immediate neighborhood, (ii) promoting greater choice of housing opportunities and avoiding undue concentrations of assisted persons in areas containing a high proportion of low-income persons, and (iii) assuring the availability of public facilities and services adequate to serve proposed housing projects;

[*See main edition for text of* (*5*)]

(6) provides satisfactory assurances that, prior to submission of its application, it has (A) prepared and followed a written citizen participation plan which provides citizens an opportunity to participate in the development of the application, encourages the submission of views and proposals, particularly by residents of blighted neighborhoods and citizens of low- and moderate-income, provides for timely responses to the proposals submitted, and schedules hearings at times and locations which permit broad participation; (B) provided citizens with adequate information concerning the amount of funds available for proposed community development activities and housing activities, the range of activities that may be undertaken, and other important requirements; (C) held public hearings to obtain the views of citizens on community development and housing needs; and (D) provided citizens with an opportunity to submit comments concerning the community development performance of the applicant; but nothing in this paragraph shall be construed to restrict the responsibility and authority of the applicant for the development of the application and the execution of its community development program.

(b) Additional requirements of application; certifications to Secretary; waiver of required Program provisions

[*See main edition for text of* (*1*)]

(2) Any grant under this chapter shall be made only on condition that the applicant certify to the satisfaction of the Secretary that its Community Development Program has been developed so as to give maximum feasible priority to activities which will benefit low- and moderate-income families or aid in the prevention or elimination of slums or blight. The Secretary may also approve an application describing activities which the applicant certifies and the Secretary determines are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available.

(3) The Secretary may waive all or part of the requirements contained in paragraphs (1), (2), and (3) of subsection (a) if (A) the application does not involve a comprehensive community development program, as determined by the Secretary, and (B) the Secretary determines that, considering the nature of the activity to be carried out, such waiver is not inconsistent with the purposes of this chapter.

[*See main edition for text of* (*4*)]

(c) Approval of application

The Secretary shall approve an application for an amount which does not exceed the amount determined in accordance with section 5306(a) of this title unless—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) the Secretary determines that the application does not comply with the requirements of this chapter, with specific regard to the primary purposes of principally benefiting persons of low- and moderate-income or aiding in the prevention or elimination of slums or blight or meeting other community development needs having a particular urgency, or other applicable law or proposes activities which are ineligible under this chapter.

The Secretary may not disapprove an application on the basis that such application addresses any one of the primary purposes described in paragraph (3) to a greater or lesser degree than any other, except that such application may be disapproved if the Secretary determines that the extent to which a primary purpose is addressed is plainly inappropriate to meeting the needs and objectives which are consistent with the community's efforts to achieve the primary objective of this chapter.

(d) Submission of annual performance report by grantee to Secretary; contents; annual review and audit by Secretary of program implementation; adjustments in amount of annual grants

Prior to the beginning of fiscal year 1977 and each fiscal year thereafter, each grantee shall submit to the Secretary a performance report concerning the activities carried out pursuant to this chapter, together with an assessment by the grantee of the relationship of those activities to the objectives of this chapter and the needs and objectives identified in the grantee's statement submitted pursuant to subsection (a) of this section. The performance report shall include any citizen comments submitted pursuant to subsection (a)(6)(D) of this section and the Secretary shall consider such comments, together with the views of other citizens and such other information as may be available, in carrying out the provisions of this subsection. The Secretary shall, at least on an annual basis, make such reviews and audits as may be necessary or appropriate to determine whether the grantee has carried out a program substantially as described in its application, whether that program conformed to the requirements of this chapter and other applicable laws, and whether the applicant has a continuing capacity to carry out in a timely manner the approved Community Development Program. The Secretary may make appropriate adjustments in the amount of the annual grants in accordance with his findings pursuant to this subsection. With respect to grants made pursuant to sections 5306(d)(2) and 5306(f)(1)(B) of this title, the Secretary may adjust, reduce, or withdraw grant funds, or take other action as appropriate in accordance with such reviews and audits, except that funds already expended on eligible activities under this chapter shall not be recaptured or deducted from future grants made to the recipient.

(e) Submission of application for review and comment by areawide agency under procedures established by President pursuant to applicable statutes; State participation in selection process for funding grants

No grant may be made under this chapter unless the application therefor has been submitted for review and comment to an areawide agency under procedures established by the President pursuant to title II of the Demonstration Cities and Metropolitan Development Act of 1966 [42 U.S.C. 3331 et seq.] and title IV of the Intergovernmental Cooperation Act of 1968 [42 U.S.C. 4231 et seq.]. In addition, the Secretary may provide an opportunity for the State, in which a grant is to be made to a unit of general local government under section 5306(d)(2) or (f)(1)(B) of this title, to participate in the selection process for funding such grants. Such participation may include, as determined practicable by the Secretary, the incorporation of State growth and resource coordination policies in funding decisions on such grants, or such other arrangements, excluding administration of the grants referred to in the preceding sentence, as the Secretary deems appropriate.

[*See main edition for text of* (*f*) *and* (*g*)]

(h) Environmental protection measures applicable for release of funds to applicants for projects; issuance of regulations by Secretary subsequent to consultation with Council on Environmental Quality; request and certification to Secretary for approval of release of funds; form, contents and effect of certification

(1) In order to assure that the policies of the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most effectively implemented in connection with the expenditure of funds under this chapter, and to assure to the public undiminished protection of the environment, the Secretary, in lieu of the environmental protection procedures otherwise applicable, may under regulations provide for the release of funds for particular projects to applicants who assume all of the responsibilities for environmental review, decisionmaking, and action pursuant to such Act, and such other provisions of law as the regulations of the Secretary specify, that would apply to the Secretary were he to undertake such projects as Federal projects. The Secretary shall issue regulations to carry out this subsection only after consultation with the Council on Environmental Quality.

(2) The Secretary shall approve the release of funds for projects subject to the procedures authorized by this subsection only if, at least fifteen days prior to such approval and prior to any commitment of funds to such projects other than for purposes authorized by section 5305(a)(12) of this title or for environmental studies, the applicant has submitted to the Secretary a request for such release accompanied by a certification which meets the requirements of paragraph (3). The Secretary's approval of any such certification shall be deemed to satisfy his responsibilities under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and such other provisions of law as the regulations of the Secretary specify, insofar as those responsibilities relate to the applications and releases of funds for projects to be carried out pursuant thereto which are covered by such certification.

(3) A certification under the procedures authorized by this subsection shall—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) specify that the certifying officer (i) consents to assume the status of a responsible Federal official under the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.] and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other such provision of law apply pursuant to paragraph (1) of this subsection, and (ii) is authorized and consents on behalf of the applicant and himself to accept the jurisdiction of the Federal courts for the purpose of enforcement of his responsibilities as such an official.

(i) Payments; revolving loan fund: establishment in private financial institution for rehabilitation activities; standards for payments: criteria; agreements: review and approval

(1) The Secretary shall, in making funds available to the recipients of grants under this chapter, permit any such recipient to receive funds, in one payment, in an amount not to exceed the total amount designated in the recipient's application, and approved by the Secretary pursuant to this section, for use by the recipient for establishing a revolving loan fund which is to be established in a private financial institution and which is to be used to finance rehabilitation activities that are part of the recipient's community development program. The Secretary may, as a condition of making such payment, require that the revolving loan fund be utilized for the making of loans to finance rehabilitation activities in a manner consistent

with this chapter. Rehabilitation activities authorized under this section shall begin within forty-five days after the Secretary has made such payment.

(2) The Secretary shall establish standards for such cash payments which will insure that the deposits result in appropriate benefits in support of the recipient's rehabilitation program. These standards shall be designed to assure that the benefits to be derived from the local program include, at a minimum, one or more of the following elements, or such other criteria as determined by the Secretary—

(A) leverage of community development block grant funds so that participating financial institutions commit private funds for loans in the rehabilitation program in amounts substantially in excess of deposit of community development funds;

(B) commitment of private funds for rehabilitation loans at below-market interest rates or with repayment periods lengthened or at higher risk than would normally be taken;

(C) provision of administrative services in support of the rehabilitation program by the participating lending institutions; and

(D) interest earned on such cash deposits shall be used in a manner which supports the community rehabilitation program.

At the time of application, the Secretary shall review and approve all agreements with lending institutions which receive funds for community rehabilitation programs. Such approval shall be made on a case-by-case basis, and upon a determination by the Secretary that the agreement with the lending institution meets minimum benefit standards as listed in this paragraph.

(As amended Pub. L. 95-128, title I, §§ 104, 110(a), Oct. 12, 1977, 91 Stat. 1114, 1125; Pub. L. 95-557, title I, § 103(a)-(d), Oct. 31, 1978, 92 Stat. 2083; Pub. L. 96-153, title I, §§ 103(c), (g), 109(a), Dec. 21, 1979, 93 Stat. 1102, 1105.)

AMENDMENTS

1979—Subsec. (a)(4)(A). Pub. L. 96-153, § 109(a), added reference to the impact of conversion of rental housing to condominium or cooperative ownership on housing needs.

Subsec. (b)(3). Pub. L. 96-153, § 103(c), struck out cl. (A), and redesignated cls. (B) and (C) as (A) and (B), respectively.

Subsec. (h)(1). Pub. L. 96-153, § 103(g)(1), substituted "Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations issued by the Secretary) are most" for "Act of 1969 are most", and "such Act, and such other provisions of law as the regulations of the Secretary specify that would apply" for "such Act that would apply".

Subsec. (h)(2). Pub. L. 96-153, § 103(g)(2), substituted "National Environmental Policy Act of 1969 and such other provisions of law as the regulations of the Secretary specify" for "National Environmental Policy Act".

Subsec. (h)(3)(D). Pub. L. 96-153, § 103(g)(3), substituted "Act of 1969 and each provision of law specified in regulations issued by the Secretary insofar as the provisions of such Act or other provision of law" for "Act of 1969 insofar as the provisions of such Act" in cl. (i).

1978—Subsec. (a)(3)(C). Pub. L. 95-557, § 103(c), added "as a result of existing or projected employment opportunities in the community (and those elderly persons residing in or expected to reside in the community), or as estimated in a community accepted State or regional housing opportunity plan approved by the Secretary" following "expected to reside in the community".

Subsec. (a)(4)(A). Pub. L. 95-557, § 103(a), (c), added "owners of homes requiring rehabilitation assistance" following "large families" and added "as a result of existing or projected employment opportunities in the community (and those elderly persons residing in or expected to reside in the community), or as estimated in a community accepted State or regional housing opportunity plan approved by the Secretary" following "expected to reside in the community".

Subsec. (a)(4)(B)(i). Pub. L. 95-557, § 103(b), added "including existing rental and owner occupied dwelling units to be upgraded and thereby preserved" after "existing dwelling units".

Subsec. (c). Pub. L. 95-557, § 103(d), added provisions relating to approval or disapproval of any application on the basis that such application addresses any one of the primary purposes described in par. (3) to a greater or lesser extent than any other, unless such purpose is plainly inappropriate, in which case the application may be disapproved.

1977—Subsec. (a). Pub. L. 95-128, § 110(a), inserted reference to section 5318 of this title.

Subsec. (a)(1). Pub. L. 95-128, § 104(a)(1), inserted "and housing" preceding "needs".

Subsec. (a)(2)(B). Pub. L. 95-128, § 104(a)(2), included provision activities designed to revitalize neighborhoods for benefit of low- and moderate-income persons.

Subsec. (a)(3). Pub. L. 95-128, § 104(a)(3), inserted subpar. (B) requirement for a program designed to insure fully opportunity for participation by, and benefits to, the handicapped and added subpar. (C).

Subsec. (a)(4). Pub. L. 95-128, § 104(a)(4), inserted subpar. (A) provision for identification of housing stock in a deteriorated condition; inserted in subpar. (B) "lower-income" preceding "persons" and added cl. (iii); and inserted subpar. (C)(i) provision respecting reclamation of housing stock where feasible through use of a broad range of techniques for housing restoration by local government, the private sector, or community organizations, including provision of a reasonable opportunity for tenants displaced as a result of such activities to relocate in their immediate neighborhood.

Subsec. (a)(6). Pub. L. 95-128, § 104(a)(5), added cl. (A), redesignated former cls. (A) and (B) as (B) and (C), and redesignated former cl. (C) as (D) and substituted therein "with an opportunity to submit comments concerning the community development performance of the applicant; but nothing in this paragraph" for "an adequate opportunity to participate in the development of the application; but no part of this paragraph".

Subsec. (b)(2). Pub. L. 95-128, § 104(b), substituted in first sentence "low- and moderate-income" for "low- or moderate-income" and in second sentence following "urgency" the clause "because existing conditions pose a serious and immediate threat to the health or welfare of the community, and other financial resources are not available" for "as specifically described in the application".

Subsec. (b)(3). Pub. L. 95-128, § 104(c), added cl. (B), struck out former cl. "(B) the application relates to the first community development activity to be carried out by such locality with assistance under this chapter", redesignated former cl. (D) as (C) and struck out former cl. "(C) the assistance requested is for a single development activity under this chapter of a type eligible for assistance under title VII of the Housing Act of 1961 or title VII of the Housing and Urban Development Act of 1965".

Subsec. (c)(3). Pub. L. 95-128, § 104(d), inserted ", with specific regard to the primary purposes of principally benefiting persons of low- and moderate-income or aiding in the prevention or elimination of slums or blight or meeting other community development needs having a particular urgency," preceding "or other applicable law".

Subsec. (d). Pub. L. 95-128, § 104(e), inserted requirement for inclusion of citizen comments in the performance reports and Secretary's consideration of the comments and added provision for adjustment of grants under section 5306(d)(2) and (f)(1)(B) of this title without recapture of expended funds or deduction from future grants.

Subsec. (e). Pub. L. 95-128, § 104(f), added provisions respecting State participation in selection process for funding the grants.

Subsec. (i). Pub. L. 95-128, § 104(g), added subsec. (i).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-557 effective Oct. 1, 1978, see section 104 of Pub. L. 95-557, set out as an Effective Date of 1978 Amendment note under section 1709 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as an Effective Date of 1977 Amendment note under section 5301 of this title.

REPORT TO CONGRESS CONCERNING CONVERSION OF RENTAL HOUSING TO CONDOMINIUM OR COOPERATIVE OWNERSHIP

Section 109(b) of Pub. L. 96-153 provided that:

"Not later than six months after the date of enactment of this Act [Dec. 21, 1979], the Secretary of Housing and Urban Development shall submit a report to the Congress concerning the conversion of rental housing to condominium or cooperative ownership. Such report shall at least include—

"(1) an estimate of the number of such conversions which have occurred since 1970;

"(2) a projection of the number of such conversions estimated to occur during the period 1980 through 1985;

"(3) an assessment of the impact that such conversions have had or are likely to have on the availability of housing for lower income persons;

"(4) an assessment of the extent to which such conversions are concentrated in certain areas or types of areas of the country; and

"(5) an assessment of the factors contributing to the increase in such conversions.

The Secretary may also include in such report recommendations concerning alternative means to minimize the adverse impact that such conversions may have on lower income persons."

FLOODPLAIN MANAGEMENT

For provisions relating to the reduction of the risk of flood loss, the minimization of the impact of floods on human safety, health and welfare, and the management of floodplains, see Ex. Ord. No. 11988, May 24, 1977, 42 F.R. 26951, set out as a note under section 4321 of this title.

PROTECTION OF WETLANDS

For provisions relating to the protection of wetlands, see Ex. Ord. No. 11990, May 24, 1977, 42 F.R. 26961, set out as a note under section 4321 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437c, 1439, 5302, 5305, 5306, 5316, 5318 of this title.

§ 5305. Activities of Community Development Programs eligible for assistance; reimbursement of Secretary for administrative services connected with rehabilitation of properties

(a) A Community Development Program assisted under this chapter shall consist of activities which assist in carrying out a comprehensive strategy for meeting the community development and housing needs and priorities identified pursuant to section 5304 of this title, giving primary attention to activities benefiting low- and moderate-income persons and neighborhoods, aiding in the prevention or elimination of slums or blight, or meeting other community development needs having a particular urgency. These activities may include only—

[*See main edition for text of (1) to (3)*]

(4) clearance, demolition, removal, and rehabilitation of buildings and improvements (including interim assistance, and financing public or private acquisition for rehabilitation, and rehabilitation, of privately owned properties);

[*See main edition for text of (5) to (7)*]

(8) provision of public services not otherwise available in areas where other activities assisted under this chapter are being carried out in a concentrated manner, if such services are determined to be necessary or appropriate to support such other activities and if assistance in providing or securing such services under other applicable Federal laws or programs has been applied for and denied or not made available within a reasonable period of time, and if such services are directed toward (A) improving the community's public services and facilities, including those concerned with the employment, crime prevention, child care, health, drug abuse, education, welfare, or recreation needs of persons residing in such areas, and (B) coordinating public and private development programs, and if such services have not been provided by the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) during any part of the twelve-month period immediately preceding the date of application submission for funds which are to be made available under this chapter, and which are to be utilized for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the applicant;

[*See main edition for text of (9), (10)*]

(11) relocation payments and assistance for displaced individuals, families, businesses, organizations, and farm operations, when determined by the grantee to be appropriate to the community development program;

(12) activities necessary (A) to develop a comprehensive community development plan, and (B) to develop a policy-planning-management capacity so that the recipient of assistance under this chapter may more rationally and effectively (i) determine its needs, (ii) set long-term goals and short-term objectives, (iii) devise programs and activities to meet these goals and objectives, (iv) evaluate the progress of such programs in accomplishing these goals and objectives, and (v) carry out management, coordination, and monitoring of activities necessary for effective planning implementation;

(13) payment of reasonable administrative costs and carrying charges related to the planning and execution of community development and housing activities, including the provision of information and resources to residents of areas in which community development and housing activities are to be concentrated with respect to the planning and execution of such activities; and

(14) activities which are carried out by public or private non-profit entities when such activities are necessary or appropriate to meeting the needs and objectives of the community development plan described in section 5304(a)(1) of this title, including (A) acquisition of real property; (B) acquisition, construction, reconstruction, rehabilitation, or installation of (i) public facilities, site improvements, and utilities, and (ii) commercial or industrial buildings or structures and other commercial or industrial real property improvements; and (C) planning; and

(15) grants to neighborhood-based nonprofit organizations, local development corporations, or entities organized under section 681(d) of title 15 to carry out a neighborhood revitalization or community economic development project in furtherance of the objectives of section 5301(c) of this title.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 95-128, title I, § 105, Oct. 12, 1977, 91 Stat. 1116; Pub. L. 95-557, title I, § 103(e), Oct. 31, 1978, 92 Stat. 2084.)

AMENDMENTS

1978—Subsec. (a)(11). Pub. L. 95-557 added "displaced" following "payments and assistance for" and substituted "when determined by the grantee to be appropriate to the community development program" for "displaced by activities assisted under this chapter".

1977—Subsec. (a). Pub. L. 95-128, § 105(a), inserted in the introductory text description of activities covered including the words "These activities".

Subsec. (a)(4). Pub. L. 95-128, § 105(b), substituted parenthetical text "(including interim assistance, and financing public or private acquisition for rehabilitation, and rehabilitation, of privately owned properties)" for "(including interim assistance and financing rehabilitation of privately owned properties when incidental to other activities)".

Subsec. (a)(8). Pub. L. 95-128, § 105(c), deleted from cl. (A) "economic development," preceding "crime prevention" and authorized the program to provide public services only if such services have not been provided by the unit of general local government during any part of the twelve-month period preceding the date of application submission for funds to be made available under this chapter, and to be utilized for such services, unless the Secretary finds that the discontinuation of such services was the result of events not within the control of the applicant.

Subsec. (a)(14), (15). Pub. L. 95-128, § 105(d), added pars. (14) and (15).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-557 effective Oct. 1, 1978, see section 104 of Pub. L. 95-557, set out as an Effective Date of 1978 Amendment note under section 1709 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as an Effective Date of 1977 Amendment note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5304, 5318 of this title.

§ 5306. Allocation and distribution of funds

(a) Amount allocated to metropolitan areas; annual grants for metropolitan cities and urban counties; limitations

Of the amount approved in an appropriation Act under section 5303(a) of this title for grants in any year (excluding the amount provided for use in accordance with sections 5303(a)(2) and 5307 of this title), 80 per centum shall be allocated by the Secretary to metropolitan areas. Except as provided in subsections (c) and (e) of this section, each metropolitan city and urban county shall, subject to the provisions of section 5304 of this title and except as otherwise specifically authorized, be entitled to annual grants from such allocation in an aggregate amount not exceeding the greater of its basic amount computed pursuant to paragraph (1) or (2) of subsection (b) of this section or its hold-harmless amount computed pursuant to subsection (g) of this section.

(b) Amount allocated to metropolitan cities and urban counties; computation

(1) The Secretary shall determine the amount to be allocated to each metropolitan city which shall be the greater of an amount that bears the same ratio to the allocation for all metropolitan areas as either—

(A) the average of the ratios between—

(i) the population of that city and the population of all metropolitan areas;

(ii) the extent of poverty in that city and the extent of poverty in all metropolitan areas; and

(iii) the extent of housing overcrowding in that city and the extent of housing overcrowding in all metropolitan areas; or

(B) the average of the ratios between—

(i) the extent of growth lag in that city and the extent of growth lag in all metropolitan cities;

(ii) the extent of poverty in that city and the extent of poverty in all metropolitan areas; and

(iii) the age of housing in that city and the age of housing in all metropolitan areas.

(2) The Secretary shall determine the amount to be allocated to each urban county, which shall be the greater of an amount that bears the same ratio to the allocation for all metropolitan areas as either—

(A) the average of the ratios between—

(i) the population of that urban county and the population of all metropolitan areas;

(ii) the extent of poverty in that urban county and the extent of poverty in all metropolitan areas; and

(iii) the extent of housing overcrowding in that urban county and the extent of housing overcrowding in all metropolitan areas; or

(B) the average of the ratios between—

(i) the extent of growth lag in that urban county and the extent of growth lag in all metropolitan cities and urban counties;

(ii) the extent of poverty in that urban county and the extent of poverty in all metropolitan areas; and

(iii) the age of housing in that urban county and the age of housing in all metropolitan areas.

(3) In determining the average of ratios under paragraphs (1)(A) and (2)(A), the ratio involving the extent of poverty shall be counted twice, and each of the other ratios shall be counted once; and in determining the average of ratios under paragraphs (1)(B) and (2)(B), the ratio involving the extent of growth lag shall be counted once, the ratio involving the extent of poverty shall be counted one and one-half times, and the ratio involving the age of housing shall be counted two and one-half times.

(4) In computing amounts or exclusions under this section with respect to any urban county there shall be excluded units of general local government located in the county (A) which are entitled to hold-harmless grants pursuant to subsection (h) of this section, or (B) the populations of which are not counted in determining the eligibility of the urban county to receive a grant under this subsection.

(5) In computing amounts under this section with respect to any urban county, there shall be included all of the area of any unit of local government which is part of, but is not located entirely within the boundaries of, such urban county if the part of such unit of local government which is within the boundaries of such urban county would otherwise be included in computing the amount for such urban county under this section, and if the part of such unit of local government which is not within the boundaries of such urban county is not included as a part of any other unit of local government for the purpose of this section. Any amount received by such urban county under this section may be used with respect to the part of such unit of local government which is outside the boundaries of such urban county.

(c) Adjustment of amounts for metropolitan cities and urban counties; time periods for adjustments

With respect to funds approved for distribution to a metropolitan city or urban county under this section during fiscal years 1975, 1976, and 1977, the basic grant amount of such city or county as computed under subsection (b) of this section shall be adjusted only for such funds approved for distribution in fiscal years 1975, 1976, and 1977 as provided in this subsection if the amount so computed for the first such year exceeds the city's or county's hold-harmless amount as determined under subsection (g) of this section. Such adjustment shall be made so that—

[*See main edition for text of* (*1*) *to* (*3*)]

(d) Additional allocations of amounts allocated to metropolitan areas and added amounts for grants to metropolitan cities, urban counties, specified units of general local government, and States; computations; pro rata reduction; multiyear commitment; annual grant; limitation

(1) Any portion of the amount allocated to metropolitan areas under the first sentence of subsection (a) of this section which remains after the allocation of grants to metropolitan cities and urban counties in accordance with subsection (b) of this section and any amounts added in accordance with the provisions of section 5303(a)(2) of this title shall be allocated by the Secretary, first, for grants to metropolitan cities, urban counties, and other units of general local government within metropolitan areas to meet their hold-harmless needs as determined under subsections (g) and (h) of this section, and, second, in accordance with the provisions of paragraph (2).

(2) Any portion of such amounts which remains after applying the provisions of paragraph (1) shall be utilized by the Secretary for grants to units of general local government within metropolitan areas (other than metropolitan cities and urban counties), and States for use within metropolitan areas, allocating for the metropolitan areas of each State the greater of an amount that bears the same ratio to the allocation for such areas of all States available under this paragraph as either—

(A) the average of the ratios between—

(i) the population of the metropolitan areas in that State and the population of the metropolitan areas of all States;

(ii) the extent of poverty in the metropolitan areas in that State and the extent of poverty in the metropolitan areas of all States; and

(iii) the extent of housing overcrowding in the metropolitan areas in that State and the extent of housing overcrowding in the metropolitan areas of all States; or

(B) the average of the ratios between—

(i) the age of housing in the metropolitan areas in that State and the age of housing in the metropolitan areas of all States;

(ii) the extent of poverty in the metropolitan areas in that State and the extent of poverty in the metropolitan areas of all States; and

(iii) the population of the metropolitan areas in that State and the population of the metropolitan areas of all States.

In determining the average of the ratios under subparagraph (A), the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once; and in determining the average of the ratios under subparagraph (B), the ratio involving the age of housing shall be counted two and one-half times, the ratio involving the extent of poverty shall be counted one and one-half times, and the ratio involving population shall be counted once. The Secretary shall, in order to compensate for the discrepancy between the total of the amounts to be allocated under this paragraph and the total of the amounts available under such paragraph, make a pro rata reduction of each amount allocated to the metropolitan areas in each State under such paragraph so that the metropolitan areas in each State will receive an amount which represents the same percentage of the total amount available under such paragraph as the percentage which the metropolitan areas of the same State would have received under such paragraph if the total amount available under that paragraph had equaled the total amount which was allocated under that paragraph.

(3) If the Secretary approves a grant under paragraph (2) to a unit of general local government which has a comprehensive community development program with provision for lower-income housing, the Secretary may make a multiyear commitment, up to three years, to any such unit of general local government for specified grant amounts, subject to the availability of appropriations. In determining whether to make such a commitment to a unit of general local government, the Secretary shall give special consideration to those communities presently carrying out comprehensive community development programs, which are subject to the provisions of subsection (h)(2) of this section, before making new commitments. In making grants under paragraph (2), the Secretary shall establish for each participating unit of general local government an annual grant at an amount meaningful to the size of the unit and the program identified, and shall consider such factors as the unit's engaging in economic redevelopment activities, past performance of the unit in community development activities, prior and present funding levels under this chapter, the function of the unit as a regional center of economic development and activity, impact on the unit's growth of national policy or direct Federal program decisions, the potential for having increased employment within such unit as a result of community development activity, the physical and economic deterioration within the unit, the age of housing stock and the extent of poverty within the unit, the extent to which the unit's activity or program of activities is necessary to alleviate a serious threat to health or safety, the capacity of the unit to carry out such programs, and any other factors deemed, by the Secretary, to be relevant to carrying out the purposes of this chapter. The Secretary shall make grants under paragraph (2) in such a manner as to insure that a reasonable proportion of grants is available to applicants which are not seeking funding for comprehensive community development programs. The Secretary may accept and approve commitments for annual grants based on comprehensive community development programs commencing in future fiscal years subject only to the availability of appropriations. In computing amounts under paragraph (2), there shall be excluded metropolitan cities, urban counties, Indian tribes, and units of general local government which are entitled to hold-harmless grants pursuant to subsection (h) of this section.

(e) Reallocation of amounts allocated to metropolitan cities, urban counties, and metropolitan areas for use by States, metropolitan cities, urban counties, or specified units of general local government; prerequisites; review by Secretary

Any amounts allocated to a metropolitan city or urban county pursuant to the preceding provisions of this section which are not applied for during a program period or which are not approved by the Secretary, and any other amounts allocated to a metropolitan area which the Secretary determines, on the basis of the applications and other evidence available, are not likely to be fully obligated within a reasonable time, shall be reallocated for use by States, metropolitan cities, urban counties, or units of general local government, first, in any metropolitan area in the same State, and second, in any other metropolitan area. The Secretary shall review determinations under this subsection from time to time as appropriate with a view of assuring maximum use of all available funds in the period for which such funds were appropriated.

(f) Amounts allocated to units of general local government of metropolitan areas and States; computations; pro rata reduction; multiyear commitment; annual grant; limitation; reallocation of amounts to nonmetropolitan areas of other States; prerequisites; review by Secretary

(1) Of the amount approved in an appropriation Act under section 5303(a) of this title for grants in any year (excluding the amount provided for use in accordance with sections 5303(a)(2) and 5307 of this title), 20 per centum shall be allocated by the Secretary—

(A) first, for grants to units of general local government outside of metropolitan areas to meet their hold-harmless needs as determined under subsection (h) of this section; and

(B) second, any portion of such amount which remains after applying the provisions of subparagraph (A) shall be utilized by the Secretary for grants to units of general local government outside of metropolitan areas and States for use outside the metropolitan areas, allocating for the nonmetropolitan areas of each State the greater of an amount that bears the same ratio to the allocation for such areas of all States available under this subparagraph as either—

(i) the average of the ratios between—

(I) the population of the nonmetropolitan areas in that State and the population of the nonmetropolitan areas of all States;

(II) the extent of poverty in the nonmetropolitan areas in that State and the extent of poverty in the nonmetropolitan areas of all States; and

(III) the extent of housing overcrowding in the nonmetropolitan areas in that State and the extent of housing overcrowding in the nonmetropolitan areas of all States; or

(ii) the average of the ratios between—

(I) the age of housing in the nonmetropolitan areas in that State and the age of housing in the nonmetropolitan areas of all States;

(II) the extent of poverty in the nonmetropolitan areas in that State and the extent of poverty in the nonmetropolitan areas of all States; and

(III) the population of the nonmetropolitan areas in that State and the population of the nonmetropolitan areas of all States.

In determining the average of the ratios under clause (i) of subparagraph (B) the ratio involving the extent of poverty shall be counted twice and each of the other ratios shall be counted once; and in determining the average of the ratios under clause (ii) of subparagraph (B), the ratio involving the age of housing shall be counted two and one-half times, the ratio involving the extent of poverty shall be counted one and one-half times, and the ratio involving population shall be counted once. The Secretary shall, in order to compensate for the discrepancy between the total of the amounts to be allocated under subparagraph (B) and the total of the amounts available under such subparagraph, make a pro rata reduction of each amount allocated to the nonmetropolitan areas in each State under such subparagraph so that the nonmetropolitan areas in each State will receive an amount which represents the same percentage of the total amount available under such subparagraph as the percentage which the nonmetropolitan areas of the same State would have received under such subparagraph if the total amount available under such subparagraph had equaled the total amount which was allocated under such subparagraph.

(2) If the Secretary approves a grant under paragraph (1)(B) to a unit of general local government which has a comprehensive community development program with provision for lower-income housing, the Secretary may make a multiyear commitment, up to three years, to any such unit of general local government for specified grant amounts, subject to the availability of appropriations. In determining whether to make such a commitment to a unit of general local government, the Secretary shall give special consideration to those communities presently carrying out comprehensive community development programs, which are subject to the provisions of subsection (h)(2) of this section, before making new commitments. In making grants under paragraph (1)(B), the Secretary shall establish for each participating unit of general local government an annual grant at an amount meaningful to the size of the unit and the program identified, and shall consider such factors as the unit's engaging in economic redevelopment activities, past performance of the unit in community development activities, prior and present funding levels under this chapter, the function of the unit as a regional center of economic development and activity, impact on the unit's growth of national policy or direct Federal program decisions, the potential for having increased employment within such unit as a result of community development activity, the physical and economic deterioration within the unit, the age of housing stock and the extent of poverty within the unit, the extent to which the unit's activity or program activities is necessary to alleviate a serious threat to health or safety, the capacity of the unit to carry out such programs, and any other factors deemed, by the Secretary, to be relevant to carrying out the purposes of this chapter. The Secretary shall make grants under paragraph (1)(B) in such a manner as to insure that a reasonable proportion of grants is available to applicants which are not seeking funding for comprehensive community development programs. The Secretary may accept and approve commitments for annual grants based on comprehensive community development programs commencing in future fiscal years subject only to the availability of appropriations. In computing amounts under paragraph (1)(B), three[1] shall be excluded units of general local government which are entitled to hold-harmless grants pursuant to subsection (h) of this section and Indian tribes.

(3) Any amounts allocated to a unit of general local government under paragraph (1) which are not applied for during a program period or which are not approved by the Secretary, and any amounts allocated to the nonmetropolitan areas of a State under paragraph (1)(B) which the Secretary determines, on the basis of applications and other evidence available, are not likely to be fully obligated within a reasonable time, shall be reallocated as soon as practicable to the nonmetropolitan areas of other States. The Secretary shall review determinations under this paragraph from time to time with a view to assuring maximum use of all available funds in the program period for which such funds were appropriated.

(g) Hold-harmless amount of metropolitan cities and urban counties; factors determining computation of sum

[*See main edition for text of (1)*]

(2) During the fiscal years 1975, 1976, and 1977, the hold-harmless amount of any metropolitan city or urban county shall be the full amount computed for the city or county in accordance with paragraph (1). In the fiscal years 1978, 1979, and 1980, if such amount is greater than the basic grant amount of the metropolitan city or urban county for that year, as computed under subsection (b)(1)(A) or (B), or (2)(A) or (B) of this section, it shall be reduced so that—

(i) in the fiscal year 1978, the excess of the hold-harmless amount over the basic grant amount, as computed under subsection (b)(1)(A) or (B), or (2)(A) or (B) of this section, shall equal two-thirds of the difference between the amount computed under paragraph (1) and the basic grant amount for such year,

(ii) in the fiscal year 1979, the excess of the hold-harmless amount over the basic grant amount, as computed under subsection (b)(1)(A) or (B), or (2)(A) or (B) of this section, shall equal one-third of the difference between the amount computed under paragraph (1) and the basic grant amount for such year, and

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[1] So in original. Probably should be "there".

(iii) in the fiscal year 1980, there shall be no excess of the hold-harmless amount over the basic grant amount.

[*See main edition for text of* (*h*)]

(i) Percentages excluded from data in computation of hold-harmless grants for units of general local government for fiscal years 1978 and 1979

In excluding the data of units of general local government which are entitled to a hold-harmless grant pursuant to subsection (h) of this section from the computations described in subsections (b)(4), (d), and (f) of this section, the Secretary shall exclude only two-thirds of such data for the fiscal year 1978 and one-third of such data for the fiscal year 1979.

(j) Waiver of eligibility by units of general local government for hold-harmless grants; computations unaffected by waiver

Any unit of general local government eligible for a hold-harmless grant pursuant to subsection (h) of this section may, by such date as the Secretary shall determine, irrevocably waive its eligibility for a hold-harmless grant for a single year under such subsection. In the case of such a waiver the unit of general local government shall not be excluded from the computations described in subsections (b)(4), (d), and (f) of this section.

[*See main edition for text of* (*k*)]

(*l*) Report to Congress: adequacy of funds allocation formula; "impaction" defined

Not later than September 30, 1978, the Secretary shall report to the Congress with respect to the adequacy, effectiveness, and equity of the formula used for allocation of funds under this chapter, with specific analysis and recommendation as to the feasibility of utilizing factors of impaction (such as adjusted age of housing and extent of poverty) as a measurement consideration, and the feasibility of utilizing a single formula based on the current factors or others, including regional or area differences in income and cost of living. As used in this subsection, the term "impaction" means the intensity, measured in terms of absolute numbers and proportions of each needs factor.

(m) Pro rata reduction of basic grant and hold-harmless entitlement amounts and other funds to meet deficiency of funds

In the event that the total amount available for distribution under this section in fiscal year 1978, fiscal year 1979, or fiscal year 1980 is insufficient to meet all basic grant and hold-harmless entitlement needs as provided pursuant to this section, and funds are not otherwise appropriated to meet such deficiency, the Secretary shall meet the deficiency through a pro rata reduction of (1) all basic grant and hold-harmless entitlement amounts, and (2) funds available under subsection (d)(2) of this section (including amounts provided for use under section 5303(a)(2) of this title) and subsection (f)(1)(B) of this section.

(As amended Pub. L. 95-128, title I, § 106, Oct. 12, 1977, 91 Stat. 1117; Pub. L. 96-153, title I, § 103(d), (e), Dec. 21, 1979, 93 Stat. 1102.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (d)(3), (f)(2), and (*l*), in the original read "this title" meaning title I of Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, which enacted this chapter and amended sections 1452b, 1453, and 3311 of this title, section 1701u of Title 12, Banks and Banking, and section 711 of Title 31, Money and Finance.

AMENDMENTS

1979—Subsec. (b)(5). Pub. L. 96-153, § 103(e), added par. (5).

Subsec. (m). Pub. L. 96-153, § 103(d), added reference to fiscal year 1980.

1977—Subsec. (a). Pub. L. 95-128, § 106(a), substituted in second sentence reference to pars. "(1) or (2)" for pars. "(2) or (3)" of subsec. (b) of this section.

Subsec. (b)(1). Pub. L. 95-128, § 106(b), added par. (1), and struck out former par. (1) provisions stating that "The Secretary shall determine the amount to be allocated to all metropolitan cities which shall be an amount that bears the same ratio to the allocation for all metropolitan areas as the average of the ratios between—

"(A) the population of all metropolitan cities and the population of all metropolitan areas;

"(B) the extent of poverty in all metropolitan cities and the extent of poverty in all metropolitan areas; and

"(C) the extent of housing overcrowding in all metropolitan cities and the extent of housing overcrowding in all metropolitan areas.", now incorporated in this paragraph.

Subsec. (b)(2). Pub. L. 95-128, § 106(b), added par. (2) and struck out former par. (2) provisions declaring that "From the amount allocated to all metropolitan cities the Secretary shall determine for each metropolitan city a basic grant amount which shall equal an amount that bears the same ratio to the allocation for all metropolitan cities as the average of the ratios between—

"(A) the population of that city and the population of all metropolitan cities;

"(B) the extent of poverty in that city and the extent of poverty in all metropolitan cities; and

"(C) the extent of housing overcrowding in that city and the extent of housing overcrowding in all metropolitan cities.", now incorporated in subsec. (b)(1) of this section.

Subsec. (b)(3). Pub. L. 95-128, § 106(b), added par. (3) and struck out former par. (3) provisions for determination of basic grant amount of each urban county, now covered in subsec. (b)(2) of this section and formerly providing that "The Secretary shall determine the basic grant amount of each urban county by—

"(A) calculating the total amount that would have been allocated to metropolitan cities and urban counties together under paragraph (1) of this subsection if data pertaining to the population, extent of poverty, and extent of housing overcrowding in all urban counties were included in the numerator of each of the fractions described in such paragraph; and

"(B) determining for each county the amount which bears the same ratio to the total amount calculated under subparagraph (A) of this paragraph as the average of the ratios between—

"(i) the population of that urban county and the population of all metropolitan cities and urban counties;

"(ii) the extent of poverty in that urban county and the extent of poverty in all metropolitan cities and urban counties; and

"(iii) the extent of housing overcrowding in that urban county and the extent of housing overcrowding in all metropolitan cities and urban counties."

Subsec. (b)(4). Pub. L. 95-128, § 106(b), (c), struck out former par. "(4) In determining the average of ratios under paragraphs (1), (2), and (3), the ratio involving the extent of poverty shall be counted twice.", now incorporated in par. (3), redesignated former par. (5) as (4) and substituted "are entitled to" for "receive".

Subsec. (b)(5). Pub. L. 95-128, § 106(c)(1), redesignated former par. (5) as (4).

Subsec. (c). Pub. L. 95-128, § 106(d), in the first sentence, substituted "With respect to funds approved for distribution to a metropolitan city or urban county under this section during fiscal years 1975, 1976, and 1977" for "During the first three years for which funds are approved for distribution to a metropolitan city or urban county under this section" and inserted following "adjusted" the phrase "only for such funds approved for distribution in fiscal years 1975, 1976, and 1977".

Subsec. (d). Pub. L. 95-128, § 106(e), incorporated existing introductory text and provisions of former par. (1) in provisions now designated par. (1); added par. (2), incorporating provisions of former par. (2) respecting additional allocations by the Secretary "for grants to units of general local government (other than metropolitan cities and urban counties) and States for use in metropolitan areas, allocating for each such metropolitan area an amount which bears the same ratio to the allocation for all metropolitan areas available under this paragraph as the average of the ratios between—

"(A) the population of that metropolitan area and the population of all metropolitan areas,

"(B) the extent of poverty in that metropolitan area and the extent of poverty in all metropolitan areas, and

"(C) the extent of housing overcrowding in that metropolitan area and the extent of housing overcrowding in all metropolitan areas." and declaring that "In determining the average of ratios under paragraph (2), the ratio involving the extent of poverty shall be counted twice"; deleted end clause providing that "in computing amounts under such paragraph there shall be excluded any metropolitan cities, urban counties, and units of general local government which receive hold-harmless grants pursuant to subsection (h) of this section", now constituting last sentence of par. (3); and added par. (3) provisions.

Subsec. (e). Pub. L. 95-128, § 106(f), in first sentence, substituted "within a reasonable time" for "during such program period" and struck out "during the same period" following "shall be reallocated".

Subsec. (f)(1). Pub. L. 95-128, § 106(g)(1), inserted in subpar. (B) "any portion of such amount which remains after applying the provisions of subparagraph (A) shall be utilized by the Secretary" following "second," and "the greater of" preceding "an amount"; reenacted existing provisions in cl. (i); added cl. (ii); added provision respecting determination of average of ratios under cl. (ii) of subpar. (B) and provision for pro rata reduction, to compensate for the discrepancy between the total of the amounts to be allocated under subpar. (B) and the total of the amounts available under such subparagraph, of each amount allocated to the nonmetropolitan areas in each State under such subparagraph; and deleted end clause providing that in computing amounts under such subpar. (B) there shall be excluded units of general local government which receive hold-harmless grants pursuant to subsec. (h) of this section, now constituting end sentence of subsec. (f)(2) of this section.

Subsec. (f)(2). Pub. L. 95-128, § 106(g)(1), (2), added par. (2) and redesignated former par. (2) as (3).

Subsec. (f)(3). Pub. L. 95-128, § 106(g)(2)-(4), redesignated former par. (2) as (3), substituted therein "within a reasonable time" for "during such period", and deleted "during the same period" following "as soon as practicable".

Subsec. (g)(2). Pub. L. 95-128, § 106(h), substituted reference to "subsection (b)(1)(A) or (B), or (2)(A) or (B) of this section" for "subsection (b)(2) or (3) of this section" and inserted in cls. (i) and (ii) preceding "shall" the phrase ", as computed under subsection (b)(1)(A) or (B), or (2)(A) or (B) of this section,".

Subsec. (i). Pub. L. 95-128, § 106(i), struck out "population, poverty, and housing overcrowding" preceding "data" and substituted "are entitled to" for "receive" and reference to subsec. (b)(4) for (b)(5) of this section.

Subsec. (j). Pub. L. 95-128, § 106(j), substituted "by such date as the Secretary shall determine" for "not later than thirty days prior to the beginning of any program period" and reference to subsec. (b)(4) for (b)(5) of this section and inserted "for a hold-harmless grant for a single year" following "eligibility".

Subsec. (*l*). Pub. L. 95-128, § 106(k), substituted provisions for submission of a report to Congress not later than Sept. 30, 1978, respecting adequacy of funds allocation formula and defining "impaction" for prior requirement of a report to Congress not later than Mar. 31, 1977, setting forth recommendations to further purposes and policies of this chapter, for modifying or expanding the provisions of this section relating to the method of funding and the allocation of funds and the determination of basic grant entitlement, and for application of the provisions in the further distribution of funds under this chapter and the conduct of a study by the Secretary respecting manner of distributing funds under this chapter in accordance with community development needs, objectives, and capacities, measured to the maximum extent feasible by objective standards.

Subsec. (m). Pub. L. 95-128, § 106(*l*), added subsec. (m).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as an Effective Date of 1977 Amendment note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5303, 5304, 5307, 5308, 5312, 5316, 5318 of this title.

§ 5307. Special discretionary fund

(a) Amount; purposes for expenditure from fund

Of the total amount of authority to enter into contracts approved in appropriation Acts under section 5303(a)(1) of this title for each of the fiscal years 1975, 1976, 1977, 1978, 1979, and 1980, an amount equal to 3 per centum thereof shall be reserved and set aside in a special discretionary fund for use by the Secretary in making grants (in addition to any other grants which may be made under this chapter to the same entities or for the same purposes)—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) to States, units of general local government, and Indian tribes for the purpose of meeting emergency community development needs caused by federally recognized disasters;

(6) to States and units of general local government where the Secretary deems it necessary to correct inequities resulting from the allocation provisions of section 5306 of this title;

(7) to Indian tribes; and

(8) to States, units of general local government, Indian tribes, or areawide planning organizations for the purpose of providing technical assistance in planning, developing, and administering assistance under this chapter. The Secretary may also provide, directly or

through contracts, technical assistance under this paragraph to such governmental units, or to a group designated by such a governmental unit for the purpose of assisting that governmental unit to carry out its Community Development Program.

(b) Limitation on amount reserved for emergency disaster needs

Not more than 15 per centum of the total amount reserved and set aside in the special discretionary fund under subsection (a) of this section for each year may be used for grants to meet emergency disaster needs under subsection (a)(5) of this section.

[*See main edition for text of* (c)]

(d) Indian tribal eligibility for grant dependent upon conformity of program with prescribed constitutional rights and privilege of habeas corpus

No grant may be made to an Indian tribe unless the applicant provides satisfactory assurances that its program will be conducted and administered in conformity with title II of Public Law 90-284 [25 U.S.C. 1301 et seq.]. The Secretary may waive, in connection with such grants, the provisions of section 5309 and section 5310 of this title.

(As amended Pub. L. 95-128, title I, § 107, Oct. 12, 1977, 91 Stat. 1123; Pub. L. 95-557, title I, § 103(f), Oct. 31, 1978, 92 Stat. 2084.)

REFERENCES IN TEXT

Title II of Public Law 90-284, referred to in subsec. (d), is title II of Pub. L. 90-284, Apr. 11, 1968, 82 Stat. 77, which is classified generally to subchapter I (§ 1301 et seq.) of chapter 15 of Title 25, Indians.

AMENDMENTS

1978—Subsec. (a)(8). Pub. L. 95-557 substituted "The Secretary may also provide, directly or through contracts, technical assistance under this paragraph to such governmental units, or to a group designated by such a governmental unit for the purpose of assisting that governmental unit to carry out its Community Development Program" for "The Secretary may also provide such technical assistance under this paragraph directly or through contracts".

1977—Subsec. (a). Pub. L. 95-128, § 107(1), (2), extended the provisions to fiscal years 1978 through 1980 and increased the rate to 3 from 2 per centum.

Subsec. (a)(5). Pub. L. 95-128, § 107(3), provided for grants to Indian tribes.

Subsec. (a)(7), (8). Pub. L. 95-128, § 107(4), added pars. (7) and (8).

Subsec. (b). Pub. L. 95-128, § 107(5), substituted "15 per centum" for "one-fourth".

Subsec. (d). Pub. L. 95-128, § 107(6), added subsec. (d).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-557 effective Oct. 1, 1978, see section 104 of Pub. L. 95-557, set out as an Effective Date of 1978 Amendment note under section 1709 of Title 12, Banks and Banking.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as an Effective Date of 1977 Amendment note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5303, 5308, 5316 of this title.

§ 5308. Guarantee and commitment to guarantee loans for acquisition of property

(a) Authority of Secretary; issuance of obligations by units of general local government or designated public agencies; form, denomination, maturity, and conditions of notes or other obligations

The Secretary is authorized, upon such terms and conditions as the Secretary may prescribe, to guarantee and make commitments to guarantee the notes or other obligations issued by units of general local government, or by public agencies designated by such units of general local government, for the purposes of financing acquisition of real property or the rehabilitation of real property owned by the unit of general local government (including such related expenses as the Secretary may permit by regulation). Notes or other obligations guaranteed pursuant to this section shall be in such form and denominations, have such maturities, and be subject to such conditions as may be prescribed by regulations issued by the Secretary.

(b) Prerequisites

No guarantee or commitment to guarantee shall be made with respect to any note or other obligation if the issuer's total outstanding notes or obligations guaranteed under this section would thereby exceed an amount equal to three times the amount of the grant approval for the issuer pursuant to section 5306 of this title.

(c) Payment of principal, interest and costs

Notwithstanding any other provision of this chapter, grants allocated to an issuer pursuant to this chapter (including program income derived therefrom) are authorized for use in the payment of principal and interest due (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) on the notes or other obligations guaranteed pursuant to this section.

(d) Repayment contract; security

To assure the repayment of notes or other obligations and charges incurred under this section and as a condition for receiving such guarantees, the Secretary shall require the issuer to—

(1) enter into a contract, in a form acceptable to the Secretary, for repayment of notes or other obligations guaranteed hereunder;

(2) pledge any grant approved or for which the issuer may become eligible under this chapter; and

(3) furnish, at the discretion of the Secretary, such other security as may be deemed appropriate by the Secretary in making such guarantees, including increments in local tax receipts generated by the activities assisted under this chapter or dispositions proceeds from the sale of land or rehabilitated property.

(e) Pledged grants for repayments

The Secretary is authorized, notwithstanding any other provision of this chapter, to apply grants pledged pursuant to subsection (d)(2) of this section to any repayments due the United States as a result of such guarantees.

(f) Full faith and credit of United States pledged for payment; conclusiveness and validity of guarantee

The full faith and credit of the United States is pledged to the payment of all guarantees made under this section. Any such guarantee made by the Secretary shall be conclusive evidence of the eligibility of the obligations for such guarantee with respect to principal and interest, and the validity of any such guarantee so made shall be incontestable in the hands of a holder of the guaranteed obligations.

(g) Issuance of obligations by Secretary to Secretary of Treasury to satisfy authorized guarantee obligations; establishment of maturities and rates of interest and purchase of obligations by Secretary of Treasury

The Secretary may issue obligations to the Secretary of the Treasury in an amount outstanding at any one time sufficient to enable the Secretary to carry out his obligations under guarantees authorized by this section. The obligations issued under this subsection shall have such maturities and bear such rate or rates of interest as shall be determined by the Secretary of the Treasury. The Secretary of the Treasury is authorized and directed to purchase any obligations of the Secretary issued under this section, and for such purpose is authorized to use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, as now or hereafter in force, and the purposes for which such securities may be issued under such Act are extended to include the purchases of the Secretary's obligations hereunder.

(h) Federal taxation of guaranteed obligations; grants to borrowing unit or agency of taxable obligations for net interest costs, etc.; limitation on amount of grant

Obligations guaranteed under this section, shall be subject to Federal taxation as provided in subsection (i) of this section. The Secretary is authorized to make, and to contract to make, grants, in such amounts as may be approved in appropriations Acts, to or on behalf of the issuing unit of general local government or public agency to cover not to exceed 30 per centum of the net interest cost (including such servicing, underwriting, or other costs as may be specified in regulations of the Secretary) to the borrowing unit or agency of such obligations.

(i) Inclusion within gross income for purpose of chapter 1 of title 26 of interest paid on taxable obligations

With respect to any obligation issued by a unit of general local government or designated agency which is guaranteed pursuant to this section, the interest paid on such obligation shall be included in gross income for the purpose of chapter 1 of title 26.

(j) Outstanding obligations; limitation

Notwithstanding any other provision of this section, the total amount of outstanding obligations guaranteed on a cumulative basis by the Secretary pursuant to subsection (a) of this section shall not at any time exceed $3,500,000,000 or such higher amount as may be authorized to be appropriated for sections 5306 and 5307 of this title for any fiscal year.

(Pub. L. 93-383, title I, § 108(a)-(h), (j), (k), Aug. 22, 1974, 88 Stat. 647-649, as amended Pub. L. 95-128, title I, § 108, Oct. 12, 1977, 91 Stat. 1123.)

References in Text

This chapter, referred to in subsecs. (c) to (e), in the original read "this title" meaning title I of Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, which enacted this chapter and amended sections 1452b, 1453, and 3311 of this title, section 1701u of Title 12, Banks and Banking, and section 711 of Title 31, Money and Finance.

The Second Liberty Bond Act, referred to in subsec. (g), is act Sept. 2, 1917, ch. 56, 40 Stat. 288, as amended. For complete classfication of this Act to the Code, see References in Text note set out under section 774 of Title 31, Money and Finance, and Tables.

Codification

Subsecs. (f) and (g), originally enacted as subsecs. (c) and (d), were redesignated (f) and (g) by section 108(2) of Pub. L. 95-128. Subsec. (f) of Pub. L. 93-383, § 108, as originally enacted which amended section 711(22) of Title 31, Money and Finance, was redesignated subsec. (i) of Pub. L. 93-383, § 108, by Pub. L. 95-128, § 108(2). Subsec. (j) of Pub. L. 93-383, § 108, originally enacted as (g) of Pub. L. 93-383, § 108, and redesignated (j) by Pub. L. 95-128, § 108(2), and subsec. (k), added by section 108(7) of Pub. L. 95-128, have been designated as subsecs. (i) and (j) of this section for purposes of codification. See also 1977 Amendment notes below.

Amendments

1977—Subsec. (a). Pub. L. 95-128, § 108(1), (3), reenacted substantially existing provisions and also deleted "or assembly" following "acquisition of", included rehabilitation of real property owned by the unit of general local government, added provision respecting form, denominations, maturities, and conditions of notes or other obligations to be guaranteed, and deleted after parenthetical text "to serve or be used in carrying out activities which are eligible for assistance under section 5305 of this title and are identified in the application under section 5304 of this title, and with respect to which grants have been or are to be made under section 5303 of this title, but no such guarantee shall be issued in behalf of any agency designed to benefit, in or by the flotation of any issue, a private individual or corporation".

Subsec. (b). Pub. L. 95-128, § 108(1), (3), added subsec. (b) and deleted prior provisions respecting: reservation and withholding of prescribed amount for purpose of paying guaranteed obligations, subject to being increased because of any unanticipated, major reduction in estimated disposition proceeds; pledge of full faith and credit of unit of general local government to the Secretary for repayment of any amount required to be paid by the United States pursuant to any guarantee; and pledge of repayment of proceeds of grants in event of failure of repayment as hereinbefore provided.

Subsecs. (c) to (e). Pub. L. 95-128, § 108(3), added subsecs. (c) to (e). Former subsecs. (c) to (e) redesignated (f) to (h).

Subsecs. (f), (g). Pub. L. 95-128, § 108(2), redesignated former subsecs. (c) and (d) as (f) and (g).

Subsec. (h). Pub. L. 95-128, § 108(2), (4), (5), redesignated former subsec. (e) as (h) and substituted in first sentence "subsection (i)" for "subsection (f)"; substituted in first sentence "shall" for "may, at the option of the issuing unit of general local government or designated agency,"; and in second sentence "The Secretary is authorized to make, and to contract to make, grants, in such amounts as may be approved in appropriations Acts," for "In the event that taxable obligations are issued and guaranteed, the Secretary is authorized to make, and to contract to make, grants".

Subsec. (i). Pub. L. 95-128, § 108(2), (6), redesignated former subsec. (f) as (i) and substituted "is guaranteed pursuant to" for "such unit or agency has elected to issue as a taxable obligation pursuant to subsection (e) of".

Subsec. (j). Pub. L. 95-128, § 108(7), added subsec. (j).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as an Effective Date of 1977 Amendment note under section 5301 of this title.

§ 5309. Nondiscrimination in programs and activities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5307 of this title.

§ 5310. Labor standards; rate of wages; exceptions; employment powers

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5307 of this title.

§ 5313. Reporting requirements

(a) Not later than 180 days after the close of each fiscal year in which assistance under this chapter is furnished, the Secretary shall submit to the Congress a report which shall contain—

(1) a description of the progress made in accomplishing the objectives of this chapter;

(2) a summary of the use of such funds as approved by the Secretary during the preceding fiscal year; and

(3) with respect to the action grants authorized under section 5318 of this title, a listing of each unit of general local government receiving funds and the amount of such grants, as well as a brief summary of the projects funded for each such unit, the extent of financial participation by other public or private entities, and the impact on employment and economic activity of such projects during the previous fiscal year.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 95-128, title I, § 109, Oct. 12, 1977, 91 Stat. 1124.)

AMENDMENTS

1977—Subsec. (a)(3). Pub. L. 95-128 added par. (3).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-128 effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as an Effective Date of 1977 Amendment note under section 5301 of this title.

STATEMENT OF POLICY AND STUDY ON HOUSING DISPLACEMENT

Pub. L. 95-557, title IX, § 902, Oct. 31, 1978, 92 Stat. 2125, declared it to be the policy of Congress that in the administration of Federal housing and development programs, involuntary displacement of persons from homes and neighborhoods should be minimized and in keeping with such stated policy, authorized the Secretary of Housing and Urban Development to conduct a study on the nature and extent of such displacement and, not later than Jan. 31, 1979, report to Congress on recommendations for the formulation of a national policy to minimize such displacement.

STUDY ON SMALL CITIES; REPORT TO PRESIDENT AND CONGRESS; ALTERNATIVE FORMULAE

Pub. L. 95-128, title I, § 113, Oct. 12, 1977, 91 Stat. 1111, authorized the Secretary of Housing and Urban Development to conduct a study and, not later than one year after Oct. 12, 1977, report to the President and Congress recommendations on the formation of a national policy on the developmental needs of small cities and, among other things, include in such report alternative verifiable formulae to be used in the distribution of discretionary balance funds available for allocation to such small cities under this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1452b of this title.

§ 5316. Transition provisions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5303 of this title.

§ 5318. Urban development action grants

(a) Grants to severely distressed cities and urban counties for prescribed purposes

In order to promote the primary objective of this chapter of the development of viable urban communities, of the total amount of authority approved in appropriation Acts under section 5303(c) of this title, the Secretary is authorized to make urban development action grants to severely distressed cities and urban counties to help alleviate physical and economic deterioration through reclamation of neighborhoods having excessive housing abandonment or deterioration, and through community revitalization in areas with population outmigration or a stagnating or declining tax base. Grants made under this section shall be for the support of severely distressed cities and urban counties that require increased public and private assistance in addition to the assistance otherwise made available under this chapter and other forms of Federal assistance.

(b) Criteria and standards; regulations

(1) Urban development action grants shall be made only to cities and urban counties that have, in the determination of the Secretary, demonstrated results in providing housing for persons of low- and moderate-income and in providing equal opportunity in housing and employment for low- and moderate-income persons and members of minority groups. The Secretary shall issue regulations establishing criteria in accordance with the preceding sentence and setting forth minimum standards for determining the level of physical and economic distress of cities and urban counties for eligibility for such grants, which standards shall take into account factors such as the age and condition of housing stock, including residential abandonment; average income; population outmigration; and stagnating or declining tax base.

(2) A city or urban county which fails to meet the minimum standards established pursuant to paragraph (1) shall be eligible for assistance under this section if it meets the requirements of the first sentence of paragraph (1), and—

(A) in the case of a city with a population of fifty thousand persons or more or an urban county, contains an area (i) composed of one or more contiguous census tracts, enumeration districts, or block groups, as defined by the United States Bureau of Census, having at least a population of ten thousand persons or 10 per centum of the population of the city or urban county, (ii) in which at least 70 per centum of the residents have incomes below 80 per centum of the median income of such city or urban county, and (iii) in which at least 30 per centum of the residents have incomes of below the national poverty level; or

(B) in the case of a city with a population of less than fifty thousand persons, contains an area (i) composed of one or more contiguous census tracts, enumeration districts, or block groups or other areas defined by the United States Bureau of Census or for which data certified by the United States Bureau of Census are available having at least a population of two thousand and five hundred persons or 10 per centum of the population of such city, whichever is greater, (ii) in which at least 70 per centum of the residents have incomes below 80 per centum of the median income for such city, and (iii) in which at least 30 per centum of the residents have incomes of below the national poverty level.

The Secretary shall utilize up to, but not more than, 20 per centum of the funds appropriated for use in any fiscal year under this section for the purpose of making grants to cities and urban counties eligible under this paragraph.

(c) Applications; contents; citizen participation plan; public hearings

Applications for assistance under this section shall—

(1) include documentation of eligibility for grants in accordance with the standards described in subsection (b) of this section;

(2) describe a concentrated urban development action program setting forth a comprehensive action plan and strategy to alleviate physical and economic distress through systematic change, which program shall be consistent with the community development program described in section 5304(a)(2) of this title and the housing assistance plan described in section 5304(a)(4) of this title, and, where it exists and is in effect, the overall economic development plan as provided for in section 3142(b)(10) of this title, but only in the event and after such time as such plans are required by law or administrative action to be consistent with community development programs. Such program shall be developed as to take advantage of unique opportunities to attract private investment, stimulate investment in restoration of deteriorated or abandoned housing stock, or solve critical problems resulting from population outmigration or a stagnating or declining tax base;

(3) include the activities to be undertaken in the urban development action program, together with the estimated costs and general locations of such activities;

(4) indicate public and private resources which are expected to be made available toward achieving the action plan and strategy described in paragraph (2);

(5) provide satisfactory assurances that, prior to submission of its application, it has (A) prepared and followed a written citizen participation plan, which plan provides the opportunity for citizens to participate in the development of the application, with special attention to measures to encourage the statement of views and the submission of proposals by low- and moderate-income people and residents of blighted neighborhoods, and to scheduling hearings at times and locations which are convenient to all citizens, (B) provided citizens with adequate information concerning the amount of funds available for proposed activities under this section, the range of activities that may be undertaken, and other important program requirements, and (C) held public hearings to obtain the views of citizens on needs which may be dealt with under this section; and

(6) include a statement analyzing the impact of the proposed urban development action program on the residents, particularly those of low and moderate income, of the residential neighborhood, and on the neighborhood, in which the program is to be located.

(d) Application requirements of section 5304(a) for section 5306 allocation and distribution of funds applicable to this section

To the extent that the application requirements of section 5304(a)(4) of this title have been satisfied in connection with a grant made pursuant to section 5306 of this title, such requirements shall be determined to have been met for purposes of this section.

(e) Selection criteria

(1) Except in the case of a city or urban county eligible under subsection (b)(2), in establishing criteria for the purpose of making grants under this section the Secretary shall establish selection criteria which must include (A) as the primary criterion, the comparative degree of physical and economic distress among applicants, as measured (in the case of a metropolitan city or urban county) by the differences in the extent of growth lag, the extent of poverty, and the adjusted age of housing in the metropolitan city or urban county; (B) other factors determined to be relevant by the Secretary in assessing the comparative degree of physical and economic deterioration in cities and urban counties; and (C) at least the following other criteria: demonstrated performance of the city or urban county in housing and community development programs; impact of the proposed urban development action program on the special problems of low- and moderate-income persons and minorities; extent of financial participation by other public or by private entities; extent of assistance to be made available by the State; impact on the physical, fiscal, or economic deterioration of the city or urban county; extent to which the program describes activities representing a special or unique opportunity to meet local priority needs or the objectives of this chapter; impact of the proposed urban development action program on the residents, particularly those of low and moderate income, of the

residential neighborhood, and on the neighborhood, in which the program is to be located; and feasibility of accomplishing the program in a timely fashion within the grant amount available.

(2) For the purpose of making grants with respect to areas described in subsection (b)(2) of this section, the Secretary shall establish selection criteria, which must include (A) factors determined to be relevant by the Secretary in assessing the comparative degree of physical and economic deterioration among eligible areas, and (B) such other criteria as the Secretary may determine, including at a minimum the criteria listed in clause (C) of paragraph (1) of this subsection.

(3) The Secretary may not approve any grant to a city or urban county eligible under subsection (b)(2) of this section unless—

(A) the grant will be utilized in connection with a project located in an area described in subsection (b)(2) of this section, except that the Secretary may waive this requirement where the Secretary determines (i) that there is no suitable site for the project within such area, (ii) the project will be located directly adjacent to such area, and (iii) the project will substantially contribute to the physical and economic development of such area;

(B) the city or urban county has demonstrated to the satisfaction of the Secretary that basic services supplied by the city or urban county to the area described in subsection (b)(2) of this section are at least equivalent, as measured by per capita expenditures, to those supplied to other areas within the city or urban county which are similar in population size and physical characteristics and which have median incomes above the median income for the city or urban county;

(C) the grant will be utilized in connection with a project which will directly benefit the low- and moderate-income families and individuals residing in the area described in subsection (b)(2) of this section; and

(D) the city or urban county makes available, from its own funds or from funds received from the State or under any Federal program which permits the use of financial assistance to meet the non-Federal share requirements of Federal grant-in-aid programs, an amount equal to 20 per centum of the grant to be available pursuant to this section to be used in carrying out the activities described in the application.

(f) Activities of urban development action program

In addition to activities authorized under section 5305(a) of this title, an urban development action program may also include such additional community development and neighborhood development and conservation activities as the Secretary may determine to be consistent with the purposes of this section.

(g) Consultation of Secretary with other Federal agencies and coordination of assistance

No assistance shall be provided for business loans or industrial development under this section unless the Secretary shall first consult with and coordinate such assistance with other Federal agencies which make available funds for similar activities.

(h) Annual reviews and audits; administrative action appropriate to findings; recapture or deduction of expended funds prohibited

The Secretary shall, at least on an annual basis, make reviews and audits of recipients of grants pursuant to this section as necessary to determine the progress made in carrying out activities substantially in accordance with approved plans and timetables. The Secretary may adjust, reduce, or withdraw grant funds, or take other action as appropriate in accordance with the findings of such review and audits, except that funds already expended on eligible activities under this chapter shall not be recaptured or deducted from future grants made to the recipient.

(i) Relocation

No assistance may be provided under this section for projects intended to facilitate the relocation of industrial or commercial plants or facilities from one area to another, unless the Secretary finds that such relocation does not significantly and adversely affect the unemployment or economic base of the area from which such industrial or commercial plant or facility is to be relocated.

(j) Allocation of funds based upon balance among program objectives

The Secretary shall allocate the amounts available for grants under this section in a manner which achieves a reasonable balance among programs that are designed primarily (1) to restore seriously deteriorated neighborhoods, (2) to reclaim for industrial purposes underutilized real property, and (3) to renew commercial employment centers.

(k) Minimum percentage of funds for use of certain noncentral cities

Not less than 25 per centum of the funds made available for grants under this section shall be used for cities under fifty thousand population which are not central cities of a standard metropolitan statistical area.

(*l*) Criteria of nonsubstitution of grants for available non-Federal funds

A grant may be made under this section only where the Secretary determines that there is a strong probability that the non-Federal investment in the project would not be made without such grant and where the Secretary determines that there is a strong probability that the grant would not substitute for non-Federal funds which are otherwise available to the project.

(m) Waiver or reduction of requirement of closely settled unit of general local government

For purposes of carrying out this section, the Secretary may reduce or waive the requirement, as described in section 5302(a)(5)(B)(ii) of this title and applied to recipients of community development grants, that a town or township be closely settled.

(Pub. L. 93-383, title I, § 119, as added Pub. L. 95-128, title I, § 110(b), Oct. 12, 1977, 91 Stat. 1125, and amended Pub. L. 95-557, title I, § 103(g), (h), Oct. 31, 1978, 92 Stat. 2084; Pub. L. 96-153, title I, §§ 104, 105, Dec. 21, 1979, 93 Stat. 1102-1104.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (e)(1)(C), and (h), in the original read "this title" meaning title I of Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, which enacted this chapter and amended sections 1452b, 1453, and 3311 of this title, section 1701u of Title 12, Banks and Banking, and section 711 of Title 31, Money and Finance.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-153, § 104, designated existing provisions as par. (1) and added par. (2).

Subsec. (e). Pub. L. 96-153, § 104(b), designated existing provisions as par. (1) and in par. (1) as so designated, substituted "(1) Except in the case of a city or urban county eligible under subsection (b)(2) of this section, in establishing criteria" for "In establishing criteria" in the opening sentence, redesignated existing cls. (1) to (3) as (A) to (C), and added pars. (2) and (3).

Subsecs. (*l*), (m). Pub. L. 96-153, § 105, added subsecs. (*l*) and (m).

1978—Subsec. (c)(6). Pub. L. 95-557, § 103(g), added par. (6).

Subsec. (e). Pub. L. 95-557, § 103(h), added "impact of the proposed urban development action program on the residents, particularly those of low and moderate income, of the residential neighborhood, and on the neighborhood, in which the program is to be located" following "objectives of this chapter".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-557 effective Oct. 1, 1978, see section 104 of Pub. L. 95-557, set out as an Effective Date of 1978 Amendment note under section 1709 of Title 12, Banks and Banking.

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 114 of Pub. L. 95-128, set out as an Effective Date of 1977 Amendment note under section 5301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5303, 5304, 5313 of this title; title 26 section 103.

§ 5319. Community participation in programs

No community shall be barred from participating in any program authorized under this chapter solely on the basis of population, except as expressly authorized by statute.

(Pub. L. 93-383, title I, § 120, as added Pub. L. 95-557, title I, § 103(i), Oct. 31, 1978, 92 Stat. 2084.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this title" meaning title I of Pub. L. 93-383, Aug. 22, 1974, 88 Stat. 633, which enacted this chapter and amended sections 1452b, 1453, and 3311 of this title, section 1701u of Title 12, Banks and Banking, and section 711 of Title 31, Money and Finance.

EFFECTIVE DATE

Section effective Oct. 1, 1978, see section 104 of Pub. L. 95-557, set out as an Effective Date of 1978 Amendment note under section 1709 of Title 12, Banks and Banking.

CHAPTER 70—MOBILE HOME CONSTRUCTION AND SAFETY STANDARDS

§ 5403. Construction and safety standards

[*See main edition for text of* (*a*) *to* (*g*)]

(h) Coverage; exclusion

The Secretary shall exclude from the coverage of this chapter any structure which the manufacturer certifies, in a form prescribed by the Secretary, to be:

(1) designed only for erection or installation on a site-built permanent foundation;

(2) not designed to be moved once so erected or installed;

(3) designed and manufactured to comply with a nationally recognized model building code or an equivalent local code, or with a State or local modular building code recognized as generally equivalent to building codes for site-built housing, or with minimum property standards adopted by the Secretary pursuant to title II of the National Housing Act [12 U.S.C. 1707 et seq.]; and

(4) to the manufacturer's knowledge is not intended to be used other than on a site-built permanent foundation.

(As amended Pub. L. 95-128, title IX, § 902(a), Oct. 12, 1977, 91 Stat. 1149.)

REFERENCES IN TEXT

The National Housing Act, referred to in subsec. (h)(3), is act June 27, 1934, ch. 847, 48 Stat. 1246, as amended. Title II of the National Housing Act is classified principally to subchapter II (§ 1707 et seq.) of chapter 13 of Title 12, Banks and Banking. For complete classification of this Act to the Code, see section 1701 of Title 12 and Tables.

AMENDMENTS

1977—Subsec. (h). Pub. L. 95-128 added subsec. (h).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5409 of this title

§ 5409. Prohibited acts; exemptions

(a) No person shall—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) fail to issue a certification required by section 5415 of this title, or issue a certification to the effect that a mobile home conforms to all applicable Federal mobile home construction and safety standards, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect;

(5) fail to comply with a final order issued by the Secretary under this chapter; or

(6) issue a certification pursuant to subsection (h) of section 5403 of this title, if such person in the exercise of due care has reason to know that such certification is false or misleading in a material respect.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 95-128, title IX, § 902(b), Oct. 12, 1977, 91 Stat. 1149.)

AMENDMENTS

1977—Subsec. (a)(6). Pub. L. 95-128 added par. (6).

§ 5419. Inspection fees

In carrying out the inspections required under this chapter, the Secretary may establish and impose on mobile home manufacturers, distributors, and dealers such reasonable fees as may be necessary to offset the expenses incurred by him in conducting such inspections, and the Secretary may use any fees so collected to pay expenses incurred in connection with such inspections, except that this section shall not apply in any State which has in effect a State plan under section 5422 of this title.

(As amended Pub. L. 96-153, title III, § 320, Dec. 21, 1979, 93 Stat. 1119.)

AMENDMENTS

1979—Pub. L. 96-153 substituted "conducting such inspections, and the Secretary may use any fees so collected to pay expenses incurred in connection with such inspections, except" for "conducting such inspections, except".

§ 5425. Reports to Congress

(a) Contents of annual report

The Secretary shall prepare and submit to the President for transmittal to the Congress on July 1 of every other year beginning with calendar year 1978 a comprehensive report on the administration of this chapter for the two preceding calendar years. Such report shall include but not be restricted to (1) a thorough statistical compilation of the accidents, injuries, deaths, and property losses occurring in or involving mobile homes in such years; (2) a list of Federal mobile home construction and safety standards prescribed or in effect in such years; (3) the level of compliance with all applicable Federal mobile home standards; (4) a summary of all current research grants and contracts together with a description of the problems to be studied in such research; (5) an analysis and evaluation, including relevant policy recommendations, of research activities completed and technological progress achieved during such years; (6) a statement of enforcement actions including judicial decisions, settlements, defect notifications, and pending litigation commenced during such years; and (7) the extent to which technical information was disseminated to the scientific community and consumer-oriented information was made available to mobile home owners and prospective buyers.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 95-557, title IX, § 901, Oct. 31, 1978, 92 Stat. 2124.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-557 substituted "July 1 of every other year beginning with calendar year 1978", for "March 1, of each year", "two preceding calendar years" for "preceding calendar year", and "such years" for "such year" in cls. (1), (2) and (5) and "the year" in cl. (6), respectively.

CHAPTER 71—SOLAR ENERGY

SUBCHAPTER I—HEATING AND COOLING

Sec.
5504a. Repealed.

SUBCHAPTER II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Sec.
5556a. Solar photovoltaic energy systems studies and acquisitions by Secretary of Energy; scope, contents, and submission dates for reports; acquisition authority and requirements; authorization of appropriations [New].

SUBCHAPTER III—SOLAR PHOTOVOLTAIC ENERGY RESEARCH, DEVELOPMENT AND DEMONSTRATION [NEW]

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Sec.
5590. Submittal to Congressional committees of plan for demonstrating applications of photovoltaic systems and facilitating use in other nations; encouragement of international participation and cooperation; coordination and consistency of plan and international activities with similar activities and programs.
5591. Participation of small business concerns.
5592. Priorities.
5593. Construction with National Energy Conservation Policy Act.
5594. Authorization of appropriations.

SUBCHAPTER I—HEATING AND COOLING

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 5553, 5902, 7135a of this title.

§ 5501. Congressional findings and declaration of policy

Short Title

Pub. L. 95-590, § 1, Nov. 4, 1978, 92 Stat. 2513, provided: "That this Act [enacting subchapter III of this chapter] may be cited as the 'Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978'."

Cross References

Federal buildings, demonstration of solar heating and cooling, see section 8241 et seq. of this title.

Photovoltaic solar electric systems, Federal utilization, see section 8271 et seq. of this title.

§ 5502. Definitions

Section Referred to in Other Sections

This section is referred to in title 38 section 810

§ 5504a. Repealed. Pub.L. 96-125, title VIII, § 804(b), Nov. 26, 1979, 93 Stat. 948

Section, Pub. L. 95-356, title VIII, § 804, Sept. 8, 1978, 92 Stat. 565, related to use of solar energy systems in military construction projects.

§ 5516. Transfer of Functions

Transfer of Functions

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SUBCHAPTER II—RESEARCH, DEVELOPMENT, AND DEMONSTRATION

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 5902, 5905, 7135a of this title.

§ 5552. Definitions

Section Referred to in Other Sections

This section is referred to in title 29 section 823.

§ 5553. Solar Energy Coordination and Management Project

Transfer of Functions

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 this title.

§ 5556a. Solar photovoltaic energy systems studies and acquisitions by Secretary of Energy; scope, contents, and submission dates for reports; acquisition authority and requirements; authorization of appropriations

(a) The Secretary of Energy shall—

(1) Omitted

(2) initiate and conduct a study of the options available to the Federal Government to provide for the adequate growth of the solar photovoltaic industry and to include such possible incentives as government funding, loan guarantees, tax incentives, the operation of pilot plants or production lines and other incentives deemed worthy of consideration by the Secretary of Energy. A preliminary report shall be submitted to Congress within six months following February 25, 1978;

(3) Omitted

(4) be authorized to acquire up to an additional 4.0 megawatts (peak) of solar photovoltaic energy systems. The sum of $13,000,000 is hereby authorized to be appropriated (in addition to any other amounts authorized by this Act to be appropriated) for the fiscal year ending September 30, 1978, and for delivery in the following twelve months. Such sums shall remain available until expended. The solar photovoltaic energy systems acquired shall be available for use for power generation by Federal agencies, provided that no procurement takes place until their application on Federal sites is determined to be life cycle cost effective.

(b) For technology development, particularly for engineering design and development of the manufacturing process of solar photovoltaic energy systems (primarily for the implementation of automated processes and other cost reducing production technologies), the sum of $6,000,000 is hereby authorized by this Act to be appropriated for the fiscal year ending September 30, 1978.

(Pub. L. 95-238, title II, § 208, Feb. 25, 1978, 92 Stat. 75.)

References in Text

This Act, referred to in text, means Pub. L. 95-238, Feb. 25, 1978, 92 Stat. 47, known as the Department of Energy Act of 1978—Civilian Applications. For complete classification of this Act to the Code, see Tables.

Codification

Former subsec. (a)(1) of this section, which authorized the Secretary of Energy to conduct an application and system design study to determine the potential use of solar photovoltaic systems at specific federal installations which study was to include an analysis of those sites currently and prospectively cost-effective, was to identify potential sites and uses of such systems at specific federal agencies, was to provide a preliminary report to Congress within nine months following Feb. 28, 1978, and was to include the presentation of a detailed plan for the implementation of such systems for power generation at specific federal sites to Congress within twelve months following Feb. 25, 1978, was omitted from the Code as executed.

Former subsec. (a)(3) of this section, which authorized the Secretary of Energy to conduct a study involving the prospects for applications of solar photovoltaic energy systems for power generation in foreign countries, particularly less developed countries, and the potential for exportation of such systems and required submission of a final report to Congress, as well as a preliminary report, within twelve months of Feb. 25, 1978, was omitted from the Code as executed.

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Solar Energy Research, Development, and Demonstration Act of 1974 which comprises this subchapter.

Nonapplicability of Title II of Pub. L. 95-238 to Any Authorization or Appropriation for Military Application of Nuclear Energy, Etc.; Definitions

Nonapplicability of provisions of title II of Pub. L. 95-238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95-238, set out as a note under section 5821 of this title.

Section Referred to in Other Sections

This section is referred to in section 5589 of this title.

§ 5557. Solar Energy Information Data Bank

Transfer of Functions

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SUBCHAPTER III—SOLAR PHOTOVOLTAIC ENERGY RESEARCH, DEVELOPMENT AND DEMONSTRATION [NEW]

§ 5581. Congressional findings and declaration of policy

(a) The Congress hereby finds that—

(1) the United States of America is faced with a finite and diminishing resource base of native fossil fuels, and as a consequence must develop as quickly as possible a diversified, pluralistic national energy capability and posture;

(2) the current imbalance between supply and demand for fuels and energy in the United States is likely to grow for many years;

(3) the early demonstration of the feasibility of using solar photovoltaic energy systems for the generation of electricity could help to relieve the demand on existing fuel and energy supplies;

(4) the national security and economic well-being of the United States is endangered by its dependence on imported energy supplies which are subject to resource limitations, artifical pricing mechanisms which do not accurately reflect supply and demand relationships, and supply interruptions;

(5) the early development and widespread utilization of photovoltaic energy systems could significantly expand the domestic energy resource base of the United States, thereby lessening its dependence on foreign supplies;

(6) the establishment of sizable markets for photovoltaic energy systems will justify private investment in plant and equipment necessary to realize the economies of scale, and will result in significant reductions in the unit costs of these systems;

(7) the use of solar photovoltaic energy systems for certain limited applications has already proved feasible;

(8) there appear to be no insoluble technical obstacles to the widespread commercial use of solar photovoltaic energy technologies;

(9) an aggressive research and development program should solve existing technical problems of solar photovoltaic systems; and, supported by an assured and growing market for photovoltaic systems during the next decade, should maximize the future contribution of solar photovoltaic energy to this Nation's future energy production;

(10) it is the proper and appropriate role of the Federal Government to undertake research, development, and demonstration programs in solar photovoltaic energy technologies and to supplement and assist private industry and other entities and thereby the general public, so as to hasten the general commercial use of such technologies;

(11) the high cost of imported energy sources impairs the economic growth of many nations which lack sizable domestic energy supplies or are unable to develop these resources;

(12) photovoltaic energy systems are economically competitive with conventional energy resources for a wide variety of applications in many foreign nations at the present time, and will find additional applications with continued cost reductions;

(13) the early development and export of solar photovoltaic energy systems, consistent with the established preeminence of the United States in the field of high technology products, can make a valuable contribution to the well-being of the people of other nations and to this Nation's balance of trade;

(14) the widespread use of solar photovoltaic energy systems to supplement and replace conventional methods for the generation of electricity would have a beneficial effect upon the environment;

(15) to increase the potential application of solar photovoltaic energy systems in remote locations, and to minimize the need for backup systems depending on fossil fuel, programs leading to the development of inexpensive and reliable systems for the storage of electricity should be pursued as part of any solar photovoltaic energy research, development, and demonstration program;

(16) evaluation of the performance and reliability of solar photovoltaic energy technol-

ogies can be expedited by testing of prototypes under carefully controlled conditions;

(17) commercial application of solar photovoltaic energy technologies can be expedited by early commercial demonstration under practical conditions;

(18) photovoltaic energy systems are currently adaptable on a life cycle, cost-justified basis for certain of the energy needs of the Federal Government, and will find additional applications as continued refinements improve performance and reduce unit costs;

(19) the Federal Government can stimulate innovation and economic efficiency in the production of photovoltaic energy systems through the development and implementation of policies to promote diversity and maximum competition between firms engaged in the research, manufacture, installation, and/or maintenance of these systems;

(20) innovation and creativity in the development of solar photovoltaic energy components and systems can be fostered through encouraging direct contact between the manufacturers of such systems and the architects, engineers, developers, contractors, and other persons interested in utilizing such systems; and

(21) it is contemplated that the ten-year program established by this subchapter will require the expenditure of $1,500,000,000 by the Federal Government.

(b) It is therefore declared to be the policy of the United States and the purpose of this subchapter to establish during the next decade an aggressive research, development, and demonstration program involving solar photovoltaic energy systems and in the long term, to have as an objective the production of electricity from photovoltaic systems cost competitive with utility-generated electricity from conventional sources. Further, it is declared to be the policy of the United States and the purpose of this subchapter that the objectives of this research, development, and demonstration program are—

(1) to double the production of solar photovoltaic energy systems each year during the decade starting with fiscal year 1979, measured by the peak generating capacity of the systems produced, so as to reach a total annual United States production of solar photovoltaic energy systems of approximately two million peak kilowatts, and a total cumulative production of such systems of approximately four million peak kilowatts by fiscal year 1988;

(2) to reduce the average cost of installed solar photovoltaic energy systems to $1 per peak watt by fiscal year 1988; and

(3) to stimulate the purchase by private buyers of at least 90 per centum of all solar photovoltaic energy systems produced in the United States during fiscal year 1988.

(Pub. L. 95-590, § 2, Nov. 4, 1978, 92 Stat. 2513.)

SHORT TITLE

For Short Title of this subchapter as the "Solar Photovoltaic Energy Research, Development, and Demonstration Act of 1978", see section 1 of Pub. L. 95-590, set out as a Short Title note under section 5501 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5583, 5589 of this title.

§ 5582. Definitions

For purposes of this subchapter—

(1) a "solar photovoltaic energy system" is a system of components which generates electricity from incident sunlight by means of the photovoltaic effect, and which shall include all components, including energy storage devices where appropriate, necessary to provide electricity for individual, industrial, agricultural, or governmental use;

(2) the term "solar photovoltaic energy system" may be used interchangeably with the term "photovoltaic system";

(3) a "hybrid solar photovoltaic energy system" is a system of components that generates electricity from incident sunlight by means of the photovoltaic effect and, in conjunction with electronic and, if appropriate, optical, thermal and storage devices, provides electricity, as well as heat and/or light for individual, commercial, industrial, agricultural, or governmental use;

(4) "photovoltaic effect" refers to the physical phenomenon exhibited under certain circumstances by some materials in which a portion of the light energy striking the material is directly converted to electrical energy;

(5) "facility" means any building, agricultural, commercial or industrial complex or other device constructively employing photovoltaic systems; and

(6) "Secretary" means the Secretary of Energy.

(Pub. L. 95-590, § 3, Nov. 4, 1978, 92 Stat. 2515.)

§ 5583. Establishment and promotion of research, development, and demonstration programs

The Secretary is directed to establish immediately and carry forth such research, development, and demonstration programs as may be necessary to meet the objectives of this subchapter as set forth in section 5581(b) of this title, and as a part of any such program shall—

(a) conduct, and promote the coordination and acceleration of, research, development, and demonstrations relating to solar photovoltaic energy systems and components thereof, and

(b) conduct, and promote the coordination and acceleration of, research, development, and demonstrations for systems and components to be used in applications that are dependent for their energy on solar photovoltaic energy systems.

(Pub. L. 95-590, § 4, Nov. 4, 1978, 92 Stat. 2515.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5584, 5586, 5592 of this title.

§ 5584. Federal assistance application procedures; selection of applicants; agreements; financial assistance; observation and monitoring of photovoltaic systems; reports; projects and activities

(a) In carrying out the provisions of section 5583 of this title, the Secretary is authorized—

(1) to establish procedures whereby any public or private entity wishing to install solar photovoltaic components and systems in any new or existing facility may apply for Federal assistance in purchasing and installing, in such facility, photovoltaic components or systems;

(2) to select, as soon as he deems it feasible, a number of the applicants under paragraph (1) and enter into agreements with them for the design, purchase, fabrication, testing, installation, and demonstration of photovoltaic components and systems. Such selection shall be based on the need to obtain scientific, technological, and economic information from a variety of such systems under a variety of circumstances and conditions; and

(3) to arrange, as part of any agreement entered into under paragraph (2), to provide up to 75 per centum of the purchase and installation costs of photovoltaic components or systems, taking into account relevant considerations involving the relative stage of consumer and industry interest and development at the time of the financial assistance action. Such arrangements shall be contingent upon terms and conditions prescribed by the Secretary, including an express agreement that the entity with whom the agreement is entered into shall, in such manner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary or his agents to observe and monitor) the performance and operation of such system for a period of five years, and that such entity (including any subsequent owner of the property) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(b) The Secretary shall, as he deems appropriate, undertake any projects or activities (including demonstration projects) to further the attainment of the objectives of this section.

(Pub. L. 95-590, § 5, Nov. 4, 1978, 92 Stat. 2516.)

CODIFICATION

Section 5583 of this title, referred to in subsec. (a), was in the original "section (4)" and was translated section 5583 of this title as the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5586, 5592 of this title.

§ 5585. Contracts, grants and arrangements

(a) Selection of photovoltaic components and systems, design concepts, and designs

The Secretary is authorized to select on the basis of open competitions—

(1) a number of readily available photovoltaic components and systems;

(2) a number of design concepts for various types of applications which demonstrate adaptability to the utilization of photovoltaic components and systems; and

(3) a number of designs for applications selected under paragraph (2), so that each design includes specific provisions for the utilization of solar photovoltaic components and systems selected under paragraph (1).

(b) Commercial production and utilization of photovoltaic components and systems; selection of components and systems compatible with chosen design concepts; procurement of components and systems

The Secretary, in accordance with the applicable provisions of sections 5906, 5907, and 5908 of this title and with such program guidelines as the Secretary may establish, shall—

(1) enter into such contracts and grants as may be necessary or appropriate for the development for commercial production and utilization of photovoltaic components and systems, including any further planning and design which may be required to conform with the specifications set forth in any applicable criteria;

(2) select, as being compatible with the design concepts chosen under subsection (a)(2) of this section, a reasonable number of photovoltaic components and systems; and

(3) enter into contracts with a number of persons or firms for the procurement of photovoltaic components and systems, including adequate numbers of spare and replacement parts for such systems.

(c) Design integration; demonstration of prototype photovoltaic systems; utilization of systems in existing facilities; terms and conditions upon transfer of facilities and systems

The Secretary is authorized to award contracts for the design integration between the application concepts and the photovoltaic systems procured by the Secretary under subsection (b)(3) of this section, and for the demonstration of prototype solar photovoltaic systems, and, when appropriate, for the utilization of such systems in existing facilities. Title to and ownership of the facilities so constructed and of photovoltaic systems installed hereunder may be conveyed to purchasers of such facilities under terms and conditions prescribed by the Secretary, including an express agreement that any such purchaser shall, in such manner and form and on such terms and conditions as the Secretary may prescribe, observe and monitor (or permit the Secretary to observe and monitor) the performance and operation of such systems for a period of five years, and that such purchaser (including any subsequent owner) shall regularly furnish the Secretary with such reports thereon as the agreement may require.

(d) Arrangements with Federal agencies for demonstration of systems in Federal buildings and facilities

The Secretary, in consultation with the Administrator of General Services or the Secretary of Defense or both (as may be appropriate) shall enter into arrangements with appropriate Federal agencies concurrently with the conduct of the programs under this section and section 5586 of this title, to carry out such projects and activities (including demonstration projects), with respect to Federal buildings and facilities, as may be appropriate for the demonstration of photovoltaic systems suitable and effective for use in such applications.

(e) Projects and activities

The Secretary shall, as he deems appropriate, undertake any projects or activities (including demonstration projects) to further the attainment of the objectives of this section.

(Pub. L. 95-590, § 6, Nov. 4, 1978, 92 Stat. 2516.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5586, 5592 of this title.

§ 5586. Test procedures and performance criteria

(a) Testing program

The Secretary shall conduct a testing program for photovoltaic systems to assist in the development and demonstration of prototype photovoltaic systems, including collectors, controls, power conditioning, and energy storage systems.

(b) Establishment and use of performance criteria

Data obtained from the testing program under subsection (a) of this section shall be evaluated and used in establishing performance criteria. These performance criteria shall be used in the demonstration program described in sections 5583, 5584, and 5585 of this title.

(c) Determination and publication in Federal Register

The Secretary shall determine, prescribe, and publish in the Federal Register, at a time which he determines to be feasible and justified—

(1) performance criteria for photovoltaic components and systems to be used in appropriate applications, and procedures whereby manufacturers of photovoltaic components and systems shall have their products tested in order to provide certification that such products conform to the performance criteria established under this paragraph; and

(2) revised performance criteria for photovoltaic components and systems to be used in appropriate applications, and procedures whereby manufacturers of photovoltaic components and systems shall have their products tested in order to provide certification that such products conform to the performance criteria established under this paragraph. Such criteria may be annually revised by the Secretary, as he deems appropriate.

(d) Performance criteria applicable to photovoltaic component or system procured or installed by Federal Government or with Federal assistance

Any photovoltaic component or system procured or installed by the Federal Government or procured or installed with Federal assistance under section 5584 or section 5585 of this title shall meet appropriate performance criteria prescribed under this section, if such performance criteria have been prescribed.

(Pub. L. 95-590, § 7, Nov. 4, 1978, 92 Stat. 2517.)

CODIFICATION

Sections 5584 or 5585 of this title, referred to in subsec. (d), was in the original "section (5) or section (6)" and was translated section 5584 or 5585 of this title as the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5585, 5587, 5592 of this title.

§ 5587. Supervision of research, development, and demonstration programs

(a) Monitoring of photovoltaic systems; collection and evaluation of data; studies, investigations, and reports

The Secretary, in coordination with such Government agencies as may be appropriate, shall—

(1) monitor the performance and operation of photovoltaic systems installed under this subchapter;

(2) collect and evaluate data and information on the performance and operation of photovoltaic systems installed under this subchapter; and

(3) from time to time carry out such studies and investigations and take such other actions, including the submission of special reports to the Congress when appropriate, as may be necessary to assure that the programs for which the Secretary is responsible under this subchapter effectively carry out the policy of this subchapter.

(b) Assistance from scientific, technical, and professional societies and industry representatives

In the development of the performance criteria and test procedures required under section 5586 of this title, the Secretary shall work closely with the appropriate scientific, technical, and professional societies and industry representatives in order to assure the best possible use of available expertise in this area.

(c) Liaison with industries, interests, and scientific and technical community

The Secretary shall also maintain continuing liaison with related industries and interests, and with the scientific and technical community, during and after the period of the programs carried out under this subchapter, in order to assure that the projected benefits of such programs are and will continue to be realized.

(Pub. L. 95-590, § 8, Nov. 4, 1978, 92 Stat. 2518.)

§ 5588. Solar Photovoltaic Energy Advisory Committee

(a) Establishment; duties

There is hereby established a Solar Photovoltaic Energy Advisory Committee, which shall study and advise the Secretary on—

(1) the scope and pace of research and development with respect to solar photovoltaic energy systems;

(2) the need for and timing of solar photovoltaic energy systems demonstration projects;

(3) the need for change in any research, development, or demonstration program established under this subchapter; and

(4) the economic, technological, and environmental consequences of the use of solar photovoltaic energy systems.

(b) Membership; chairman

The Committee shall be composed of thirteen members, including eleven members appointed by the Secretary from industrial organizations, academic institutions, professional societies or institutions, and other sources as he sees fit, and two members of the public appointed by the President. The Chairman of the Committee shall be elected from among the members thereof.

(c) Cooperation from executive departments, agencies, and instrumentalities

The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Committee in carrying out the requirements of this section, and shall furnish to the Committee such information as the Committee deems necessary to carry out this section.

(d) Application of section 7234 of this title

Section 7234 of this title shall be applicable to the Committee, except as inconsistent with this section.

(Pub. L. 95-590, § 9, Nov. 4, 1978, 92 Stat. 2518.)

TERMINATION OF ADVISORY COMMITTEES

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 5589. Promotion and facilitation of practical use of photovoltaic energy

(a) Dissemination of information; trade secret exemption

The Secretary shall take all possible steps to assure that full and complete information with respect to the demonstrations and other activities conducted under this subchapter is made available to Federal, State, and local authorities, relevant segments of the economy, the scientific and technical community, and the public at large, both during and after the close of the programs under this subchapter, with the objective of promoting and facilitating to the maximum extent feasible the early and widespread practical use of photovoltaic energy throughout the United States. Any trade secret or other proprietary information shall be exempted from such mandatory disclosure, as otherwise specified in law applicable to research, development and demonstration programs of the Department of Energy, including, but not limited to, section 5916 of this title.

(b) Studies and investigations

The Secretary shall—

(1) study the effect of the widespread utilization of photovoltaic systems on the existing electric utility system at varying levels of photovoltaic contribution to the system;

(2) study and investigate the effect of utility rate structures, building codes, zoning ordinances, and other laws, codes, ordinances, and practices upon the practical use of photovoltaic systems;

(3) determine the extent to which such laws, codes, ordinances, and practices should be changed to permit or facilitate such use and the methods by which any such changes may best be accomplished; and

(4) determine the necessity of a program of incentives to accelerate the commercial application of photovoltaic technologies.

(c) Omitted

(d) Consultation with government agencies, industry representatives, and scientific and technical community; coordination and merger of studies and reports

In carrying out his functions under this section, the Secretary shall consult with the appropriate government agencies, industry representatives, and members of the scientific and technical community having expertise and interest in this area. The Secretary also shall ensure that any study or report prepared pursuant to this section is fully coordinated with and reflective of any analyses or reports prepared pursuant to the requirements in section 5556a of this title, and in the President's Solar Energy Domestic Policy Review. The Secretary, as appropriate, may merge any continuing or on-going studies under section 5556a of this title or the Domestic Policy Review with those required by this section or avoid any unnecessary duplication of effort or funding. The separate report requirements of section 5556a of this title and this section, however, shall remain in force.

(Pub. L. 95-590, § 10, Nov. 4, 1978, 92 Stat. 2519.)

CODIFICATION

Former subsec. (c) of this section, which authorized the Secretary of Energy, within one year of Nov. 4, 1978, to make recommendations to the President and the Congress for federal policies relating to barriers to the early and widespread utilization of photovoltaic systems in order to realize the goals set forth in section 5581 of this title which recommendations should include but not be limited to the potential for integration of electricity derived from photovoltaic energy systems into the existing national grid system, the extent of competition between firms currently engaged in the fabrication and installation of photovoltaic components and systems, the opportunity for small firms to participate in programs under this subchapter, legal problems associated with widespread utilization of such systems, the availability of private capital to persons establishing commercial enterprises related to such systems, the need for industry-wide warranty and reliability standards for system components, and the attainability of the goals set forth in section 5581 of this title, was omitted from the Code as executed.

§ 5590. Submittal to Congressional committees of plan for demonstrating applications of photovoltaic systems and facilitating use in other nations; encouragement of international participation and cooperation; coordination and consistency of plan and international activities with similar activities and programs

(a) Within one year after November 4, 1978, the Secretary, in consultation with the Secretary of State, the Administrator of the Agency for International Development, the Director of

ACTION, the Director of the Export/Import Bank and other appropriate Federal officials, shall submit to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources a plan for demonstrating applications of solar photovoltaic energy systems and facilitating their widespread use in other nations, especially those with agreements for scientific cooperation with the United States.

(b) The Secretary is authorized to encourage, to the maximum extent practicable, international participation and cooperation in the development and maintenance of programs established under this plan. The Secretary, in consultation and cooperation with the Federal officials specified in subsection (a) of this section, shall insure to the maximum extent possible that the plan submitted under subsection (a) of this section and any other international activities under this section are consistent with and reflective of any similar activities or requirements under any other Federal statute, specifically including any of the several programs under other agencies and Departments involving United States international cooperation and assistance in nonnuclear energy technology, and will not duplicate activities under such programs. The plan required in subsection (a) of this section shall specifically identify all such programs and statutes and describe how the activities under this section will be consistent with such programs, will be coordinated with them, and will avoid duplication of activities under such programs.

(Pub. L. 95-590, § 11, Nov. 4, 1978, 92 Stat. 2520.)

§ 5591. Participation of small business concerns

In carrying out his functions under this subchapter, the Secretary shall take steps to assure that small-business concerns will have realistic and adequate opportunities to participate in the programs under this subchapter to the maximum extent practicable, and the Secretary is directed to set aside at least 10 per centum of the funds authorized and appropriated for the participation of small business concerns.

(Pub. L. 95-590, § 12, Nov. 4, 1978, 92 Stat. 2521.)

§ 5592. Priorities

The Secretary shall set priorities, as far as possible consistent with the intent and operation of this subchapter, in accordance with the following criteria:

(1) The applications utilizing photovoltaic systems which will be part of the research, development, and demonstration program and testing and demonstration programs referred to in sections 5583, 5584, 5585, and 5586 of this title shall be located in a sufficient number of different geographic areas in the United States to assure a realistic and effective demonstration of the use of photovoltaic systems and of the applications themselves, in both rural and urban locations and under climatic conditions which vary as much as possible.

(2) The projected costs of commercial production and maintenance of the photovoltaic systems utilized in the testing and demonstration programs established under this subchapter should be taken into account.

(3) Encouragement should be given in the conduct of programs under this subchapter to those projects in which funds are appropriated by any State or political subdivision thereof for the purpose of sharing costs with the Federal Government for the purchase and installation of photovoltaic components and systems.

(Pub. L. 95-590, § 13, Nov. 4, 1978, 92 Stat. 2521.)

§ 5593. Construction with National Energy Conservation Policy Act

Nothing in this subchapter shall be construed to negate, duplicate, or otherwise affect the provisions of part C subchapter III of chapter 91 of this title, and such part C shall be exempted fully from the provisions of this subchapter and any regulations, guidelines, or criteria pursuant thereto.

(Pub. L. 95-590, § 14, Nov. 4, 1978, 92 Stat. 2521.)

References in Text

Part C (§ 8271 et seq.) of subchapter III of chapter 91 of this title, referred to in text, in the original read "title V (Federal Initiatives), part 4 (Federal Photovoltaic Utilization), National Energy Conservation Policy Act, H.R. 5037, 95th Congress, if and when that Act becomes enacted by the Ninety-fifth Congress. The Act was enacted as Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3206, and is classified principally to chapter 91 (§ 8201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

§ 5594. Authorization of appropriations

There is hereby authorized to be appropriated to the Secretary, for the fiscal year ending September 30, 1979, $125,000,000, inclusive of any funds otherwise authorized for photovoltaic programs, (1) to carry out the functions vested in the Secretary by this subchapter, (2) to carry out the functions in fiscal year 1979, vested in the Secretary by part C of subchapter III of chapter 91 of this title, and (3) for transfer to such other agencies of the Federal Government as may be required to enable them to carry out their respective functions under this subchapter. Funds appropriated pursuant to this section shall remain available until expended: *Provided*, That any contract or agreement entered into pursuant to this subchapter shall be effective only to such extent or in such amounts as are provided in advance in appropriation Acts. Authorizations of appropriations for fiscal years after fiscal year 1979 shall be contained in the annual authorization for the Department of Energy, except for those funds authorized for fiscal years 1980 and 1981 contained in part C of subchapter III of chapter 91 of this title.

(Pub. L. 95-590, § 15, Nov. 4, 1978, 92 Stat. 2522.)

References in Text

Part C (§ 8271 et seq.) of subchapter III of chapter 91 of this title, referred to in text, in the original read "part 4 of title V of H.R. 5037, 95th Congress, if enacted by the 95th Congress. H.R. 5037 was enacted as Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3206, and is classified principally to chapter 91 (§ 8201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

CHAPTER 72—JUVENILE JUSTICE AND DELINQUENCY PREVENTION

SUBCHAPTER II—PROGRAMS AND OFFICES

Part B—Federal Assistance for State and Local Programs

SUBPART II—SPECIAL EMPHASIS PREVENTION AND TREATMENT PROGRAMS

Sec.
5639. Confidentiality of program records [New].

SUBCHAPTER III—RUNAWAY YOUTH

Part C—Reorganization

5741. Reorganization plan; submittal to Congress; required contents [New].

Part D—Authorization of Appropriations

5751. Amounts authorized for programs and activities; consultative and coordinating requirements.

Chapter Referred to in Other Sections

This chapter is referred to in sections 3745, 3797 of this title; title 20 section 3354.

SUBCHAPTER I—GENERALLY

§ 5601. Congressional statement of findings

Effective Date of 1977 Amendment

Section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, § 6(d)(2), Oct. 3, 1977, 91 Stat. 1058, provided that: "Except as otherwise provided by the Juvenile Justice Amendments of 1977, [see Short Title of 1977 Amendments note below], the amendments made by the Juvenile Justice Amendments of 1977 shall take effect on October 1, 1977."

Effective Date

Section 263(a) and (b) of Pub. L. 93-415, as amended by Pub. L. 94-273, § 32(a), Apr. 21, 1976, 90 Stat. 380; Pub. L. 95-115, § 6(d)(1), Oct. 3, 1977, 91 Stat. 1058, provided that:

"(a) Except as provided by subsections (b) and (c) [set out as an Effective Date of 1977 Amendment note above], the foregoing provisions of this Act [enacting subchapters I and II of this chapter and amending section 5108 of Title 5, Government Organization and Employees] shall take effect on the date of enactment of this Act [Sept. 7, 1974].

"(b) Section 204(b)(5) and 204(b)(6) [section 5614(b)(5) and 5614(b)(6) of this title] shall become effective at the close of the thirty-first day of the twelfth calendar month of 1974. Section 204(*l*) [section 5614(*l*) of this title] shall become effective at the close of the thirtieth day of the eleventh month of 1976."

Short Title of 1977 Amendment

Section 1 of Pub. L. 95-115, Oct. 3, 1977, 91 Stat. 1048, provided that: "This Act [which enacted section 5741 of this title, amended section 5316 of Title 5, Government Organization and Employees, sections 4351 and 5038 of Title 18, and sections 3723, 3767, 3811 to 3814, 3821, 3882, 3883, 3888, 3889, 5603, 5611 5612, 5614 to 5618, 5631 to 5635, 5637 to 5639, 5651, 5653 to 5657, 5659 to 5661, 5671, 5672, 5711 to 5713, 5731, and 5751 of this title, repealed sections 3821, 5658, and 5732 of this title, enacted provisions set out as notes under this section and sections 5632, 5633, and 5638 of this title, and amended provisions set out as a note under this section] may be cited as the 'Juvenile Justice Amendments of 1977'."

§ 5603. Definitions

For purposes of this chapter—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) the term "juvenile delinquency program" means any program or activity related to juvenile delinquency prevention, control, diversion, treatment, rehabilitation, planning, education, training, and research, including drug and alcohol abuse programs; the improvement of the juvenile justice system; and any program or activity for neglected, abandoned, or dependent youth and other youth to help prevent delinquency;

(4) the term "Law Enforcement Assistance Administration" means the agency established by section 3711 of this title;

(5) the term "Administrator" means the agency head designated by section 3711 of this title;

[*See main edition for text of* (*6*) *to* (*13*)]

(As amended Pub. L. 95-115, § 2, Oct. 3, 1977, 91 Stat. 1048.)

Codification

References in pars. (4) and (5) to "section 3711 of this title" were in the original references to sections 101(a) and 101(b), respectively, of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90-351). Title I of Pub. L. 90-351 was revised and amended generally by Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1167. As so revised, section 3711 (relating to the establishment of the Law Enforcement Assistance Administration and the Administrator thereof) does not contain subsections (a) and (b).

Amendments

1977—Par. (3). Pub. L. 95-115 substituted "to help prevent delinquency" for "who are in danger of becoming delinquent".

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

SUBCHAPTER II—PROGRAMS AND OFFICES

Subchapter Referred to in Other Sections

This subchapter is referred to in section 5751 of this title.

Part A—Juvenile Justice and Delinquency Prevention Office

Part Referred to in Other Sections

This part is referred to in section 5638 of this title.

§ 5611. Establishment

(a) Placement within Law Enforcement Assistance Administration, Department of Justice; administration of provisions by Administrator

There is hereby created within the Department of Justice, Law Enforcement Assistance Administration, the Office of Juvenile Justice and Delinquency Prevention (referred to in this chapter as the "Office"). The Administrator shall administer the provisions of this chapter through the Office.

[*See main edition for text of* (*b*)]

(c) Associate Administrator; nomination by President; references to Administrator in other statutory provisions

There shall be at the head of the Office an Associate Administrator who shall be nominated by the President by and with the advice and consent of the Senate. The Associate Administrator may be referred to as the Administrator of the Office of Juvenile Justice and Delinquency Prevention in connection with the performance of his functions as the head of the Office, except that any reference in this chapter to the "Administrator" shall not be construed as a reference to the Associate Administrator.

(d) Powers of Associate Administrator

The Associate Administrator shall exercise all necessary powers, subject to the direction of the Administrator of the Law Enforcement Assistance Administration. The Associate Administrator is authorized, subject to the direction of the Administrator, to award, administer, modify, extend, terminate, monitor, evaluate, reject, or deny all grants and contracts from, and applications for, funds made available under part B and part C of this subchapter. The Administrator may delegate such authority to the Associate Administrator for all grants and contracts from, and applications for, funds made available under this part and funds made available for juvenile justice and delinquency prevention programs under the Omnibus Crime Control and Safe Streets Act of 1968, as amended [42 U.S.C. 3701 et seq.]. The Associate Administrator shall report directly to the Administrator.

(e) Deputy Associate Administrator; appointment; general functions

There shall be in the Office a Deputy Associate Administrator who shall be appointed by the Administrator of the Law Enforcement Assistance Administration. The Deputy Associate Administrator shall perform such functions as the Assistant Administrator from time to time assigns or delegates, and shall act as Assistant Administrator during the absence or disability of the Assistant Administrator or in the event of a vacancy in the Office of the Associate Administrator.

(f) Supervision of National Institute for Juvenile Justice and Delinquency Prevention

There shall be established in the Office a Deputy Associate Administrator who shall be appointed by the Administrator whose function shall be to supervise and direct the National Institute for Juvenile Justice and Delinquency Prevention established under section 5651 of this title.

(As amended Pub. L. 95-115, § 3(a)(1)-(3)(A), (4), (5), Oct. 3, 1977, 91 Stat. 1048, 1049.)

References in Text

This chapter, referred to in subsecs. (a) to (c), in the original read "this Act" meaning Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (d), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended, title I of which is classified principally to chapter 46 (§ 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

Amendments

1977—Subsec. (a). Pub. L. 95-115, § 3(a)(1), added provisions relating to administration of provisions of this chapter.

Subsec. (c). Pub. L. 95-115, § 3(a)(2), (3)(A), added provisions relating to statutory references to the Associate Administrator and substituted "an Associate" for "an Assistant".

Subsec. (d). Pub. L. 95-115, § 3(a)(3)(A), (4), added provisions relating to powers of the Associate Administrator over grants and contracts and provisions relating to reporting requirement and substituted "The Associate Administrator shall exercise" for "The Assistant Administrator shall exercise".

Subsec. (e). Pub. L. 95-115, § 3(a)(3)(A), (5), substituted references to Deputy Associate Administrator and Associate Administrator for references to Deputy Assistant Administrator and Assistant Administrator, respectively, wherever appearing therein.

Subsec. (f). Pub. L. 95-115, § 3(a)(5), substituted "Associate" for "Assistant".

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Section Referred to in Other Sections

This section is referred to in sections 3789i, 5651 of this title.

§ 5612. Personnel

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Personnel from other agencies

Upon the request of the Administrator, the head of any Federal agency is authorized to detail, on a reimbursable basis, any of its personnel to the Associate Administrator to assist him in carrying out his functions under this chapter.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 95-115, § 3(a)(3)(A), Oct. 3, 1977, 91 Stat. 1048.)

Amendments

1977—Subsec. (c). Pub. L. 95-115 substituted "Associate" for "Assistant".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5614. Concentration of federal efforts

[*See main edition for text of* (*a*)]

(b) Duties of Administrator

In carrying out the purposes of this chapter, the Administrator, with the assistance of the Associate Administrator, shall—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) develop annually with the assistance of the Advisory Committee and the Coordinating Council and submit to the President and the Congress, after the first year following October 3, 1977, prior to December 31, an analysis and evaluation of Federal juvenile delinquency programs conducted and assisted by Federal departments and agencies, the expenditures made, the results achieved, the plans developed, and problems in the operations and coordination of such programs and a brief but precise comprehensive plan for Federal juvenile delinquency programs, with particular emphasis on the prevention of juvenile delinquency and the development of programs and services which will encourage increased diversion of juveniles from the traditional juvenile justice system, which analysis and evaluation shall include recommendations for modifications in organization, management, personnel, standards, budget requests, and implementation plans necessary to increase the effectiveness of these programs; and

(6) provide technical assistance to Federal, State, and local governments, courts, public and private agencies, institutions, and individuals, in the planning, establishment, funding, operation, or evaluation of juvenile delinquency programs.

[*See main edition for text of* (*c*)]

(d) First and second annual reports of Administrator; contents

(1) The first annual report submitted to the President and the Congress by the Administrator under subsection (b)(5) of this section shall contain, in addition to information required by subsection (b)(5) of this section, a detailed statement of criteria developed by the Associate Administrator for identifying the characteristics of juvenile delinquency, juvenile delinquency prevention, diversion of youths from the juvenile justice system, and the training, treatment, and rehabilitation of juvenile delinquents.

[*See main edition for text of* (*2*)]

(e) Third annual report of Administrator; contents

The third such annual report submitted to the President and the Congress by the Administrator under subsection (b)(5) of this section shall contain, in addition to the comprehensive plan required by subsection (b)(5) of this section, a detailed statement of procedures to be used with respect to the submission of juvenile delinquency development statements to the Administrator by Federal agencies under subsection (*l*) of this section. Such statement submitted by the Administrator shall include a description of information, data, and analyses which shall be contained in each such development statement.

(f) Information, reports, studies, and surveys from other agencies

The Administrator may require, through appropriate authority, Federal departments and agencies engaged in any activity involving any Federal juvenile delinquency program to provide him with such information and reports, and to conduct such studies and surveys, as he may deem to be necessary to carry out the purposes of this part.

(g) Delegation of functions

The Administrator may delegate any of his functions under this subchapter, to any officer or employee of the Administration.

[*See main edition for text of* (*h*)]

(i) Transfer of funds to other agencies

The Administrator is authorized to transfer funds appropriated under this subchapter to any agency of the Federal Government to develop or demonstrate new methods in juvenile delinquency prevention and rehabilitation and to supplement existing delinquency prevention and rehabilitation programs which the Associate Administrator finds to be exceptionally effective or for which he finds there exists exceptional need.

(j) Grants and contracts to other agencies, organizations, institutions, and individuals

The Administrator is authorized to make grants to, or enter into contracts with, any public or private agency, organization, institution, or individual to carry out the purposes of this subchapter.

(k) Coordination of functions of Administrator and Secretary of Health, Education, and Welfare

All functions of the Administrator under this subchapter shall be coordinated as appropriate with the functions of the Secretary of the Department of Health, Education, and Welfare under subchapter III of this chapter.

(*l*) Annual juvenile delinquency development statements of other agencies; procedure; contents; review by Administrator

(1) The Administrator shall require through appropriate authority each Federal agency which administers a Federal juvenile delinquency program which meets any criterion developed by the Associate Administrator under subsection (d)(1) of this section to submit annually to the Council a juvenile delinquency development statement. Such statement shall be in addition to any information, report, study, or survey which the Administrator may require under subsection (f) of this section.

[*See main edition for text of* (*2*) *and* (*3*)]

(As amended Pub. L. 95-115, § 3(a)(3)(A), (b), Oct. 3, 1977, 91 Stat. 1048, 1049.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-115, § 3(b)(1), in introductory material added requirement for assistance of the Associate Administrator, added par. (5), and redesignated former par. (7) as (6). Former par. (5), relating to an analysis and evaluation of Federal juvenile delinquency programs, and former par. (6), relating to a comprehensive plan for Federal juvenile delinquency programs, were struck out.

Subsec. (d)(1). Pub. L. 95-115, § 3(b)(2), added "Associate" preceding "Administrator for".

Subsec. (e). Pub. L. 95-115, § 3(b)(3), substituted "(5)" for "(6)" in two places.

Subsec. (f). Pub. L. 95-115, § 3(b)(4), added "Federal" following "appropriate authority,".

Subsec. (g). Pub. L. 95-115, § 3(b)(5), substituted "subchapter" for "part, except the making of regulations".

Subsec. (i). Pub. L. 95-115, § 3(a)(3)(A), substituted "Associate" for "Assistant".

Subsec. (j). Pub. L. 95-115, § 3(b)(6), added "organization," following "agency," and substituted "subchapter" for "part".

Subsec. (k). Pub. L. 95-115, § 3(b)(7), substituted "subchapter" for "part" and "subchapter III of this chapter" for "the Juvenile Delinquency Prevention Act".

Subsec. (*l*)(1). Pub. L. 95-115, § 3(b)(8), added "Associate" preceding "Administrator under".

CHANGE OF NAME

The Secretary of the Department of Health, Education, and Welfare was redesignated the Secretary of the Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5615. Joint funding; non-Federal share requirements

Notwithstanding any other provision of law, where funds are made available by more than one Federal agency to be used by any agency, organization, institution, or individual to carry out a Federal juvenile delinquency program or activity, any one of the Federal agencies providing funds may be requested by the Administrator to act for all in administering the funds advanced whenever the Associate Administrator finds the program or activity to be exceptionally effective or for which the Associate Administrator finds exceptional need. In such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each Federal agency, and the Administrator may order any such agency to waive any technical grant or contract requirement (as defined in such regulations) which is inconsistent with the similar requirement of the administering agency or which the administering agency does not impose.

(As amended Pub. L. 95-115, § 3(c), Oct. 3, 1977, 91 Stat. 1049.)

AMENDMENTS

1977—Pub. L. 95-115 added provisions relating to functions of the Associate Administrator with respect to joint funding.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5616. Coordinating Council on Juvenile Justice and Delinquency Prevention

(a) Establishment; membership

(1) There is hereby established, as an independent organization in the executive branch of the Federal Government a Coordinating Council on Juvenile Justice and Delinquency Prevention (hereinafter referred to as the "Council") composed of the Attorney General, the Secretary of Health, Education, and Welfare, the Secretary of Labor, n the Director of the Office of Drug Abuse Policy, the Commissioner of the Office of Education, the Director of the ACTION Agency, the Secretary of Housing and Urban Development, or their respective designees, the Associate Administrator of the Office of Juvenile Justice and Delinquency Prevention, the Deputy Associate Administrator of the Institute for Juvenile Justice and Delinquency Prevention, and representatives of such other agencies as the President shall designate.

(2) Any individual designated under this section shall be selected from individuals who exercise significant decisionmaking authority in the Federal agency involved.

(b) Chairman and Vice Chairman

The Attorney General shall serve as Chairman of the Council. The Associate Administrator of the Office of Juvenile Justice and Delinquency Prevention shall serve as Vice Chairman of the Council. The Vice Chairman shall act as Chairman in the absence of the Chairman.

(c) Functions

The function of the Council shall be to coordinate all Federal juvenile delinquency programs. The Council shall make recommendations to the Attorney General and the President at least annually with respect to the coordination of overall policy and development of objectives and priorities for all Federal juvenile delinquency programs and activities. The Council is authorized to review the programs and practices of Federal agencies and report on the degree to which Federal agency funds are used for purposes which are consistent or inconsistent with the mandates of section 5633(a)(12)(A) and (13) of this title.

(d) Meetings

The Council shall meet a minimum of four times per year and a description of the activities of the Council shall be included in the annual report required by section 5614(b)(5) of this title.

(e) Appointment of personnel or staff support by Associate Administrator

The Associate Administrator may, with the approval of the Council, appoint such personnel or staff support as he considers necessary to carry out the purposes of this subchapter.

[*See main edition for text of (f) and (g)*]

(As amended Pub. L. 95-115, § 3(a)(3)(A), (5), (d), Oct. 3, 1977, 91 Stat. 1048-1050.)

Amendments

1977—Subsec. (a)(1). Pub. L. 95-115, § 3(a)(3)(A), (5), (d)(1), added references to the Commissioner of the Office of Education and the Director of the ACTION Agency, and substituted "Associate" for "Assistant" wherever appearing therein.

Subsec. (b). Pub. L. 95-115, § 3(a)(3)(A), substituted "Associate" for "Assistant".

Subsec. (c). Pub. L. 95-115, § 3(d)(2), added provisions relating to review functions of the Council.

Subsec. (d). Pub. L. 95-115, § 3(d)(3), substituted "four" for "six".

Subsec. (e). Pub. L. 95-115, § 3(d)(4), redesignated former par. (3) as entire subsec. and, as so redesignated, added "or staff support" following "personnel" and substituted "Associate Administrator" for "Executive Secretary". Former pars. (1) and (2), which related to the appointment and responsibilities of the Executive Secretary, respectively, were struck out.

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5617. National Advisory Committee for Juvenile Justice and Delinquency Prevention

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Regular members; appointment; qualifications

The regular members of the Advisory Committee shall be appointed by the President from persons who by virtue of their training or experience have special knowledge concerning the prevention and treatment of juvenile delinquency or the administration of juvenile justice, such as juvenile or family court judges; probation, correctional, or law enforcement personnel; and representatives of private voluntary organizations and community-based programs, including youth workers involved with alternative youth programs and persons with special experience and competence in addressing the problem of school violence and vandalism and the problem of learning disabilities. The President shall designate the Chairman. A majority of the members of the Advisory Committee, including the Chairman, shall not be full-time employees of Federal, State, or local governments. At least seven members shall not have attained twenty-six years of age on the date of their appointment, of whom at least three shall have been or shall currently be under the jurisdiction of the juvenile justice system.

(d) Term of office; time of appointment; reappointment; vacancies; quorum

Members appointed by the President to the Committee shall serve for terms of four years and shall be eligible for reappointment except that for the first composition of the Advisory Committee, one-third of these members shall be appointed to one-year terms, one-third to two-year terms, and one-third to three-year terms; thereafter each term shall be four years. Such members shall be appointed within ninety days after September 7, 1974. Any members appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed, shall be appointed for the remainder of such term. Eleven members of the committee shall constitute a quorum.

(As amended Pub. L. 95-115, § 3(e), Oct. 3, 1977, 91 Stat. 1050.)

Amendments

1977—Subsec. (c). Pub. L. 95-115, § 3(e)(1), added provisions requiring members to include youth workers and persons with experience and competence in problems of school violence and vandalism, and learning disabilities, and requiring at least three members to, at any time, be in the jurisdiction of the juvenile justice system.

Subsec. (d). Pub. L. 95-115, § 3(e)(2), added provisions relating to quorum requirements.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5618. Duties of Advisory Committee

[*See main edition for text of* (*a*)]

(b) Recommendations

The Advisory Committee shall make recommendations to the Associate Administrator, the President, and the Congress at least annually with respect to planning, policy, priorities, operations, and management of all Federal juvenile delinquency programs.

(c) Subcommittee for advice on particular functions

The Chairman shall designate a subcommittee of members of the Advisory Committee to advise the Associate Administrator on particular functions or aspects of the work of the Office.

(d) Subcommittee to serve on Advisory Committee for the National Institute for Juvenile Justice and Delinquency Prevention

The Chairman shall designate a subcommittee of not less than five members of the Committee to serve, together with the Director of the National Institute of Corrections, as members of an Advisory Committee for the National Institute for Juvenile Justice and Delinquency Prevention to perform the functions set forth in section 5655 of this title.

(e) Subcommittee to serve as Advisory Committee to Associate Administrator on Standards for Juvenile Justice

The Chairman shall designate a subcommittee of not less than five members of the Committee to serve as an Advisory Committee to the Associate Administrator on Standards for Juvenile Justice to perform the functions set forth in section 5657 of this title.

(f) Request of Associate Administrator for staff and other support

The Chairman, with the approval of the Committee, shall request of the Associate Administrator such staff and other support as may be necessary to carry out the duties of the Advisory Committee.

(g) Duty of Associate Administrator to provide staff and other support

The Associate Administrator shall provide such staff and other support as may be necessary to perform the duties of the Advisory Committee.

(As amended Pub. L. 95-115, § 3(a)(3)(B), (f), Oct. 3, 1977, 91 Stat. 1048, 1050.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-115, § 3(a)(3)(B), (f)(1), added "Associate" preceding "Administrator" and references to the President and Congress.

Subsec. (c). Pub. L. 95-115, § 3(f)(2), added "Associate" preceding "Administrator" and substituted "shall" for "may".

Subsec. (d). Pub. L. 95-115, § 3(f)(3), added "not less than" following "subcommittee of".

Subsec. (e). Pub. L. 95-115, § 3(a)(3)(B), (f)(4), added "not less than" following "subcommittee of" and "Associate" preceding "Administrator" and struck out "the Administration of" preceding "Juvenile".

Subsec. (f). Pub. L. 95-115, § 3(f)(5), substituted provisions requiring staff support to be requested of the Associate Administrator, for provisions requiring the appointment of personnel to be made by the Chairman.

Subsec. (g). Pub. L. 95-115, § 3(f)(6), added subsec. (g).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

PART B—FEDERAL ASSISTANCE FOR STATE AND LOCAL PROGRAMS

SUBPART I—FORMULA GRANTS

§ 5631. Grants to States and units of general local government or combinations thereof

The Administrator is authorized to make grants to States and units of general local government or combinations thereof to assist them in planning, establishing, operating, coordinating, and evaluating projects directly or through grants and contracts with public and private agencies for the development of more effective education, training, research, prevention, diversion, treatment, and rehabilitation programs in the area of juvenile delinquency and programs to improve the juvenile justice system.

(As amended Pub. L. 95-115, § 4(a), Oct. 3, 1977, 91 Stat. 1050.)

AMENDMENTS

1977—Pub. L. 95-115 added "grants and" preceding "contracts" and substituted "units of general local government or combinations thereof" for "local governments".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5632. Allocation of funds

(a) Time; basis; amounts

In accordance with regulations promulgated under this part, funds shall be allocated annually among the States on the basis of relative population of people under age eighteen. No such allotment to any State shall be less than $225,000, except that for the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands no allotment shall be less than $56,250.

[*See main edition for text of* (*b*)]

(c) Use of alloted funds for development, etc., of state plans; limitations; matching requirements

In accordance with regulations promulgated under this part, a portion of any allotment to any State under this part shall be available to develop a State plan or for other pre-award activities associated with such State plan, and to pay that portion of the expenditures which are necessary for efficient administration, including monitoring and evaluation. Not more than 7½ per centum of the total annual allotment of such State shall be available for such purposes except that any amount expended or obligated by such State, or by units of general local government or any combination thereof, from amounts made available under this subsection shall be matched (in an amount equal to any such amount so expended or obligated) by such State, or by such units or combinations, from State or local funds, as the case may be. The State shall make available needed funds for planning and administration to units of general local government or combinations thereof within the State on an equitable basis.

(d) Minimum annual allotment for assistance of advisory group

In accordance with regulations promulgated under this part, 5 per centum of the minimum annual allotment to any State under this part shall be available to assist the advisory group established under section 5633(a)(3) of this title.

(As amended Pub. L. 95-115, § 4(b)(1), (2)(A)(C), (3), (4), Oct. 3, 1977, 91 Stat. 1051.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-115, § 4(b)(1), substituted "$225,000" for "$200,000" and "$56,250" for "$50,000".

Subsec. (c). Pub. L. 95-115, § 4(b)(2)(A), (B), (3), added provisions relating to pre-award activities, monitoring and evaluation payments, and matching requirements for expended or obligated amounts, and substituted "7½" for "15" and "units of general local government or combinations thereof" for "local governments".

Subsec. (d). Pub. L. 95-115, § 4(b)(2)(C), (4)(B), redesignated former subsec. (e) as (d). Former subsec. (d), relating to limitations on financial assistance under this section, was struck out.

Subsec. (e). Pub. L. 95-115, § 4(b)(4)(A), added subsec. (e).

Pub. L. 95-115, § 4(b)(4)(B), redesignated former subsec. (e) as (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment of subsec. (a) and amendment of (c) in respect to units of general local government by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Section 4(b)(2)(D) of Pub. L. 95-115 provided that: "The amendments made by this paragraph [amending subsec. (c) of this section, relating to pre-award activities, monitoring and evaluation payments, matching requirements, etc., and repealing subsec. (d) of this section] shall take effect on October 1, 1978."

Section 4(b)(4)(B) of Pub. L. 95-115 provided that: "Effective on October 1, 1978, section 222(e) of the Act, as added by subparagraph (A) [subsec. (e) of this section], is redesignated as section 222(d) of the Act [subsec. (d) of this section]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5633, 5638 of this title.

§ 5633. State plans

(a) Requirements

In order to receive formula grants under this part, a State shall submit a plan for carrying out its purposes consistent with the provisions of section 3733(a)(1), (3), (5), (6), (8), (10), (11), (12), (15), and (17) of this title. In accordance with regulations established under this subchapter, such plan must—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) provide for an advisory group appointed by the chief executive of the State to carry out the functions specified in subparagraph (F) and to participate in the development and review of the State's juvenile justice plan prior to submission to the supervisory board for final action and (A) which shall consist of not less than twenty-one and not more than thirty-three persons who have training, experience, or special knowledge concerning the prevention and treatment of a juvenile delinquency or the administration of juvenile justice, (B) which shall include representation of units of local government, law enforcement and juvenile justice agencies such as law enforcement, correction or probation personnel, and juvenile or family court judges, and public agencies concerned with delinquency prevention or treatment such as welfare, social services, mental health, education, or youth services departments, (C) which shall include representatives of private organizations concerned with delinquency prevention or treatment; concerned with neglected or dependent children; concerned with the quality of juvenile justice, education, or social services for children; which utilize volunteers to work with delinquents or potential delinquents; community-based delinquency prevention or treatment programs; business groups and businesses employing youth, youth workers involved with alternative youth programs, and persons with special experience and competence in addressing the problem of school violence and vandalism and the problem of learning disabilities; and organizations which represent employees affected by this chapter, (D) a majority of whose members (including the chairman) shall not be full-time employees of the Federal, State, or local government, (E) at least one-third of whose members shall be under the age of twenty-six at the time of appointment at least three of whom shall have been or shall currently be under the jurisdiction of the juvenile justice system; and (F) which (i) shall, consistent with this subchapter, advise the State planning agency and its supervisory board; (ii) may advise the Governor and the legislature on matters related to its functions, as requested; (iii) shall have an opportunity for review and comment on all juvenile justice and delinquency prevention grant applications submitted to the State planning agency other than those subject to review by the State's judicial planning committee established pursuant to section 3723(c) of this title, except that any such review and comment shall be made no later than 30 days after the submission of any such application to the advisory group; and (iv) may be given a role in monitoring State compliance with the requirements of paragraph (12)(A) and paragraph (13), in advising on State planning agency and regional planning unit supervisory board composition, in advising on the State's maintenance of effort under sections 3768(b) and 5671(b) of this title, and in review of the progress and accomplishments of juvenile justice and delinquency prevention projects funded under the comprehensive State plan;

(4) provide for the active consultation with and participation of units of general local government or combinations thereof in the development of a State plan which adequately takes into account the needs and requests of local governments, except that nothing in the plan requirements, or any regulations promulgated to carry out such requirements, shall be construed to prohibit or impede the State from making grants to, or entering into contracts with, local private agencies or the advisory group;

(5) unless the provisions of this paragraph are waived at the discretion of the Administrator for any State in which the services for delinquent or other youth are organized primarily on a statewide basis, provide that at least 66⅔ per centum of funds received by the State under section 5632 of this title, other than funds made available to the State advisory group under section 5632(d) of this title, shall be expended through—

(A) programs of units of general local government or combinations thereof, to the extent such programs are consistent with the State plan; and

(B) programs of local private agencies, to the extent such programs are consistent with the State plan, except that direct funding of any local private agency by a State shall be permitted only if such agency requests such funding after it has applied for and been denied funding by any unit of general local government or combination thereof;

(6) provide that the chief executive officer of the unit of general local government shall assign responsibility for the preparation and administration of the local government's part of a State plan, or for the supervision of the preparation and administration of the local government's part of the State plan, to that agency within the local government's structure or to a regional planning agency (hereinafter in this part referred to as the "local agency") which can most effectively carry out

the purposes of this part and shall provide for supervision of the programs funded under this part by that local agency;

[*See main edition for text of* (*7*)]

(8) set forth a detailed study of the State needs for an effective, comprehensive, coordinated approach to juvenile delinquency prevention and treatment and the improvement of the juvenile justice system. This plan shall include itemized estimated costs for the development and implementation of such programs. Programs and projects developed from the study may be funded under paragraph (10) provided that they meet the criteria for advanced technique programs as specified therein;

[*See main edition for text of* (*9*)]

(10) provide that not less than 75 per centum of the funds available to such State under section 5632 of this title, other than funds made available to the State advisory group under section 5632(d) of this title, whether expended directly by the State, by the unit of general local government or combination thereof, or through grants and contracts with public or private agencies, shall be used for advanced techniques in developing, maintaining, and expanding programs and services designed to prevent juvenile delinquency, to divert juveniles from the juvenile justice system, to provide community-based alternatives to juvenile detention and correctional facilities, to encourage a diversity of alternatives within the juvenile justice system, and to establish and adopt juvenile justice standards. These advanced techniques include—

(A) community-based programs and services for the prevention and treatment of juvenile delinquency through the development of foster-care and shelter-care homes, group homes, half-way houses, homemaker and home health services, twenty-four hour intake screening, volunteer and crisis home programs, day treatment, and home probation, and any other designated community-based diagnostic, treatment, or rehabilitative service;

[*See main edition for text of* (*B*)]

(C) youth service bureaus and other community-based programs to divert youth from the juvenile court or to support, counsel, or provide work and recreational opportunities for delinquents and other youth to help prevent delinquency;

(D) projects designed to develop and implement programs stressing advocacy activities aimed at improving services for and protecting the rights of youth impacted by the juvenile justice system;

[*See main edition for text of* (*E*) *and* (*F*)]

(G) youth initiated programs and outreach programs designed to assist youth who otherwise would not be reached by traditional youth assistance programs;

(H) provides for a statewide program through the use of probation subsidies, other subsidies, other financial incentives or disincentives to units of local government, or other effective means, are designed to—

[*See main edition for text of* (*i*) *to* (*iii*)]

(I) programs and activities to establish and adopt, based on the recommendations of the Advisory Committee, standards for the improvement of juvenile justice within the State;

(11) provides for the development of an adequate research, training, and evaluation capacity within the State;

(12)(A) provide within three years after submission of the initial plan that juveniles who are charged with or who have committed offenses that would not be criminal if committed by an adult, or such nonoffenders as dependent or neglected children, shall not be placed in juvenile detention or correctional facilities; and

(B) provide that the State shall submit annual reports to the Associate Administrator containing a review of the progress made by the State to achieve the deinstitutionalization of juveniles described in subparagraph (A) and a review of the progress made by the State to provide that such juveniles, if placed in facilities, are placed in facilities which (i) are the least restrictive alternatives appropriate to the needs of the child and the community; (ii) are in reasonable proximity to the family and the home communities of such juveniles; and (iii) provide the services described in section 5603(1) of this title;

(13) provide that juveniles alleged to be or found to be delinquent and youths within the purview of paragraph (12) shall not be detained or confined in any institution in which they have regular contact with adult persons incarcerated because they have been convicted of a crime or are awaiting trial on criminal charges;

(14) provide for an adequate system of monitoring jails, detention facilities, correctional facilities, and non-secure facilities to insure that the requirements of paragraph (12)(A) and paragraph (13) are met, and for annual reporting of the results of such monitoring to the Associate Administrator;

(15) provide assurance that assistance will be available on an equitable basis to deal with disadvantaged youth including, but not limited to, females, minority youth, and mentally retarded and emotionally or physically handicapped youth;

[*See main edition for text of* (*16*) *to* (*18*)]

(19) provide reasonable assurance that Federal funds made available under this part for any period will be so used as to supplement and increase (but not supplant) the level of the State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs described in this part, and will in no event replace such State, local, and other non-Federal funds;

(20) provide that the State planning agency will from time to time, but not less often

then[1] annually, review its plan and submit to Associate the Administrator an analysis and evaluation of the effectiveness of the programs and activities carried out under the plan, and any modifications in the plan, including the survey of State and local needs, which it considers necessary; and

(21) contain such other terms and conditions as the Associate Administrator may reasonably prescribe to assure the effectiveness of the programs assisted under this subchapter.

Such plan may at the discretion of the Administrator be incorporated into the plan specified in section 3733(a) of this title.

(b) Approval by State planning agency

The State planning agency designated pursuant to subsection (a) of this section, after receiving and considering the advice and recommendations of the advisory group referred to in subsection (a) of this section, shall approve the State plan and any modification thereof prior to submission to the Administrator.

(c) Approval by Administrator; compliance with statutory requirements

The Administrator shall approve any State plan and any modification thereof that meets the requirements of this section. Failure to achieve compliance with the requirement of subsection (a)(12)(A) of this section within the three-year time limitation shall terminate any State's eligibility for funding under this subpart unless the Administrator, with the concurrence of the Associate Administrator, determines that the State is in substantial compliance with the requirement, through achievement of deinstitutionalization of not less than 75 per centum of such juveniles, and has made, through appropriate executive or legislative action, an unequivocal commitment to achieving full compliance within a reasonable time not exceeding two additional years.

(d) Nonsubmission or nonqualification of plan; expenditure of allotted funds; availability of reallocated funds

In the event that any State chooses not to submit a plan, fails to submit a plan, or submits a plan or any modification thereof, which the Administrator, after reasonable notice and opportunity for hearing, in accordance with sections 3757, 3758, and 3759 of this title, determines does not meet the requirements of this section, the Administrator shall make that State's allotment under the provisions of section 5632(a) of this title available to public and private agencies for special emphasis prevention and treatment programs as defined in section 5634 of this title. The Administrator shall endeavor to make such reallocated funds available on a preferential basis to programs in nonparticipating States under section 5634(a)(2) of this title and to those States that have achieved substantial or full compliance with the requirement of subsection (a)(12)(A) of this section within the initial three years of participation or have achieved full compliance within a reasonable time thereafter as provided by subsection (c) of this section.

(e) Repealed. Pub. L. 95-115, § 4(c)(15), Oct. 3, 1977, 91 Stat. 1054

(As amended Pub. L. 95-115, §§ 3(a)(3)(B), 4(c)(1), (2), (3)-(15), Oct. 3, 1977, 91 Stat. 1048, 1051-1054.)

References in Text

Sections 3723, 3733, 3757, 3758, 3759, and 3768 of this title, referred to in subsecs. (a) and (d), in the original were references to sections 203, 303, 509, 510, 511, and 520 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90-351), as in effect prior to the general revision and amendment of title I of Pub. L. 90-351 by Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1167.

Former section 3723 related to State planning agencies.

Former section 3733 related to requirements for an approved State plan.

Former sections 3757 to 3759 related to withholding of payments for noncompliance and notice and hearing, administration proceedings, and judicial review. See sections 3783 to 3785 of this title.

Former section 3768 required a specific percentage of appropriations be maintained for juvenile delinquency programs. See section 3793a of this title.

Amendments

1977—Subsec. (a)(3). Pub. L. 95-115, § 4(c)(1), in the material preceding subpar. (A) substituted provisions relating to functions under subpar. (F) and participation in the development and review of the plan, for provisions relating to advisement of the State planning agency and its supervisory board, in subpar. (C) added provision relating to representatives from business groups and businesses, and in subpar. (E) added requirement for at least three of the members to be or have been under the jurisdiction of the juvenile justice system, and added subpar. (F).

Subsec. (a)(4). Pub. L. 95-115, § 4(c)(2), added provisions relating to grants or contracts with local private agencies or the advisory group, and substituted "units of general local government or combinations thereof in" for "local governments in".

Subsec. (a)(5). Pub. L. 95-115, § 4(c)(3), substituted provisions relating to requirements respecting expenditure of funds through programs of units of general local government or combinations thereof and programs of local private agencies, for provisions relating to requirements respecting expenditure of funds through programs of local government.

Subsec. (a)(6). Pub. L. 95-115, § 4(c)(4), added provision relating to regional planning agency and "unit of general" preceding "local government".

Subsec. (a)(8). Pub. L. 95-115, § 4(c)(5), added provisions relating to programs and projects developed under the study.

Subsec. (a)(10). Pub. L. 95-115, § 4(c)(6)(A)(i), (B), added provisions relating to availability of funds to the State advisory group and provisions expanding authorized use of funds to include encouragement of diversity of alternatives within the juvenile justice system and adoption of juvenile justice standards, and substituted reference to unit of general local government or combination of such unit with the State, for reference to local government.

Subsec. (a)(10)(A). Pub. L. 95-115, § 4(c)(6)(A)(ii), added "twenty-four hour intake screening, volunteer and crisis home programs, day treatment, and home probation," following "health services,".

Subsec. (a)(10)(C). Pub. L. 95-115, § 4(c)(6)(A)(iii), substituted "other youth to help prevent delinquency" for "youth in danger of becoming delinquent".

Subsec. (a)(10)(D). Pub. L. 95-115, § 4(c)(6)(A)(iv), substituted provisions relating to programs stressing advocacy activities, for provisions relating to programs of drug and alcohol abuse education and prevention and programs for treatment and rehabilitation of drug addicted youth and drug dependent youth as defined in section 201(q) of this title.

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[1] So in original. Probably should be "than".

Subsec. (a)(10)(G). Pub. L. 95-115, § 4(c)(6)(A)(v), added "traditional youth" following "reached by".

Subsec. (a)(10)(H). Pub. L. 95-115, § 4(c)(6)(A)(vi), substituted "are" for "that may include but are not limited to programs".

Subsec. (a)(10)(I). Pub. L. 95-115, § 4(c)(6)(A)(vii), added subpar. (I).

Subsec. (a)(12). Pub. L. 95-115, § 4(c)(7), redesignated existing provisions as subpar. (A) and, as so redesignated, substituted provisions relating to detention requirements respecting programs within three years after submission of the initial plan, for provisions relating to detention requirements respecting programs within two years after submission of the plan, and added subpar. (B).

Subsec. (a)(13). Pub. L. 95-115, § 4(c)(8), added "and youths within the purview of paragraph (12)" following "delinquent".

Subsec. (a)(14). Pub. L. 95-115, §§ 3(a)(3)(B), 4(c)(9), added "(A)" following "(12)" and "Associate" preceding "Administrator" and substituted "facilities, correctional facilities, and non-secure facilities" for "facilities, and correctional facilities".

Subsec. (a)(15). Pub. L. 95-115, § 4(c)(10), struck out "all" preceding "disadvantaged".

Subsec. (a)(19). Pub. L. 95-115, § 4(c)(11), struck out ", to the extent feasible and practical" preceding "the level".

Subsec. (a)(20), (21). Pub. L. 95-115, § 3(a)(3)(B), added "Associate" preceding "Administrator" wherever appearing therein.

Subsec. (b). Pub. L. 95-115, § 4(c)(12), substituted provisions relating to advice and recommendations for provisions relating to consultations.

Subsec. (c). Pub. L. 95-115, § 4(c)(13), added provisions relating to failure to achieve compliance with the requirements of subsec. (a)(12)(A) within the three-year time limitation.

Subsec. (d). Pub. L. 95-115, § 4(c)(14), added provision relating to the State choosing not to submit a plan and provision relating to reallocation of funds by the Administrator.

Subsec. (e). Pub. L. 95-115, § 4(c)(15), struck out subsec. (e) which related to reallotment of funds in a state where the state plan fails to meet the requirements of this section as a result of oversight or neglect.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Section 4(c)(3)(B) of Pub. L. 95-115 provided in part that the amendment of subsec. (a)(5) of this section, which substituted "5632(d)" for "5632(e)", by section 4(c)(3)(B) of Pub. L. 95-115 is effective on Oct. 1, 1978.

Section 4(c)(6)(B) of Pub. L. 95-115 provided in part that the amendment of subsec. (a)(10) of this section, which substituted "5632(d)" for "5632(e)", by section 4(c)(6)(B) of Pub. L. 95-115 is effective Oct. 1, 1978.

Termination of Advisory Committees

Advisory committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Section Referred to in Other Sections

This section is referred to in sections 3745, 3767, 5616, 5632, 5635, 5651 of this title.

SUBPART II—SPECIAL EMPHASIS PREVENTION AND TREATMENT PROGRAMS

§ 5634. Funding

(a) Grants and contracts to public and private agencies, organizations, etc.; purpose

The Administrator is authorized to make grants to and enter into contracts with public and private agencies, organizations, institutions, or individuals to—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) develop and implement effective means of diverting juveniles from the traditional juvenile justice and correctional system, including restitution projects which test and validate selected arbitration models, such as neighborhood courts or panels, and increase victim satisfaction while providing alternatives to incarceration for detained or adjudicated delinquents;

(4) improve the capability of public and private agencies and organizations to provide services for delinquents and other youth to help prevent delinquency;

(5) facilitate the adoption of the recommendations of the Advisory Committee and the Institute as set forth pursuant to section 5657 of this title;

(6) develop and implement, in coordination with the Commissioner of Education, model programs and methods to keep students in elementary and secondary schools and to prevent unwarranted and arbitrary suspensions and expulsions and to encourage new approaches and techniques with respect to the prevention of school violence and vandalism;

(7) develop and support programs stressing advocacy activities aimed at improving services to youth impacted by the juvenile justice system;

(8) develop, implement, and support, in conjunction with the Secretary of Labor, other public and private agencies and organizations and business and industry programs for youth employment;

(9) improve the juvenile justice system to conform to standards of due process;

(10) develop and support programs designed to encourage and enable State legislatures to consider and further the purposes of this chapter, both by amending State laws where necessary, and devoting greater resources to those purposes; and

(11) develop and implement programs relating to juvenile delinquency and learning disabilities.

(b) Limitations on availability of appropriated funds

Twenty-five per centum of the funds appropriated for each fiscal year pursuant to this part shall be available only for special emphasis prevention and treatment grants and contracts made pursuant to this section.

(c) Availability of funds for private agencies, etc.

At least 30 per centum of the funds available for grants and contracts made pursuant to this section shall be available for grants and contracts to private nonprofit agencies, organizations, or institutions who have had experience in dealing with youth.

(As amended Pub. L. 95-115, § 4(d), Oct. 3, 1977, 91 Stat. 1054.)

References in Text

This chapter, referred to in subsec. (a)(10), in the original read "this Act" meaning Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

Amendments

1977—Subsec. (a)(3). Pub. L. 95-115, § 4(d)(1), added provisions relating to restitution projects.

Subsec. (a)(4). Pub. L. 95-115, § 4(d)(2), substituted "and other youth to help prevent delinquency" for "and youths in danger of becoming delinquent".

Subsec. (a)(5). Pub. L. 95-115, § 4(d)(3), struck out "on Standards for Juvenile Justice" following "Committee" and "and" following "title;".

Subsec. (a)(6). Pub. L. 95-115, § 4(d)(4), added provision relating to coordination with the Commissioner of Education and provision relating to prevention of school violence and vandalism.

Subsec. (a)(7) to (11). Pub. L. 95-115, § 4(d)(5), added pars. (7) to (11).

Subsec. (b). Pub. L. 95-115, § 4(d)(6), substituted provisions authorizing the availability of twenty-five per centum of the funds appropriated for provisions authorizing the availability of not less than twenty-five or more than fifty per centum of the funds appropriated.

Subsec. (c). Pub. L. 95-115, § 4(d)(7), substituted "30" for "20".

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Section Referred to in Other Sections

This section is referred to in sections 5633, 5635, 5638 of this title.

§ 5635. Applications for grants and contracts

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Approval by Administrator; criteria

In determining whether or not to approve applications for grants under section 5634 of this title, the Administrator shall consider—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) the increase in capacity of the public and private agency, institution, or individual to provide services to delinquents and other youth to help prevent delinquency;

(5) the extent to which the proposed project serves communities which have high rates of youth unemployment, school dropout, and delinquency;

(6) the extent to which the proposed program facilitates the implementation of the recommendations of the Advisory Committee as set forth pursuant to section 5657 of this title; and

[*See main edition for text of* (*7*) *and* (*d*)]

(As amended Pub. L. 95-115, § 4(e), Oct. 3, 1977, 91 Stat. 1055.)

Amendments

1977—Subsec. (c)(4). Pub. L. 95-115, § 4(e)(1), substituted "and other youth to help prevent delinquency" for "or youths in danger of becoming delinquents".

Subsec. (c)(5). Pub. L. 95-115, § 4(e)(2), struck out "and" following "delinquency;".

Subsec. (c)(6). Pub. L. 95-115, § 4(e)(3), substituted "title; and" for "title.", and struck out "on Standards for Juvenile Justice" following "Committee".

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5637. Use of funds; limitations

(a) Funds paid pursuant to this subchapter to any public or private agency, organization, institution, or individual (whether directly or through a State planning agency) may be used for—

[*See main edition for text of* (*1*) *and* (*2*)]

(b) Except as provided by subsection (a) of this section, no funds paid to any public or private agency, organization, institution, or individual under this subchapter (whether directly or through a State planning agency) may be used for construction.

(As amended Pub. L. 95-115, § 4(f), Oct. 3, 1977, 91 Stat. 1055.)

Amendments

1977—Subsec. (a). Pub. L. 95-115, § 4(f)(1), substituted "public or private agency, organization, institution, or individual (whether directly or through a State planning agency)" for "State, public or private agency, institution, or individual (whether directly or through a State or local agency)".

Subsec. (b). Pub. L. 95-115, § 4(f)(2), substituted "organization, institution, or individual under this subchapter (whether directly or through a State planning agency)" for "institution, or individual under this part (whether directly or through a State agency or local agency)".

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5638. Continuing financial assistance for programs

[*See main edition for text of* (*a*)]

(b) Utilization of formula grant funds; limitations

At the discretion of the Administrator, when there is no other way to fund an essential juvenile delinquency program not funded by the Law Enforcement Assistance Administration the State may utilize 25 per centum of the formula grant funds available to it under this part to meet the non-Federal matching share requirement for any other Federal juvenile delinquency program grant.

(c) Contributions by recipient

Whenever the Administrator determines that it will contribute to the purposes of part A or part C of this subchapter, he may require the recipient of any grant or contract to contribute money, facilities, or services.

[*See main edition for text of* (*d*)]

(e) Amount of assistance

Except as provided in the second sentence of section 5632(c) of this title, financial assistance extended under the provisions of this subchapter shall be 100 per centum of the approved costs of any program or activity.

(f) Grants to Indian tribe or other aboriginal group; increase in Federal share; waiver of State liability

In the case of a grant under this part to an Indian tribe or other aboriginal group, if the Administrator determines that the tribe or group does not have sufficient funds available to meet the local share of the cost of any program or project to be funded under the grant, the Administrator may increase the Federal share of the cost thereof to the extent he deems necessary. Where a State does not have an adequate forum to enforce grant provisions imposing any liability on Indian tribes, the Administrator is authorized to waive State liability and may pursue such legal remedies as are necessary.

(g) Reallocation of funds

If the Administrator determines, on the basis of information available to him during any fiscal year, that a portion of the funds granted to an applicant under this part for that fiscal year will not be required by the applicant or will become available by virtue of the application of the provisions of section 3757 of this title, that portion shall be available for reallocation under section 5634 of this title.

(As amended Pub. L. 95-115, § 4(g)(1), (2), (3)(A), Oct. 3, 1977, 91 Stat. 1055, 1056.)

REFERENCES IN TEXT

Section 3757 of this title, referred to in subsec. (g), in the original was a reference to section 509 of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90-351), as in effect prior to the general revision and amendment of title I of Pub. L. 90-351 by Pub. L. 96-157, § 2, Dec. 27, 1979, 93 Stat. 1167. Former section 3757 related to withholding of payments for noncompliance and notice and hearing. See section 3783 of this title.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-115, § 4(g)(1), substituted "by the Law Enforcement Assistance Administration" for "under this part".

Subsec. (c). Pub. L. 95-115, § 4(g)(2), substituted "part A or part C" for "this part".

Subsecs. (e) to (g). Pub. L. 95-115, § 4(g)(3)(A), added subsecs. (e) to (g).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment, except subsec. (e), by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Addition of subsec. (e) effective Oct. 1, 1978, pursuant to section 4(g)(3)(B) of Pub. L. 95-115.

§ 5639. Confidentiality of program records

Except as authorized by law, program records containing the identity of individual juveniles gathered for purposes pursuant to this subchapter may not be disclosed except with the consent of the service recipient or legally authorized representative, or as may be necessary to perform the functions required by this subchapter. Under no circumstances may project reports or findings available for public dissemination contain the actual names of individual service recipients.

(Pub. L. 93-415, title II, § 229, as added Pub. L. 95-115, § 4(h), Oct. 3, 1977, 91 Stat. 1056.)

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

PART C—NATIONAL INSTITUTE FOR JUVENILE JUSTICE AND DELINQUENCY PREVENTION

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 5638 of this title.

§ 5651. Institute structure and operation

[*See main edition for text of* (*a*)]

(b) Deputy Associate Administrator as head; Associate Administrator to supervise and direct

The National Institute for Juvenile Justice and Delinquency Prevention shall be under the supervision and direction of the Associate Administrator, and shall be headed by a Deputy Associate Administrator of the Office appointed under section 5611(f) of this title.

[*See main edition for text of* (*c*)]

(d) Purpose of Institute

It shall be the purpose of the Institute to provide a coordinating center for the collection, preparation, and dissemination of useful data regarding the treatment and control of juvenile offenders, and it shall also be the purpose of the Institute to provide training for representatives of Federal, State, and local law enforcement officers, teachers, and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation personnel, correctional personnel and other persons, including lay personnel, including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations, connected with the treatment and control of juvenile offenders.

(e) Additional powers

In addition to the other powers, express and implied, the Institute may—

(1) request any Federal agency to supply such statistics, data, program reports, and other material as the Institute deems necessary to carry out its functions;

(2) arrange with and reimburse the heads of Federal agencies for the use of personnel or facilities or equipment of such agencies;

(3) confer with and avail itself of the cooperation, services, records, and facilities of

State, municipal, or other public or private local agencies;

(4) make grants and enter into contracts with public or private agencies, organizations, or individuals, for the partial performance of any functions of the Institute;

(5) compensate consultants and members of technical advisory councils who are not in the regular full-time employ of the United States, at a rate now or hereafter prescribed for GS-18 of the General Schedule by section 5332 of title 5 and while away from home, or regular place of business, they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently; and

(6) assist, through training, the advisory groups established pursuant to section 5633(a)(3) of this title or comparable public or private citizen groups in nonparticipating States in the accomplishment of their objectives consistent with this chapter.

(f) Cooperation of other Federal agencies

Any Federal agency which receives a request from the Institute under subsection (e)(1) of this section may cooperate with the Institute and shall, to the maximum extent practicable, consult with and furnish information and advice to the Institute.

(As amended Pub. L. 95-115, §§ 3(a)(3)(A), (5), 5(a), (f), Oct. 3, 1977, 91 Stat. 1048, 1049, 1056, 1057.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (e)(6), in the original read "this Act" meaning Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-115, § 3(a)(3)(A), (5), substituted "Associate" for "Assistant" wherever appearing therein.

Subsec. (d). Pub. L. 95-115, § 5(a)(1), (f), redesignated former subsec. (f) as (d) and, as so redesignated, expanded scope of lay personnel to include persons associated with law-related education programs, etc. Former subsec. (d), which set forth the responsibilities of the Administrator, was struck out.

Subsec. (e). Pub. L. 95-115, § 5(a)(1), (2), (3), redesignated former subsec. (g) as (e) and, as so redesignated, in par. (4) added provision authorizing the making of grants and added par. (6). Former subsec. (e), which authorized the Administrator to delegate powers under this chapter, was struck out.

Subsec. (f). Pub. L. 95-115, § 5(a)(1), (4), (5), redesignated former subsec. (h) as (f) and, as so redesignated, substituted "(e)" for "(g)". Former subsec. (f) was redesignated as (d).

Subsec. (g). Pub. L. 95-115, § 5(a)(1), redesignated former subsec. (g) as (e).

Subsec. (h). Pub. L. 95-115, § 5(a)(4), redesignated former subsec. (h) as (f).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5653. Research, demonstration, and evaluation functions of Institute

The National Institute for Juvenile Justice and Delinquency Prevention is authorized to—

[*See main edition for text of (1) to (3)*]

(4) provide for the evaluation of any other Federal, State, or local juvenile delinquency program, upon the request of the Associate Administrator;

(5) prepare, in cooperation with educational institutions, Federal, State, and local agencies, and appropriate individuals and private agencies, such studies as it considers to be necessary with respect to the prevention and treatment of juvenile delinquency and related matters, including recommendations designed to promote effective prevention and treatment, such as assessments regarding the role of family violence, sexual abuse or exploitation and media violence in delinquency, the improper handling of youth placed in one State by another State, the possible ameliorating roles of recreation and the arts, and the extent to which youth in the juvenile system are treated differently on the basis of sex and the ramifications of such practices;

[*See main edition for text of (6) and (7)*]

(As amended Pub. L. 95-115, §§ 3(a)(3)(B), 5(b), Oct. 3, 1977, 91 Stat. 1048, 1057.)

AMENDMENTS

1977—Par. (4). Pub. L. 95-115, § 3(a)(3)(B), added "Associate" preceding "Administrator".

Par. (5). Pub. L. 95-115, § 5(b), added provisions relating to assessments regarding the role of family violence, etc.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5654. Training function of Institute

The National Institute for Juvenile Justice and Delinquency Prevention is authorized to—

[*See main edition for text of (1) and (2)*]

(3) devise and conduct a training program, in accordance with the provisions of sections 5659, 5660, and 5661 of this title, of short-term instruction in the latest proven-effective methods of prevention, control, and treatment of juvenile delinquency for correctional and law enforcement personnel, teachers and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation officers, and other persons (including lay personnel), including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations) connected with the prevention and treatment of juvenile delinquency; and

(4) develop technical training teams to aid in the development of training programs in

the States and to assist State and local agencies which work directly with juveniles and juvenile offenders.

(As amended Pub. L. 95-115, § 5(f), Oct. 3, 1977, 91 Stat. 1057.)

AMENDMENTS

1977—Par. (3). Pub. L. 95-115 added provisions expanding scope of lay personnel to include persons associated with law-related education programs, etc.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5655. Functions of the Advisory Committee

The Advisory Committee shall advise, consult with, and make recommendations to the Associate Administrator concerning the overall policy and operations of the Institute.

(As amended Pub. L. 95-115, § 5(c), Oct. 3, 1977, 91 Stat. 1057.)

AMENDMENTS

1977—Pub. L. 95-115 substituted provisions relating to the functions of the Advisory Committee with respect to the Associate Administrator concerning the policy and operations of the Institute, for provisions relating to the functions of the Advisory Committee for the National Institute for Juvenile Justice and Delinquency Prevention with respect to the Deputy Assistant Administrator for the National Institute concerning the policy and operations of the Institute.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5656. Annual report by Deputy Associate Administrator; time; contents; summary to President and Congress

The Deputy Associate Administrator for the National Institute for Juvenile Justice and Delinquency Prevention shall develop annually and submit to the Associate Administrator after the first year the legislation is enacted, prior to September 30, a report on research, demonstration, training, and evaluation programs funded under this subchapter, including a review of the results of such programs, an assessment of the application of such results to existing and to new juvenile delinquency programs, and detailed recommendations for future research, demonstration, training, and evaluation programs. The Associate Administrator shall include a summary of these results and recommendations in his report to the President and Congress required by section 5614(b)(5) of this title.

(As amended Pub. L. 95-115, § 3(a)(3), (5), Oct. 3, 1977, 91 Stat. 1048, 1049.)

AMENDMENTS

1977—Pub. L. 95-115, § 3(a)(3), substituted "Deputy Associate Administrator" for "Deputy Assistant Administrator" and inserted "Associate" preceding "Administrator" in two instances.

Pub. L. 95-115, § 3(a)(5), enacted identical amendment as section 3(a)(3) by substituting "Deputy Associate Administrator" for "Deputy Assistant Administrator".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5657. Standards for juvenile justice system

(a) Functions of Institute

The National Institute for Juvenile Justice and Delinquency Prevention, under the supervision of the Advisory Committee, shall review existing reports, data, and standards, relating to the juvenile justice system in the United States.

[*See main edition for text of* (b) *and* (c)]

(d) Refinement of recommended standards and assistance in adoption of State and local standards; development of model State legislation

Following the submission of its report under subsection (b) of this section the Advisory Committee shall direct its efforts toward refinement of the recommended standards and may assist State and local governments and private agencies and organizations in the adoption of appropriate standards at State and local levels. The National Institute for Juvenile Justice and Delinquency Prevention is authorized to develop and support model State legislation consistent with the mandates of this chapter and the standards developed by Advisory Committee.

(As amended Pub. L. 95-115, § 5(d), Oct. 3, 1977, 91 Stat. 1057.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (d), in the original read "this Act" meaning Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-115, § 5(d)(1), struck out "on Standards for Juvenile Justice established in section 5618(e) of this title" following "Committee".

Subsec. (d). Pub. L. 95-115, § 5(d)(2), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5658. Repealed. Pub. L. 95-115, § 5(e)(1), Oct. 3, 1977, 91 Stat. 1057

Section, Pub. L. 93-415, title II, § 248, Sept. 7, 1974, 88 Stat. 1128, set forth provisions relating to restrictions on disclosure and transfer of juvenile records. See section 5639 of this title.

EFFECTIVE DATE OF REPEAL

Repeal by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L.

95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5659. Training program; establishment; purpose; utilization of state and local facilities, personnel, etc.; enrollees

(a) The Associate Administrator shall establish within the Institute a training program designed to train enrollees with respect to methods and techniques for the prevention and treatment of juvenile delinquency. In carrying out this program the Associate Administrator is authorized to make use of available State and local services, equipment, personnel, facilities and the like.

(b) Enrollees in the training program established under this section shall be drawn from correctional and law enforcement personnel, teachers and other educational personnel, juvenile welfare workers, juvenile judges and judicial personnel, probation officers, and other persons (including lay personnel), including persons associated with law-related education programs, youth workers, and representatives of private youth agencies and organizations) connected with the prevention and treatment of juvenile delinquency.

(Pub. L. 93-415, title II, § 248, formerly § 249, Sept. 7, 1974, 88 Stat. 1128, renumbered and amended Pub. L. 95-115, §§ 3(a)(3)(B), 5(e)(1), (f), Oct. 3, 1977, 91 Stat. 1048, 1057.)

PRIOR PROVISIONS

A prior section 248 of Pub. L. 93-415, relating to restrictions on disclosure and transfer of juvenile records, was classified to section 5658 of this title and was repealed by Pub. L. 95-115, § 5(e)(1), Oct. 3, 1977, 91 Stat. 1057.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-115, § 3(a)(3)(B), added "Associate" preceding "Administrator" wherever appearing therein.

Subsec. (b). Pub. L. 95-115, § 5(f), added provisions expanding scope of lay personnel to include persons associated with law-related education programs, etc.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5660. Curriculum for training program

The Associate Administrator shall design and supervise a curriculum for the training program established by section 5659 of this title which shall utilize an interdisciplinary approach with respect to the prevention of juvenile delinquency, the treatment of juvenile delinquents, and the diversion of youths from the juvenile justice system. Such curriculum shall be appropriate to the needs of the enrollees of the training program.

(Pub. L. 93-415, title II, § 249, formerly § 250, Sept. 7, 1974, 88 Stat. 1128, renumbered and amended Pub. L. 95-115, §§ 3(a)(3)(B), 5(e)(1), (2)(A), Oct. 3, 1977, 91 Stat. 1048, 1057.)

PRIOR PROVISIONS

A prior section 249 of Pub. L. 93-415, relating to the establishment of a training program within the National Institute for Juvenile Justice and Delinquency Prevention, was renumbered section 248 of Pub. L. 93-415 by Pub. L. 95-115, § 5(e)(1), Oct. 3, 1977, 91 Stat. 1057, and is classified to section 5659 of this title.

AMENDMENTS

1977—Pub. L. 95-115 added "Associate" preceding "Administrator" and substituted "section 248" for "section 249" which for purposes of codification had already been translated as "section 5659 of this title", thereby necessitating no further change in text.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5661. Enrollment for training program

(a) Application

Any person seeking to enroll in the training program established under section 5659 of this title shall transmit an application to the Associate Administrator, in such form and according to such procedures as the Associate Administrator may prescribe.

(b) Admittance; determination by Secretary

The Associate Administrator shall make the final determination with respect to the admittance of any person to the training program. The Associate Administrator, in making such determination, shall seek to assure that persons admitted to the training program are broadly representative of the categories described in section 5659(b) of this title.

[*See main edition for text of* (c)]

(Pub. L. 93-415, title II, § 250, formerly § 251, Sept. 7, 1974, 88 Stat. 1128, renumbered and amended Pub. L. 95-115, §§ 3(a)(3)(B), 5(e)(1), (2)(B), Oct. 3, 1977, 91 Stat. 1048, 1057.)

PRIOR PROVISIONS

A prior section 250 of Pub. L. 93-415, relating to the curriculum for the training program within the National Institute of Juvenile Justice and Delinquency Prevention, was renumbered section 249 of Pub. L. 93-415 by Pub. L. 95-115, § 5(e)(1), Oct. 3, 1977, 91 Stat. 1057, and is classified to section 5660 of this title.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-115, §§ 3(a)(3)(B), 5(e)(2)(B) added "Associate" preceding "Administrator" wherever appearing therein and substituted "section 248" for "section 249" which for purposes of codification had been translated already as "section 5659 of this title" thereby necessitating no further change in text.

Subsec. (b). Pub. L. 95-115, §§ 3(a)(3)(B), 5(e)(2)(B), added "Associate" preceding "Administrator" wherever appearing therein and substituted "section 248(b)" for "section 249(b)" which for purposes of codification already had been translated as "section 5659(b) of this title", thereby necessitating no further change in text.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

PART D—ADMINISTRATIVE PROVISIONS

§ 5671. Authorization of appropriations; availability of funds; juvenile delinquency programs

(a) To carry out the purposes of this subchapter there is authorized to be appropriated $150,000,000 for the fiscal year ending September 30, 1978, $175,000,000 for the fiscal year ending September 30, 1979, and $200,000,000 for the fiscal year ending September 30, 1980. Funds appropriated for any fiscal year may remain available for obligation until expended.

[*See main edition for text of* (*b*)]

(As amended Pub. L. 95-115, § 6(b), Oct. 3, 1977, 91 Stat. 1058.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-115 substituted provisions setting forth authorization of appropriations for the fiscal year ending Sept. 30, 1978, through the fiscal year ending Sept. 30, 1980, and authorization of availability of funds until expended, for provisions setting forth authorization of appropriations for the fiscal year ending June 30, 1975, through the fiscal year ending Sept. 30, 1977.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3793a of this title.

§ 5672. Applicability of other administrative provisions

The administrative provisions of title I of the Omnibus Crime Control and Safe Streets Act of 1968 [42 U.S.C. 3701 et seq.], designated as sections 501, 504, 507, 509, 510, 511, 516, 518(c), 521, and 524(a) and (c) of such Act [42 U.S.C. 3751, 3754, 3755, 3757, 3758, 3759, 3764, 3766(c), 3769, 3771(a) and (c)], are incorporated herein as administrative provisions applicable to this chapter.

(As amended Pub. L. 95-115, § 6(c), Oct. 3, 1977, 91 Stat. 1058.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in text, is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended. Title I of the Omnibus Crime Control and Safe Streets Act of 1968 is classified principally to chapter 46 (§ 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

Sections 501, 504, 507, 509, 510, 511, 516, 518(c), 521, and 524(a) and (c) of such Act, referred to in text, mean such sections of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (Pub. L. 90-351), as in effect prior to the general revision and amendment of title I of Pub. L. 90-351 by Pub. L. 95-157, § 2, Dec. 27, 1979, 93 Stat. 1167. For provisions of title I of Pub. L. 90-351 as revised by Pub. L. 96-157 similar to such sections 501, 510, 511, 516, 518, 521, and 524, see sections 3782, 3784, 3785, 3797, 3789d, 3789f, and 3789g of this title, respectively.

AMENDMENTS

1977—Pub. L. 95-115 substituted provisions setting forth applicability of specified statutory requirements, for provisions setting forth prohibitions against discrimination and required terms in grants, contracts, and agreements and enforcement procedures thereof.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by section 6(d)(2) of Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

SUBCHAPTER III—RUNAWAY YOUTH

§ 5702. Promulgation of rules

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

PART A—GRANTS PROGRAM

§ 5711. Authorization for grants, technical assistance and short-term training; purposes; amount of grant; priority

The Secretary is authorized to make grants and to provide technical assistance and short-term training to States, localities and nonprofit private agencies and coordinated networks of such agencies in accordance with the provisions of this part. Grants under this part shall be made for the purpose of developing local facilities to deal primarily with the immediate needs of runaway youth or otherwise homeless youth in a manner which is outside the law enforcement structure and juvenile justice system. The size of such grant shall be determined by the number of such youth in the community and the existing availability of services. Among applicants priority shall be given to private organizations or institutions which have had past experience in dealing with such youth.

(As amended Pub. L. 95-115, § 7(a)(1), Oct. 3, 1977, 91 Stat. 1058.)

AMENDMENTS

1977—Pub. L. 95-115 substituted "technical assistance and short-term training to States, localities and nonprofit private agencies and coordinated networks of such agencies in" for "technical assistance to localities and nonprofit private agencies in", "needs of runaway youth or otherwise homeless youth in" for "needs of runaway youth in", and "such youth" for "runaway youth" in two places.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5712. Eligibility; plan requirements

[*See main edition for text of* (*a*)]

(b) In order to qualify for assistance under this part, an applicant shall submit a plan to the Secretary meeting the following requirements and including the following information. Each house—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) shall develop an adequate plan for aftercare counseling involving runaway youth and

their parents within the State in which the runaway house is located and for assuring, as possible, that aftercare services will be provided to those children who are returned beyond the State in which the runaway house is located;

(6) shall keep adequate statistical records profiling the children and parents which it serves, except that records maintained on individual runaway youths shall not be disclosed without the consent of the individual youth and parent or legal guardian to anyone other than another agency compiling statistical records or a government agency involved in the disposition of criminal charges against an individual runaway youth, and reports or other documents based on such statistical records shall not disclose the identity of individual runaway youths;

[*See main edition for text of* (*7*) *to* (*10*)]

(As amended Pub. L. 95-115, § 7(a)(2), (3), Oct. 3, 1977, 91 Stat. 1058.)

Amendments

1977—Subsec. (b). Pub. L. 95-115 in par. (5) substituted "aftercare services" for "aftercase services" and in par. (6) substituted "the consent of the individual youth and parent or legal guardian" for "parental consent".

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5713. Approval of application by Secretary; priority

An application by a State, locality, or nonprofit private agency for a grant under this part may be approved by the Secretary only if it is consistent with the applicable provisions of this part and meets the requirements set forth in section 5712 of this title. Priority shall be given to grants smaller than $100,000. In considering grant applications under this part, priority shall be given to any applicant whose program budget is smaller than $150,000.

(As amended Pub. L. 95-115, § 7(a)(4), Oct. 3, 1977, 91 Stat. 1058.)

Amendments

1977—Pub. L. 95-115 substituted "$100,000" and "$150,000" for "$75,000" and "$100,000", respectively.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Part B—Records

§ 5731. Restrictions on disclosure and transfer

Records containing the identity of individual youths pursuant to this chapter may under no circumstances be disclosed or transferred to any individual or to any public or private agency.

(As amended Pub. L. 95-115, § 7(b), Oct. 3, 1977, 91 Stat. 1058.)

References in Text

This chapter, referred to in text, in the original read "this Act" meaning Pub. L. 93-415, Sept. 7, 1974, 88 Stat. 1109, which enacted this chapter and sections 3772 to 3774 and 3821 of this title and sections 4351 to 4353 and 5038 to 5042 of Title 18, Crimes and Criminal Procedure, amended sections 3701, 3723, 3733, 3768, 3811 to 3814, 3882, and 3883 to 3888 of this title, section 5108 of Title 5, Government Organization and Employees, and sections 5031 to 5037 of Title 18, and repealed section 3889 of this title.

Amendments

1977—Pub. L. 95-115 substituted provisions relating to restrictions on disclosure and transfer of records, for provisions relating to scope, etc., of statistical report to Congress.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

§ 5732. Repealed. Pub. L. 95-115, § 7(b), Oct. 3, 1977, 91 Stat. 1058

Section, Pub. L. 93-415, title III, § 322, Sept. 7, 1974, 88 Stat. 1132, set forth restrictions on disclosure and transfer of records. See section 5731 of this title.

Effective Date of Repeal

Repeal by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

Part C—Reorganization

§ 5741. Reorganization plan; submittal to Congress; required contents

(a) After April 30, 1978, the President may submit to the Congress a reorganization plan which, subject to the provisions of subsection (b) of this section, shall take effect, if such reorganization plan is not disapproved by a resolution of either House of the Congress, in accordance with the provisions of, and the procedures established by chapter 9 of title 5, except to the extent provided in this part.

(b) A reorganization plan submitted in accordance with the provisions of subsection (a) of this section shall provide—

(1) for the establishment of an Office of Youth Assistance which shall be the principal agency for purposes of carrying out this subchapter and which shall be established—

(A) within the Office of Juvenile Justice and Delinquency Prevention in the Department of Justice; or

(B) within the ACTION Agency;

(2) that the transfer authorized by paragraph (1) shall be effective 30 days after the last date on which such transfer could be disapproved under chapter 9 of title 5;

(3) that property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions of the Office of Youth Development within the Department of Health, Education, and Welfare in the operation of functions pursuant to this subchapter, shall be transferred to the Office of Youth Assistance

within the Office of Juvenile Justice and Delinquency Prevention or within the ACTION Agency, as the case may be, and that all grants, applications for grants, contracts, and other agreements awarded or entered into by the Office of Youth Development shall continue in effect until modified, superseded, or revoked;

(4) that all official actions taken by the Secretary of Health, Education, and Welfare, his designee, or any other person under the authority of this subchapter which are in force on the effective date of such plan, and for which there is continuing authority under the provisions of this subchapter, shall continue in full force and effect until modified, susperseded,[1] or revoked by the Associate Administrator for the office [2] of Juvenile Justice and Delinquency Prevention or by the Director of the ACTION Agency, as the case may be, as appropriate; and

(5) that references to the Office of Youth Development within the Department of Health, Education, and Welfare in any statue,[3] reorganization plan, Executive order, regulation, or other official document or proceeding shall, on and after such date, be deemed to refer to the Office of Youth Assistance within the Office of Juvenile Justice and Delinquency Prevention or within the ACTION Agency, as the case may be, as appropriate.

(Pub. L. 93-415, title III, § 331, as added Pub. L. 95-115, § 7(c), Oct. 3, 1977, 91 Stat. 1059.)

CHANGE OF NAME

The Secretary and Department of Health, Education, and Welfare was redesignated the Secretary and Department of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE

Section effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

PART D—AUTHORIZATION OF APPROPRIATIONS

AMENDMENTS

1977—Pub. L. 95-115, § 7(c), Oct. 3, 1977, 91 Stat. 1059, designated former part C of this subchapter as part D.

§ 5751. Amounts authorized for programs and activities; consultative and coordinating requirements

(a) To carry out the purposes of part A of this subchapter there is authorized to be appropriated for each of the fiscal years ending June 30, 1975, and 1976, and September 30, 1977, the sum of $10,000,000, and for each of the fiscal years ending September 30, 1978, 1979, and 1980, the sum of $25,000,000.

(b) The Secretary (through the Office of Youth Development which shall administer this subchapter) shall consult with the Attorney General (through the Associate Administrator of the Office of Juvenile Justice and Delinquency Prevention) for the purpose of coordinating the development and implementation of programs and activities funded under this subchapter with those related programs and activities funded under subchapter II of this chapter and under the Omnibus Crime Control and Safe Streets Act of 1968, as amended [42 U.S.C. 3701 et seq.].

(Pub. L. 93-415, title III, § 341, formerly § 331, Sept. 7, 1974, 88 Stat. 1132, Pub. L. 94-273, § 32(c), Apr. 21, 1976, 90 Stat. 380, renumbered and amended Pub. L. 95-115, § 7(c), (d), Oct. 3, 1977, 91 Stat. 1059, 1060.)

REFERENCES IN TEXT

The Omnibus Crime Control and Safe Streets Act of 1968, referred to in subsec. (b), is Pub. L. 90-351, June 19, 1968, 82 Stat. 197, as amended, title I of which is classified principally to chapter 46 (§ 3701 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3701 of this title and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-115, § 7(d)(1), added provisions authorizing appropriations for the fiscal years ending Sept. 30, 1978, 1979, and 1980.

Subsec. (b). Pub. L. 95-115, § 7(d)(2), substituted provisions relating to consultative and coordinating requirements for funded programs and activities, for provisions relating to authorization for funding surveys under part B of this subchapter.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-115 effective Oct. 1, 1977, see section 263(c) of Pub. L. 93-415, as added by Pub. L. 95-115, set out as an Effective Date of 1977 Amendment note under section 5601 of this title.

CHAPTER 73—DEVELOPMENT OF ENERGY SOURCES

SUBCHAPTER I—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

Sec.
5816a. Financial statements of Administration officers and employees [New].
  (a) Annual filing requirement.
  (b) Monitoring and enforcement; reports.
  (c) Exemption for occupants of nonpolicy making positions.
  (d) Penalty.
5817a. Employee-suggested research projects; approval; funding; reports [New].
5821. Annual authorization Acts [New].
  (a) General requirements; applicability to appropriations.
  (b) Requirements and limitations respecting funds appropriated for operating expenses.
  (c) Additional requirements and limitations respecting funds appropriated for operating expenses.
  (d) Requirements respecting amounts appropriated in annual appropriation Act for use in programs in excess of amount actually authorized for use in program not presented to, or requested of Congress; reduction in aggregate amount available for categories of coal, etc., from sums appropriated.
  (e) Requirements and limitations respecting merger of amounts appropriated for operating expenses or for plant and capital equipment.

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[1] So in original. Probably should be "superseded,".

[2] So in original. Probably should be "Office".

[3] So in original. Probably should be "statute".

Sec.
- (f) Availability until expended of amounts appropriated for operating expenses or for plant and capital equipment.
- (g) Performance of construction design services by Administrator.
- (h) Retention and use for operating expenses, and availability until expended, of moneys received by Administration; exceptions.
- (i) Requirements respecting transfers of sums appropriated for operating expenses to other Governmental agencies; merger of transferred sums.

SUBCHAPTER II—NUCLEAR REGULATORY COMMISSION

5850. Unresolved safety issues plan [New].
5851. Employee protection [New].
- (a) Discrimination against employee.
- (b) Complaint, filing and notification.
- (c) Review.
- (d) Jurisdiction.
- (e) Commencement of action.
- (f) Enforcement.
- (g) Deliberate violations.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5905, 7135a of this title; title 15 sections 2507, 2705; title 22 section 3203.

§ 5801. Congressional declaration of policy and purpose

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Administrator of the Energy Research and Development Administration (unless otherwise specifically provided) by section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SUBCHAPTER I—ENERGY RESEARCH AND DEVELOPMENT ADMINISTRATION

§ 5811. Establishment of Energy Research and Development Administration

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5812. Officers of the Administration

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

The Division of Military Application was transferred to the Department of Energy by section 7158(b) of this title with that organizational unit to be deemed an organizational unit established by chapter 84 (§ 7101 et seq.) of this title.

§ 5813. Responsibilities of the Administrator

The responsibilities of the Administrator shall include, but not be limited to—

[*See main edition for text of* (*1*) *to* (*6*)]

(7) establishing, in accordance with the National Energy Extension Service Act [42 U.S.C. 7001 et seq.], an Energy Extension Service to provide technical assistance, instruction, and practical demonstrations on energy conservation measures and alternative energy systems to individuals, businesses, and State and local government officials;

(8) creating and encouraging the development of general information to the public on all energy conservation technologies and energy sources as they become available for general use, and the Administrator, in conjunction with the Administrator of the Federal Energy Administration shall, to the extent practicable, disseminate such information through the use of mass communications;

(9) encouraging and conducting research and development in energy conservation, which shall be directed toward the goals of reducing total energy consumption to the maximum extent practicable, and toward maximum possible improvement in the efficiency of energy use. Development of new and improved conservation measures shall be conducted with the goal of the most expeditious possible application of these measures;

(10) encouraging and participating in international cooperation in energy and related environmental research and development;

(11) helping to assure an adequate supply of manpower for the accomplishment of energy research and development programs, by sponsoring and assisting in education and training activities in institutions of higher education, vocational schools, and other institutions, and by assuring the collection analysis, and dissemination of necessary manpower supply and demand data;

(12) encouraging and conducting research and development in clean and renewable energy sources.

(As amended Pub. L. 95-39, title V, § 510(a), June 3, 1977, 91 Stat. 200.)

REFERENCES IN TEXT

The National Energy Extension Service Act, referred to in par. (7), is Pub. L. 95-39, title V, June 3, 1977, 91 Stat. 191, which is classified principally to chapter 83 (§ 7001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7001 of this title and Tables.

AMENDMENTS

1977—Par. (7). Pub. L. 95-39 added par. (7). Former par. (7) redesignated as (8).

Pars. (8) to (12). Pub. L. 95-39 redesignated former pars. (7) to (11) as (8) to (12), respectively.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration and the Federal Energy Administration were terminated and functions vested by law in their respective Administrators were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5814. Abolition and transfers

References in Text

Section 2036 of this title, referred to in subsec. (d), was repealed by Pub. L. 95-91, title VII, § 709(c)(1), Aug. 4, 1977, 91 Stat. 608.

Transfer of Functions

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

The Division of Naval Reactors and the Division of Military Applications, both established under section 2035 of this title, and the functions of the Energy Research and Development Administration with respect to the Military Liaison Committee, established by section 2037 of this title, referred to in subsec. (d), were transferred to the Department of Energy by section 7158(b) of this title, with such organizational units to be deemed organizational units established by chapter 84 (§ 7101 et seq.) of this title.

The functions of the Secretary of the Interior, the Department of the Interior, and the officers and components of the Department of the Interior exercised by the Bureau of Mines relating to fuel supply and demand analysis and data gathering, research and development relating to increased efficiency of production technology of solid fuel minerals other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining, and coal preparation and analysis, referred to in subsec. (e), were transferred to the Secretary of Energy by section 7152(d) of this title.

§ 5815. Administrative provisions

Transfer of Functions

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5816. Personnel and services

Transfer of Functions

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Section Referred to in Other Sections

This section is referred to in section 5919 of this title.

§ 5816a. Financial statements of Administration officers and employees

(a) Annual filing requirement

Each officer or employee of the Energy Research and Development Administration who—

(1) performs any functions or duty under this Act or any other Act amended by this Act; and

(2) has any known financial interest—

(A) in any person engaged in the business, other than at the retail level, of developing, producing, refining, transporting by pipeline, or converting into synthetic fuel, minerals, wastes, or renewable resources, or in the generation of energy from such minerals, wastes, or renewable resources, or in conducting research, development, and demonstration with financial assistance under this Act or any other Act amended by this Act, or

(B) in property from which minerals are commercially produced,

shall, beginning on February 1, 1977, annually file with the Administrator a written statement concerning all such interests held by such officer or employee during the preceding calendar year. Such statements shall be available to the public.

(b) Monitoring and enforcement; reports

The Administrator shall—

(1) act within ninety days after June 3, 1977—

(A) to define the term "known financial interest" for purposes of paragraph (2) of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Administrator of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Exemption for occupants of non-policy making positions

In the rules prescribed in subsection (b) of this section, the Administrator may identify specific positions within the Administration which are of a nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

(d) Penalty

Any officer or employee who is subject to, and knowingly violates, this section or any regulation issued thereunder, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(Pub. L. 95-39, title III, § 308, June 3, 1977, 91 Stat. 189.)

References in Text

This Act, referred to in subsec. (a)(1), (2)(A), means Pub. L. 95-39, June 3, 1977, 91 Stat. 180, which to the extent classified to the Code enacted sections 5816a, 5817a, 5903c, 5907a, 5915a, 5918, and 7001 to 7011 of this title, amended sections 5813, 5818, and 5912 of this title, and enacted provisions set out as notes under sections 5906, 5907, 5914, and 7001 of this title. For complete classification of this Act to the Code, see Tables.

Codification

Section was not enacted as part of the Energy Reorganization Act of 1974, which comprises this chapter.

Transfer of Functions

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5817. Powers of the Administrator

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5817a. Employee-suggested research projects; approval; funding; reports

(a) Any Government-owned contractor operated laboratory, energy research center, or other laboratory performing functions under contract to the Administration may, with the approval of the Administrator, use a reasonable amount of its operating budget for the funding of employee-suggested research projects up to the pilot stage of development. It shall be a condition of any such approval that the director of the laboratory or center involved form an internal review mechanism for determining which employee-suggested projects merit funding in a given fiscal year; and any such project may be funded in one or more succeeding years if the review process indicates that it merits such funding.

(b) Each director of a laboratory or center specified in subsection (a) of this section shall submit an annual report to the Administrator on projects being funded under this section; and on completion of each such project shall submit a report to the Technical Information Center of the Administration for inclusion in its data base.

(Pub. L. 95-39, title III, § 303, June 3, 1977, 91 Stat. 189.)

CODIFICATION

Section was not enacted as part of the Energy Reorganization Act of 1974, which comprises this chapter.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5818. Repealed. Pub. L. 95-91, title VII, § 709(b), Aug. 4, 1977, 91 Stat. 608

Section, Pub. L. 93-438, title I, § 108, Oct. 11, 1974, 88 Stat. 1241; Pub. L. 94-385, title I, §§ 162, 163, Aug. 14, 1976, 90 Stat. 1140, 1142; Pub. L. 95-39, title V, § 510(b), (c), June 3, 1977, 91 Stat. 200, related to establishment of an Energy Resources Council.

EXECUTIVE ORDER NO. 11814

Ex. Ord. No. 11814, Oct. 11, 1974, 39 F.R. 36955, as amended by Ex. Ord. No. 11819, Nov. 16, 1974, 39 F.R. 40743; Ex. Ord. No. 11855, May 1, 1975, 40 F.R. 19423, which related to the activation of the Energy Resources Council, was revoked by Ex. Ord. No. 12083, Sept. 27, 1978, 43 F.R. 44813, set out as a note under section 7101 of this title.

§ 5820. Coordination with environmental efforts

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5821. Annual authorization Acts

(a) General requirements; applicability to appropriations

All appropriations made to the Energy Research and Development Administration or the Administrator shall, except as otherwise provided by law, be subject to annual authorization in accordance with section 2017 of this title, section 5915 of this title, and section 5875 of this title. The provisions of this section shall apply with respect to appropriations made pursuant to the Act providing such authorization (hereinafter in this section referred to as "annual authorization Acts").

(b) Requirements and limitations respecting funds appropriated for operating expenses

(1) Funds appropriated pursuant to an annual authorization Act for "Operating expenses" may be used for—

(A) the construction or acquisition of any facilities, or major items of equipment, which may be required at locations other than installations of the Administration, for the performance of research, development, and demonstration activities, and

(B) grants to any organization for purchase or construction of research facilities.

No such funds shall be used under this subsection for the acquisition of land. Fee title to all such facilities and items of equipment shall be vested in the United States, unless the Administrator or his designee determines in writing that the research, development, and demonstration authorized by such Act would best be implemented by permitting fee title or any other property interest to be vested in an entity other than the United States; but before approving the vesting of such title or interest in such entity, the Administrator shall (i) transmit such determination, together with all pertinent data, to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate and (ii) wait a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(2) No funds shall be used under paragraph (1) for any facility or major item of equipment, including collateral equipment, if the estimated cost to the Federal Government exceeds $5,000,000 in the case of such a facility or $2,000,000 in the case of such an item of equipment, unless such facility or item has been previously authorized by the appropriate committees of the House of Representatives and the Senate, or the Administrator—

(A) transmit to the appropriate committees of the House of Representatives and the Senate a report on such facility or item showing its nature, purpose, and estimated cost, and

(B) waits a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain), unless prior to the expiration of such period each such committee has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(c) Additional requirements and limitations respecting funds appropriated for operating expenses

(1) Not to exceed 1 per centum of all funds appropriated pursuant to any annual authorization Act for "Operating expenses" may be used by the Administrator to construct, expand, or modify laboratories and other facilities, including the acquisition of land, at any location under the control of the Administrator, if the Administrator determines that (A) such action would be necessary because of changes in the national programs authorized to be funded by such Act or because of new scientific or engineering developments, and (B) deferral of such action until the enactment of the next authorization Act would be inconsistent with the policies established by Congress for the Administration.

(2) No funds may be obligated for expenditure or expended under paragraph (1) for activities described in such paragraph unless—

(A) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the Administrator has transmitted to the appropriate committees of the House of Representatives and the Senate a written report containing a full and complete statement concerning (i) the nature of the construction, expansion, or modification involved, (ii) the cost thereof, including the cost of any real estate action pertaining thereto, and (iii) the reason why such construction, expansion, or modification is necessary and in the national interest, or

(B) each such committee before the expiration of such period has transmitted to the Administrator a written notice to the effect that such committee has no objection to the proposed action;

except that this paragraph shall not apply to any project the estimated total cost of which does not exceed $50,000.

(d) Requirements respecting amounts appropriated in annual appropriation Act for use in programs in excess of amount actually authorized for use in program not presented to, or requested of Congress; reduction in aggregate amount available for categories of coal, etc., from sums appropriated

(1) Except as otherwise provided in the authorization Act involved—

(A) no amount appropriated pursuant to any annual authorization Act may be used for any program in excess of the amount actually authorized for that particular program by such Act, and

(B) no amount appropriated pursuant to any annual authorization Act may be used for any program which has not been presented to, or requested of the Congress,

unless (i) a period of thirty calendar days (not including any day in which either House of Congress is not in session because of adjournment of more than three calendar days to a day certain) has passed after the receipt by the appropriate committees of the House of Representatives and the Senate of notice given by the Administrator containing a full and complete statement of the action proposed to be taken and the facts and circumstances relied upon in support of such proposed action, or (ii) each such committee before the expiration of such period has transmitted to the Administrator written notice to the effect that such committee has no objection to the proposed action.

(2) Notwithstanding any other provision of this section or the authorization Act involved, the aggregate amount available for use within the categories of coal, petroleum and natural gas, oil shale, solar, geothermal, nuclear energy (non-weapons), environment and safety, and conservation from sums appropriated pursuant to an annual authorization Act may not, as a result of reprograming, be decreased by more than 10 per centum of the total of the sums appropriated pursuant to such Act for those categories.

(e) Requirements and limitations respecting merger of amounts appropriated for operating expenses or for plant and capital equipment

Subject to the applicable requirements and limitations of this section and the authorization Act involved, when so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for "Operating expenses" or for "Plant and capital equipment" may be merged with any other amounts appropriated for like purposes pursuant to any other Act authorizing appropriations for the Administration: *Provided*, That no such amounts appropriated for "Plant and capital equipment" may be merged with amounts appropriated for "Operating expenses".

(f) Availability until expended of amounts appropriated for operating expenses or for plant and capital equipment

When so specified in an appropriation Act, amounts appropriated pursuant to any annual authorization Act for "Operating expenses" or for "Plant and capital equipment" may remain available until expended.

(g) Performance of construction design services by Administrator

The Administrator is authorized to perform construction design services for any administration construction project whenever (1) such construction project has been included in a proposed authorization bill transmitted to the Congress by the Administration, and (2) the Administration determines that the project is of such urgency in order to meet the needs of national defense or protection of life and property or health and safety that construction of the project should be initiated promptly upon enactment of legislation appropriating funds for its construction.

(h) Retention and use for operating expenses, and availability until expended, of moneys received by Administration; exceptions

When so specified in appropriation Acts, any moneys received by the Administration may be retained and used for operating expenses, and may remain available until expended, notwithstanding the provisions of section 484 of title 31; except that—

(1) this subsection shall not apply with respect to sums received from disposal of property under the Atomic Energy Community Act of 1955 [42 U.S.C. 2301 et seq.] or the Strategic and Critical Materials Stockpiling Act, as amended [50 U.S.C. 98 et seq.], or with respect to fees received for tests or investigations under the Act of May 16, 1910, as amended (30 U.S.C. 7); and

(2) revenues received by the Administration from the enrichment of uranium shall (when so specified) be retained and used for the specific purpose of offsetting costs incurred by the Administration in providing uranium enrichment service activities.

(i) Requirements respecting transfers of sums appropriated for operating expenses to other Governmental agencies; merger of transferred sums

When so specified in an appropriation Act, transfers of sums from the "Operating expenses" appropriation made pursuant to an annual authorization Act may be made to other agencies of the Government for the performance of the work for which the appropriation is made, and in such cases the sums so transferred may be merged with the appropriations to which they are transferred.

(Pub. L. 93-438, title I, § 111, as added Pub. L. 95-238, title II, § 201, Feb. 25, 1978, 92 Stat. 56.)

REFERENCES IN TEXT

The Atomic Energy Community Act of 1955, referred to in subsec. (h)(1), is act Aug. 4, 1955, ch. 543, 69 Stat. 472, as amended, which is classified principally to chapter 24 (§ 2301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2301 of this title and Tables.

The Strategic and Critical Materials Stockpiling Act, as amended, referred to in subsec. (h)(1), is act June 7, 1939, ch. 190, as revised generally by Pub. L. 96-41, § 2, July 30, 1979, 93 Stat. 319, which is classified generally to subchapter III (§ 98 et seq.) of chapter 5 of Title 50, War and National Defense. For complete classification of this Act to the Code, see section 98 of Title 50 and Tables.

The Act of May 16, 1910, as amended, referred to in subsec. (h)(1), is act May 16, 1910, ch. 240, 36 Stat. 369, as amended, which enacted sections 1, 3, and 5 to 7 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95-238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Section 209 of Pub. L. 95-238 provided that:

"(a) Nothing in this title [enacting this section and sections 5556a and 5919 of this title, amending sections 2391, 2394, 5905, 5906, and 5914 of this title, and enacting provisions set out as notes under section 7256 of this title and section 2429 of Title 22, Foreign Relations and Intercourse] shall apply with respect to any authorization or appropriation for any military application of nuclear energy, for research and development in support of the Armed Forces, or for the common defense and security of the United States.

"(b)(1) The term 'military application' means any activity authorized or permitted by chapter 9 of the Atomic Energy Act of 1954, as amended (Public Law 83-703, as amended; 42 U.S.C. 2121, 2122).

"(2) The term 'research and development' as used in this section, is defined by section 11 x., of the Atomic Energy Act of 1954, as amended (Public Law 83-703, as amended; 42 U.S.C. 2014).

"(3) The term 'common defense and security' means the common defense and security of the United States as used in the Atomic Energy Act of 1954, as amended (Public Law 83-703, as amended) [section 2011 et seq. of this title]."

SUBCHAPTER II—NUCLEAR REGULATORY COMMISSION

§ 5841. Establishment and transfers

[*See main edition for text of* (*a*) *to* (*g*)]

(h) Quarterly report on compliance with equal employment requirements

The Commission shall prepare and submit to the Congress a quarterly report which documents, for grades GS-11 or above:

(1) the number of minority and women candidates hired, by grade level;

(2) the number of minority and women employees promoted, by grade level;

(3) the procedures followed by the Commission in preparing job descriptions, informing potential applicants, and selecting from candidates the persons to be employed in positions at grade GS-11 or above; and

(4) other steps taken to meet provisions of the Equal Employment Act.

The first such quarterly report shall be submitted to the Congress not later than January 31, 1978, and subsequent reports shall be submitted prior to the end of one calendar month after the end of each calendar quarter thereafter.

(As amended Pub. L. 95-209, § 2, Dec. 13, 1977, 91 Stat. 1482.)

REFERENCES IN TEXT

GS-11, referred to in subsec. (h), is contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

The Equal Employment Act, referred to in subsec. (h)(4), probably means the Equal Employment Opportunity Act of 1972, Pub. L. 92-261, Mar. 24, 1972, 86 Stat. 103, which enacted sections 2000e-16 and 2000e-17 of this title, amended sections 2000e to 2000e-6, 2000e-8, 2000e-9, 2000e-13 and 2000e-14 of this title and sections 5108 and 5314 to 5316 of Title 5, Government Organization and Employees, and enacted provisions set out as notes under section 2000e-5 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

AMENDMENTS

1977—Subsec. (h). Pub. L. 95-209 added subsec. (h).

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by this section and section 5814 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Review of Selection and Training of Members of Atomic Safety and Licensing Boards; Report to Congress

Pub. L. 95-601, § 7, Nov. 6, 1978, 92 Stat. 2950, provided that: "The Commission is authorized and directed to undertake a comprehensive review of the existing process for selection and training of members of the Atomic Safety and Licensing Boards, including, but not limited to, the selection criteria, including qualifications, the selection procedures, and the training programs for Board members. The Commission shall report to the Congress on the findings of such review by January 1, 1979, and shall revise such selection and training process as appropriate, based on such findings."

Executive Order No. 11902

Ex. Ord. No. 11902, Feb. 2, 1976, 41 F.R. 4877, as amended by Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, which set out procedures for the export licensing policy as to nuclear materials and equipment, was revoked by Ex. Ord. No. 12058, May 11, 1978, 43 F.R. 20947, set out as a note under section 3201 of Title 22, Foreign Relations and Intercourse.

§ 5842. Licensing and related regulatory functions respecting selected Administration facilities

Study of Extension of Licensing and Regulatory Authority of Commission; Report to Congress

Pub. L. 95-601, § 12, Nov. 6, 1978, 92 Stat. 2953, provided that:

"(a) The Commission, in cooperation with the Department of Energy, is authorized and directed to conduct a study of extending the Commission's licensing or regulatory authority to include categories of existing and future Federal radioactive waste storage and disposal activities not presently subject to such authority.

"(b) Each Federal agency, subject to the provisions of existing law, shall cooperate with the Commission in the conduct of the study. Such cooperation shall include providing access to existing facilities and sites and providing any information needed to conduct the study which the agency may have or be reasonably able to acquire.

"(c) On or before March 1, 1979, the Commission shall submit a report to the Congress containing the results of the study. The report shall include a complete listing and inventory of all radioactive waste storage and disposal activities now being conducted or planned by Federal agencies."

§ 5845. Office of Nuclear Regulatory Research

[*See main edition for text of* (*a*) *to* (*e*)]

(f) Improved safety systems research

The Commission shall develop a long-term plan for projects for the development of new or improved safety systems for nuclear powerplants.

(As amended Pub. L. 95-209, § 4(a), Dec. 13, 1977, 91 Stat. 1482.)

Amendments

1977—Subsec. (f). Pub. L. 95-209 added subsec. (f).

§ 5848. Abnormal occurrence reports

President's Commission on the Accident at Three Mile Island; Subpena Power

Pub. L. 96-12, May 23, 1979, 93 Stat. 26, provided: "That for purposes of this joint resolution—

"(1) The term 'Commission' means the Commission appointed by the President pursuant to Executive Order Numbered 12130, dated April 11, 1979 [set out as a note below].

"(2) The term 'person' includes a department, agency, or other unit of the Federal Government or of a State or local government.

"Sec. 2. (a) The Commission, or any member of the Commission when so authorized by the Commission, shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence from the Nuclear Regulatory Commission or any person that relates to any matter under investigation by the Commission. The Commission, or any member of the Commission or any agent or agency designated by the Commission for such purpose, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place within the United States at any designated place of hearing.

"(b) The Commission, or any member of the Commission when so authorized by the Commission, may issue an order for the inspection of the nuclear powerplant at Three Mile Island, or any portion thereof, by members of the Commission or any agent or agency designated by the Commission.

"(c) In case of contumacy or refusal to obey a subpena or inspection order issued to the Nuclear Regulatory Commission or any person under subsection (a) or (b), any court of the United States within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Attorney General, shall have jurisdiction to issue to the Nuclear Regulatory Commission or such person an order requiring a witness to appear before the Commission, its members, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question, or to permit inspection of the nuclear powerplant at Three Mile Island or a portion thereof; and any failure to obey such order of the court may be punished by the court as a contempt thereof.

"(d) Process and papers of the Commission, and its members, agent, or agency, may be served either in person or by registered or certified mail or by telegraph or by leaving a copy thereof at the residence or principal office or place of business of the person required to be served. The verified return by the individual so serving the same, setting forth the manner of such service, shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered or certified and mailed or telegraphed shall be proof of service of the same. Witnesses summoned before the Commission, or its members, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the individuals taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

"(e) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to a subpena or order on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture. The Commission may, with the approval of the Attorney General, issue an order requiring the person to give testimony or provide other information which he refuses to give or provide on the basis of his privilege against self-incrimination in the same manner and subject to the same restrictions as a government agency may issue such an order pursuant to section 6004 of title 18, United States Code.

"(f) All process of any court to which application may be made under this joint resolution may be served in the judicial district wherein the person required to be served resides or may be found."

Ex. Ord. No. 12130. President's Commission on the Accident at Three Mile Island

Ex. Ord. No. 12130, Apr. 11, 1979, 44 F.R. 22027, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide, in accordance with the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), an independent forum to investigate and explain the recent accident at the nuclear power facility at Three Mile Island in Pennsylvania, it is hereby ordered as follows:

1-1. Establishment

1-101. There is established the President's Commission on the Accident at Three Mile Island.

1-102. The membership of the Commission shall be composed of not more than twelve persons appointed by the President from among citizens who are not full time officers or employees within the Executive Branch. The President shall designate a Chairman from among the members of the Commission.

1-2. Functions

1-201. The Commission shall conduct a comprehensive study and investigation of the recent accident involving the nuclear power facility on Three Mile Island in Pennsylvania. The study and investigation shall include:

(a) a technical assessment of the events and their causes;

(b) an analysis of the role of the managing utility;

(c) an assessment of the emergency preparedness and response of the Nuclear Regulatory Commission and other Federal, state and local authorities;

(d) an evaluation of the Nuclear Regulatory Commission's licensing, inspection, operation and enforcement procedures as applied to this facility;

(e) an assessment of how the public's right to information concerning the events at Three Mile Island was served and of the steps which should be taken during similar emergencies to provide the public with accurate, comprehensible and timely information; and

(f) appropriate recommendations based upon the Commission's findings.

1-202. The Commission shall prepare and transmit to the President and to the Secretaries of Energy and Health, Education and Welfare a final report of its findings and recommendations.

1-3. Administration

1-301. The Chairman of the Commission is authorized to appoint and fix the compensation of a staff of such persons as may be necessary to discharge the Commission's responsibilities, subject to the applicable provisions of the Federal Advisory Committee Act [5 U.S.C. App.] and Title 5 of the United States Code.

1-302. To the extent authorized by law and requested by the Chairman of the Commission, the General Services Administration shall provide the Commission with necessary administrative services, facilities, and support on a reimbursable basis.

1-303. The Department of Energy and the Department of Health, Education and Welfare shall, to the extent permitted by law and subject to the availability of funds, provide the Commission with such facilities, support, funds and services, including staff, as may be necessary for the effective performance of the Commission's functions.

1-304. The Commission may request any Executive agency to furnish such information, advice or assistance as it deems necessary to carry out its functions. Each such agency is directed, to the extent permitted by law, to furnish such information, advice or assistance upon request by the Chairman of the Commission.

1-305. Each member of the Commission may receive compensation at the maximum rate now or hereafter prescribed by law for each day such member is engaged in the work of the Commission. Each member may also receive travel expenses, including per diem in lieu of subsistence (5 U.S.C. 5702 and 5703).

1-306. The functions of the President under the Federal Advisory Committee Act which are applicable to the Commission, except that of reporting annually to the Congress, shall be performed by the Administrator of General Services.

1-4. Final Report and Termination

1-401. The final report required by Section 1-202 of this Order shall be transmitted not later than six months from the date of the Commission's first meeting.

1-402. The Commission shall terminate two months after the transmittal of its final report.

Jimmy Carter.

§ 5849. Other officers

[See main edition for text of (a)]

(b) Functions of Executive Director

The Executive Director shall perform such functions as the Commission may direct, except that the Executive Director shall not limit the authority of the director of any component organization provided in this chapter to communicate with or report directly to the Commission when such director of a component organization deems it necessary to carry out his responsibilities. Notwithstanding the preceding sentence, each such director shall keep the Executive Director fully and currently informed concerning the content of all such direct communications with the Commission.

(c) Equal employment opportunity report

The Executive Director shall report to the Commission at semi-annual public meetings on the problems, progress, and status of the Commission's equal employment opportunity efforts.

(d) Annual status report

The Executive Director shall prepare and forward to the Commission an annual report (for the fiscal year 1978 and each succeeding fiscal year) on the status of the Commission's programs concerning domestic safeguards matters including an assessment of the effectiveness and adequacy of safeguards at facilities and activities licensed by the Commission. The Commission shall forward to the Congress a report under this section prior to February 1, 1979, as a separate document, and prior to February 1 of each succeeding year as a separate chapter of the Commission's annual report (required under section 5877(c) of this title) following the fiscal year to which such report applies.

(e) Additional officers

There shall be in the Commission not more than five additional officers appointed by the Commission. The positions of such officers shall be considered career positions and be subject to section 2201(d) of this title.

(As amended Pub. L. 95-601, §§ 4, 6, Nov. 6, 1978, 92 Stat. 2949.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-601, § 4(a), added provision requiring component organization directors to keep the Executive Director informed as to communications with the Commission.

Subsec. (c). Pub. L. 95-601, § 4(b), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 95-601, § 6, added subsec. (d).

Subsec. (e). Pub. L. 95-601, § 4(b), redesignated former subsec. (c) as (e).

§ 5850. Unresolved safety issues plan

The Commission shall develop a plan providing for the specification and analysis of unresolved safety issues relating to nuclear reactors and shall take such action as may be necessary to implement corrective measures with respect to such issues. Such plan shall be submitted to the Congress on or before January 1, 1978 and progress reports shall be included in the annual report of the Commission thereafter.

(Pub. L. 93-438, title II, § 210, as added Pub. L. 95-209, § 3, Dec. 13, 1977, 91 Stat. 1482.)

CODIFICATION

Another section 210 of Pub. L. 93-438 cited as a credit to this section, was subsequently enacted by Pub. L. 95-601, § 10, Nov. 6, 1978, 92 Stat. 2951, and is set out as section 5851 of this title.

§ 5851. Employee protection

(a) Discrimination against employee

No employer, including a Commission licensee, an applicant for a Commission license, or a contractor or a subcontractor of a Commission licensee or applicant, may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.], or a proceeding for the administration or enforcement of any requirement imposed under this chapter or the Atomic Energy Act of 1954, as amended;

(2) testified or is about to testify in any such proceeding or;

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other manner in such a proceeding or in any other action to carry out the purposes of this chapter or the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].

(b) Complaint, filing and notification

(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint and the Commission.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complaint (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) Review

(1) Any person adversely affected or aggrieved by an order issued under subsection (b) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Jurisdiction

Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e) Commencement of action

(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) of this section may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Enforcement

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(g) Deliberate violations

Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter or of the Atomic Energy Act of 1954, as amended [42 U.S.C. 2011 et seq.].

(Pub. L. 93-438, title II, § 210, as added Pub. L. 95-601, § 10, Nov. 6, 1978, 92 Stat. 2951.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (g), in the original read "this Act" meaning Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, which enacted this chapter, amended sections 5313 to 5316 of Title 5, Government Organization and Employees, repealed sections 2031 and 2032 of this title, and enacted provisions set out as notes under section 5801 of this title.

The Atomic Energy Act of 1954, referred to in subsecs. (a) and (g), is act Aug. 30, 1954, ch. 1073, 68 Stat. 921, as amended, which is classified generally to chapter 23 (§ 2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification on this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

CODIFICATION

Another section 210 of Pub. L. 93-438 was previously enacted by Pub. L. 95-209, § 3, Dec. 13, 1977, 91 Stat. 1482, and is set out as section 5850 of this title.

SUBCHAPTER III—MISCELLANEOUS AND TRANSITIONAL PROVISIONS

§ 5871. Transitional provisions

TRANSFER OF FUNCTIONS

The Atomic Energy Commission was abolished and all functions were transferred to the Nuclear Regulatory Commission and the Administrator of the Energy Research and Development Administration by sections 5814 and 5841 of this title. The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5875. Authorization of appropriations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5821 of this title.

§ 5876. Comptroller General audit

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in title 15 section 2708.

§ 5877. Reports to President for submission to Congress

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5849, 5914, 7267 of this title.

CHAPTER 74—NONNUCLEAR ENERGY RESEARCH AND DEVELOPMENT

Sec.
5903c. Moneys received by Administrator from fossil energy activity; payment into Treasury; reports to House and Senate Committees [New].
5907a. Small grant program [New].
  (a) Establishment.
  (b) Limitation.
  (c) Systems and technologies to be developed and demonstrated.
  (d) Eligible participants; simplified application procedures; report to Administration; allocation criteria; guidelines.
  (e) Reports to Congress.
5915a. Expiration of initial authorization to construct fossil energy demonstration plants [New].
5918. Organizational conflicts [New].
  (a) Conflicts of interest.
  (b) Requisite affirmative finding; conflicts of interest which cannot be avoided; mitigation of conflicts.
  (c) Publication of implementing rules.
5919. Loan guarantees and commitments for alternative fuel demonstration facilities [New].
  (a) Statement of purpose.
  (b) Issuance of obligations for alternative fuel conversion facilities; terms and conditions; rules and regulations; informational requirements; concurrence of Secretary of Treasury to terms and conditions; pledge of full faith and credit of United States; cooperative agreements for construction, etc., of modular facilities; bidding practices.
  (c) Prerequisites.
  (d) Recommendations, etc., by Attorney General and Chairman of Federal Trade Commission prior to submission of required report by Administrator; referral to President subsequent to negative recommendation; further action.
  (e) Impact on communities, States, and Indian tribes; notice to State and local officials; procedures applicable for further action by Administrator subsequent to negative recommendation by State Governor; criteria and determinations relating to approval by Administrator of construction and operation plans; establishment, membership, etc., of advisory panel.
  (f) Termination, cancellation, revocation; conclusiveness; contestability.

Sec.
(g) Default by borrower; procedures applicable to payment by Administrator and rights of subrogation; notice to Attorney General by Administrator for further action; protection for benefit of United States of patents and technologies of defaulting project through agreements, etc.
(h) Contracts to pay, and payment of principal and interest by Administrator of unpaid balance of guaranteed obligations; prerequisities.
(i) Time for issuance of regulations; procedures applicable to issuance of regulations and amendments.
(j) Fees for guarantees of obligations; determination of amounts; excepted guarantees.
(k) Community development and planning assistance guarantees; terms and conditions; rules and regulations; concurrence of Secretary of Treasury to terms and conditions; payment of taxes in event of default by borrower; additional direct loans and grants; redemption of debt obligations; funding requirements and authorizations; facility title vesting and status upon default.
(l) Annual reporting requirements; contents, etc.
(m) Congressional finalization of guarantee, etc., subsequent to report to Congressional committees; scope of authority.
(n) Revolving fund; creation; funding; payments and transfers to general fund of Treasury; issuance, redemption, etc., of notes or obligations; applicability to direct loans or planning grants.
(o) Definitions.
(p) Citizenship or nationality requirements for applicants; waiver.
(q) Transfer of part of program to other agency or authority.
(r) Statutory provisions applicable to inventions.
(s) Compliance by persons receiving financial assistance with Federal and State environmental, etc., laws and regulations, and licensing requirements.
(t) Availability of information; procedures applicable; scope of disclosure; persons to whom disclosure may be made; definition.
(u) Scope of exercise of statutory authorities.
(v) Nondiscrimination requirements; scope of exemption from requirements for Indian tribes.
(w) Participation by small business concerns in program.
(x) Recordkeeping requirements; audit by Comptroller General; labor standards at construction facilities.
(y) Issuance of obligations for synthetic fuel conversion facilities and municipal organic waste energy generation facilities; rules and regulations; statutory provisions inapplicable; limitation on outstanding indebtedness; additional procedural requirements and terms and conditions applicable.

Sec.
5920. Financial support program for municipal waste reprocessing demonstration facilities [New].
(a) Statement of purpose.
(b) Grants, contracts, price supports, and cooperative agreements implementing programs; aggregate amount of funds available; definition; ownership, operation, etc., of facilities; Federal share; price support program regulations for revenue producing products.
(c) Consultation with Environmental Protection Agency to insure compliance with provisions relating to solid waste disposal full-scale demonstration facilities; administration of projects by Energy Research and Development Administration subject to May 7, 1976, Interagency Agreement between Administration and Agency.
(d) Guidelines for obtaining program information from municipalities; availability of information, etc., to Congressional committees; annual reports to Congress; contents, etc.
(e) Transfer of part of program to other agency or authority.
(f) Compliance by municipalities receiving financial assistance with Federal and State environmental, etc., laws and regulations, and licensing requirements.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5907a, 6981, 7135a of this title; title 7 sections 341, 427, 1923, 1942, 3282; title 15 sections 2507, 2705.

§ 5902. Congressional declaration of policy and purpose; implementation and administration of program by Administrator of Energy Research and Development Administration

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§§ 5903 to 5903b

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5903c. Moneys received by Administrator from fossil energy activity; payment into Treasury; reports to House and Senate Committees

All moneys received by the Administrator from any fossil energy activity shall be paid into the Treasury to the credit of miscellaneous receipts, except that on December 1 of each year the Administrator shall provide to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a report of all such receipts for the preceding fiscal year, including, but not limited to, the amount and source of such revenues and the program and subprogram activity generating such revenues.

(Pub. L. 95-39, title I, § 106, June 3, 1977, 91 Stat. 184.)

CODIFICATION

Section was not enacted as part of the Federal Nonnuclear Energy Research and Development Act of 1974, which comprises this chapter.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5904. Research, development, and demonstration program governing principles

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

NATIONAL ALCOHOL FUELS COMMISSION

Pub. L. 95-599, title I, § 170, Nov. 6, 1978, 92 Stat. 2724, as amended by Pub. L. 96-106, § 20, Nov. 9, 1979, 93 Stat. 799, provided that:

"(a)(1) There is hereby established a Commission to be known as the National Alcohol Fuels Commission hereinafter referred to as the 'Commission'.

"(2) The Commission shall make a full and complete investigation and study of the long- and short-term potential for alcohol fuels, from biomass (including, but not limited to, animal, crop and wood waste, municipal and industrial waste, sewage sludge, and oceanic and terrestrial crops) and coal, to contribute to meeting the Nation's energy needs. It shall take into consideration the technical, economic, legal, environmental, and social factors associated with the production, manufacture, distribution, and use of such fuels. It will evaluate the costs and benefits of alternative feedstocks, and their possible end uses, and analyze the feasibility and desirability of converting these resources to alcohol fuels. Based on such study it shall recommend those policies, and their attendant costs and benefits, most likely to minimize our dependence on petroleum, insure adequate energy supplies, and contribute to the economic health of the Nation.

"(3) Members of the Commission shall be appointed by February 1, 1979. The Commission shall be established within sixty days of being provided with funds. The Commission shall be comprised of nineteen members as follows:

"(A) a Chairman and five members appointed by the President pro tempore of the Senate from the membership of the Committee on Energy and Natural Resources, the Committee on Appropriations, and the Committee on Agriculture, Nutrition, and Forestry of the United States Senate;

"(B) a Vice Chairman and five members appointed by the Speaker of the House of Representatives from the membership of the Committee on Appropriations, the Committee on Science and Technology, and the Committee on Agriculture of the United States House of Representatives; and

"(C) seven members of the public appointed by the President, including a broad representation from industrial, labor, agricultural, small business, and consumer groups.

"(b) The Commission shall not later than eighteen months after being established submit to the President and the Congress its final report including its findings and recommendations. The Commission shall cease to exist six months after submission of such report. All records and papers of the Commission shall thereupon be delivered to the Administrator of General Services for deposit in the Archives of the United States.

"(c) Such report shall include the Commission's findings and recommendations with respect to—

"(1) the long- and short-term potential of alcohol fuels contributing to domestic energy supply;

"(2) the relative costs and benefits of developing alcohol fuels from alternative feedstocks, taking into account technical, economic, legal, competitive, environmental, and social factors associated with their production, distribution, and use; their most appropriate end uses; and a recommended time frame for their introduction into the Nation's energy mix;

"(3) the existing policies and programs of the Federal Government which affect the development of such alternative fuels; and

"(4) new policies and programs required to develop alcohol fuels from coal and alcohol and other fuels from the biomass to meet the Nation's projected short-term and long-term energy needs.

"(d)(1) The Chairman of the Commission shall request the head of each Federal department or agency which has an interest in or a responsibility with respect to a national alcohol fuels policy to appoint, and the head of such department or agency shall appoint, a liaison officer who shall work closely with the Commission and its staff in matters pertaining to this section. Such departments and agencies shall include, but not be limited to, the Department of Energy, the Department of Agriculture, the Department of Transportation, the Environmental Protection Agency, the Department of the Interior, the Department of Justice, the Department of the Treasury, and the Small Business Administration.

"(2) In carrying out its duties the Commission shall seek the advice of various groups interested in a national alcohol fuel policy including, but not limited to, State and local governments, public and private organizations working in the fields of alternative fuel development, industry, labor, and the environment.

"(e)(1) The Commission or, on authorization of the Commission, any committee of two or more members may, for the purpose of carrying out the provisions of this section, hold such hearings and sit and act at such times and places as the Commission or such authorized committee may deem advisable.

"(2) the Commission is authorized to secure from any department, agency, or individual instrumentality of the executive branch of the Government any information it deems necessary to carry out its functions under this section and each department, agency, and instrumentality is authorized and directed to furnish such information to the Commission upon request made by the Chairman.

"(f)(1) Members of Congress who are members of the Commission shall serve without compensation in addition to that received for their services as Members of Congress; but they shall be reimbursed for travel, per diem in accordance with the rules of the Senate, or subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Commission.

"(2) Members of the Commission, except Members of Congress, shall each receive compensation for such periods of time as they are engaged in the business of the Commission at a rate not in excess of the maximum rate of pay for GS-18 as provided in the General Schedule under section 5332 of title 5, United States Code, and shall be entitled to reimbursement for travel expenses, per diem in accordance with the rules of the Senate, or subsistence and other necessary expenses incurred by them in performance of duties while serving as a Commission member.

"(g)(1) The Commission is authorized to appoint and fix the compensation of a staff director, and such additional personnel as may be necessary to enable it to carry out its functions. The Director and personnel may be appointed without regard to the provisions of title 5, United States Code, covering appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates. Any Federal employees subject to the civil service laws and regulations who may be employed by the Commission shall retain civil service status without interruption or loss of status or privilege. In no event shall any employee other than the staff director receive as compensation an amount in excess of the maximum rate for GS-18 of the General Schedule under section 5332 of title 5, United States Code. In addition, the Commission is authorized to obtain the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5, United States Code.

"(2) The staff director shall be compensated at level II of the Executive Schedule in subchapter II of chapter 53 of title 5, United States Code.

"(3) The Director and Commission personnel shall be reimbursed for travel, per diem in accordance with the rules of the Senate, or subsistence, and other necessary expenses incurred by them in performance of duties while serving the Commission staff.

"(h) The Commission is authorized to enter into contracts or agreements for studies and surveys with public and private organizations or consultants, and, if necessary, to transfer funds to and accept funds from Federal agencies from sums appropriated pursuant to this section to carry out such of its duties as the Commission determines can best be carried out in that manner.

"(i) Any vacancy which may occur on the Commission shall not affect its powers or functions but shall be filled in the same manner in which the original appointment was made.

"(j) Subject to the provisions of the Federal Advisory Committee Act [set out in the Appendix to Title 5, Government Organization and Employees], the Chairman may appoint advisory committees to aid in the work of the Commission.

"(k) The Commission is exempt from the requirements of sections 4301 through 4308 of title 5, United States Code.

"(*l*) There is hereby authorized to be appropriated, to remain available until expended, to the Commission not to exceed $3,000,000 to carry out the purposes of this section."

§ 5905. Comprehensive plan and implementing program for energy research, development, and demonstration; transmission to Congress; purposes; scope of program; comprehensive environment and safety program implementing plan; development and transmission to Congress

[*See main edition for text of* (a) *and* (b)]

(c) Based upon the comprehensive plan developed under subsection (a) of this section, the Administrator shall develop and transmit to the Congress, on or before September 1, 1978, a comprehensive environment and safety program to insure the full consideration and evaluation of all environmental, health, and safety impacts of each element, program, or initiative contained in the nuclear and nonnuclear energy research, development, and demonstration plans.

(As amended Pub. L. 95-238, title II, § 206(a), Feb. 25, 1978, 92 Stat. 61.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-238 added subsec. (c).

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95-238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95-238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95-238, set out as a note under section 5821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5914 of this title; title 15 section 2709.

§ 5906. Federal assistance and participation in programs

(a) Forms of activities authorized

In carrying out the objectives of this chapter, the Administrator may utilize various forms of Federal assistance and participation which may include but are not limited to—

[*See main edition for text of* (*1*) *to* (*4*)]

(5) Federal loans to non-Federal entities conducting demonstrations of new technologies;

(6) incentives, including financial awards, to individual inventors, such incentives to be designed to encourage the participation of a large number of such inventors; and

(7) Federal loan guarantees and commitments thereof as provided in section 5919 of this title.

[*See main edition for text of* (b) *to* (d)]

(As amended Pub. L. 95-238, title II, § 207(a), Feb. 25, 1978, 92 Stat. 61.)

CODIFICATION

Section 5919 of this title, referred to in subsec. (a)(7), was, in the original, "section 19" and has been editorially translated as section 5919 of this title which relates to loan guarantees as the probable intent of Congress, notwithstanding enactment of another section 19 which is classified to section 5918 of this title and which relates to organizational conflicts.

AMENDMENTS

1978—Subsec. (a)(7). Pub. L. 95-238 added par. (7).

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95-238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95-238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95-238, set out as a note under section 5821 of this title.

Price-Support Program to Demonstrate Municipal Solid Waste Reprocessing for Production of Fuels and Energy Intensive Products

Pub. L. 95-39, title I, § 107, June 3, 1977, 91 Stat. 185, provided that: "The Administrator [see Transfer of Functions note above] is authorized, subject to the appropriation of funds pursuant to section 101(7)(I) of this Act [which was not classified to the Code], to establish and implement, under section 7(a)(4) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5906(a)(4)) and in accordance with section 7(c) of such Act (42 U.S.C. 5906(c)), a price-support program to demonstrate municipal solid waste reprocessing for the production of fuels and energy intensive products. Prior to entering into any contract for such demonstration, the Administrator shall submit to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a full and complete report on the proposed commercial demonstration facility and the necessary project demonstration guarantees. Such contract shall not be finalized under the authority granted by this section prior to the expiration of ninety calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which such report is received by such committees."

Section Referred to in Other Sections

This section is referred to in sections 5585, 5907, 5919, 5920 of this title.

§ 5907. Demonstration projects

Transfer of Functions

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Report to Congress on Environmental, Monitoring, Assessment, and Control Efforts Required for Demonstration Projects; Submission to Congress by December 3, 1977

Pub. L. 95-39, title I, § 113, June 3, 1977, 91 Stat. 187, which provided that the Administrator of the Energy Research and Development Administration, in consultation with the Administrator of the Environmental Protection Agency, submit a report to the Congress six months after June 3, 1977, on the environmental monitoring, assessment, and control efforts, relating to environment, safety, and health, which are required to successfully demonstrate any project which is subject to subsecs. (e) and (f) of this section and is authorized by this Act or any prior Act, was omitted from the Code as executed.

Section Referred to in Other Sections

This section is referred to in sections 5585, 5915a, 5919 of this title.

§ 5907a. Small grant program

(a) Establishment

There shall be established within the Administration a program for appropriate technology under the direction of the Assistant Administrator for Conservation Research and Development. The Administrator shall develop and implement a program of small grants for the purpose of encouraging development and demonstration projects described in subsection (c) of this section.

(b) Limitation

The aggregate amount of financial support made available to any participant in such program, including affiliates, under this section shall not exceed $50,000 during any two-year period.

(c) Systems and technologies to be developed and demonstrated

Funds made available under this section shall be used to provide for a coordinated and expanded effort for the development and demonstration of, and the dissemination of information with respect to, energy-related systems and supporting technologies appropriate to—

(1) the needs of local communities and the enhancement of community self-reliance through the use of available resources;

(2) the use of renewable resources and the conservation of nonrenewable resources;

(3) the use of existing technologies applied to novel situations and uses;

(4) applications which are energy-conserving, environmentally sound, small scale, durable and low cost; and

(5) applications which demonstrate simplicity of installation, operation and maintenance.

(d) Eligible participants; simplified application procedures; report to Administration; allocation criteria; guidelines

(1) Grants, agreements or contracts under this section may be made to individuals, local nonprofit organizations and institutions, State and local agencies, Indian tribes and small businesses. The Administration shall develop simplified procedures with respect to application for support under this section.

(2) Each grant, agreement or contract under this section shall be governed by the provisions of section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5908] and shall contain effective provisions under which the Administration shall receive a full written report of activities supported in whole or in part by funds made available by the Administration; and

(3) In determining the allocation of funds among applicants for support under this section the Administrator may take into consideration:

(A) the potential for energy savings or energy production;

(B) the type of fuel saved or produced;

(C) the potential impact on local or regional energy or environmental problems; and

(D) such other criteria as the Administrator finds necessary to achieve the purposes of this Act or the purposes of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5901 et seq.].

Guidelines implementing this section shall be promulgated with full opportunity for public comment.

(e) Reports to Congress

The Administrator shall—

(1) prepare and submit no later than October 1, 1977, a detailed report on plans for implementation, including the timing of imple-

mentation, of the provisions of this section to the Committee on Energy and Natural Resources of the Senate and the Committee on Science and Technology of the House of Representatives and shall keep such committees fully and currently informed concerning the development of such plans; and

(2) include as a part of the annual report required by section 15(a)(1) of the Federal Nonnuclear Energy Research and Development Act of 1974 [42 U.S.C. 5914(a)(1)] beginning in 1977, a full and complete report on the program under this section.

(Pub. L. 95-39, title I, § 112, June 3, 1977, 91 Stat. 186.)

REFERENCES IN TEXT

This Act, referred to in subsec. (d)(3)(D), means Pub. L. 95-39, June 3, 1977, 91 Stat. 180, which to the extent classified to the Code enacted sections 5816a, 5817a, 5903c, 5907a, 5915a, 5918, and 7001 to 7011 of this title, amended sections 5813, 5818, and 5912 of this title, and enacted provisions set out as notes under sections 5906, 5907, 5914, and 7001 of this title. For complete classification of this Act to the Code, see Tables.

The Federal Nonnuclear Energy Research and Development Act of 1974, referred to in subsec. (d)(3)(D), is Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1879, as amended, which is classified generally to this chapter (§ 5901 et seq.). For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

CODIFICATION

Section was not enacted as part of the Federal Nonnuclear Energy Research and Development Act of 1974, which comprises this chapter.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5908. Patents and inventions

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5585, 5906, 5907a, 5919, 6981, 7879 of this title; title 7 section 178j; title 15 sections 2511, 2707.

§ 5909. Relationship to antitrust laws

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7879 of this title; title 7 section 178j.

§ 5910. Environmental evaluations by Administrator of Environmental Protection Agency

(a) Continuing analysis of effect of nonnuclear energy technologies

The Administrator of the Environmental Protection Agency is authorized and directed to carry out a continuing analysis of the effect of application of nonnuclear energy technologies to evaluate—

[*See main edition for text of (1) and (2)*]

(b) Employment of consultants or contractors and services of other Federal agencies for studies and investigations

The Administrator of the Environmental Protection Agency, in carrying out the provisions of this section, may employ consultants or contractors and may by fund transfer employ the services of other Federal agencies for the conduct of studies and investigations.

(c) Annual public hearings on conduct of energy research and development and environmental consequences; availability of transcript

The Administrator of the Environmental Protection Agency shall hold annual public hearings on the conduct of energy research and development and the probable environmental consequences of trends in the development and application of energy technologies. The transcript of the hearings shall be published and made available to the public.

(d) Reports to President, Administrator, and Congress; inclusion by President of findings of Council in annual Environmental Quality Report

The Administrator of the Environmental Protection Agency shall make such reports to the President, and the Congress as it deems appropriate concerning the conduct of energy research and development. The President as a part of the annual Environmental Policy Report required by section 4341 of this title shall set forth the findings of the Administrator of the Environmental Protection Agency concerning the probable environmental consequences of trends in the development and application of energy technologies.

(As amended 1977 Reorg. Plan No. 1, § 5E, 42 F.R. 56101, 91 Stat. 1634.)

TRANSFER OF FUNCTIONS

"Administrator of the Environmental Protection Agency" was substituted for "Council on Environmental Quality" in the text, and in subsec. (d) ", the Administrator," was omitted following "reports to the President" pursuant to Reorg. Plan No. 1 of 1977, § 5E, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, which transferred those functions of the Council on Environmental Quality and the Office of Environmental Quality relating to the evaluation provided for by this section to the Administrator of the Environmental Protection Agency, effective on or before Apr. 1, 1978, at such time as specified by the President.

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

COMMENT BY GOVERNMENT AGENCIES AND THE PUBLIC

Reports required under this section to be made available to the public and to the heads of affected agencies for comment and, in the case of recommendations for actions, for response, see section 4369(c) of this title.

EX. ORD. NO. 12040. TRANSFER OF CERTAIN ENVIRONMENTAL EVALUATION FUNCTIONS

Ex. Ord. No. 12040, Feb. 24, 1978, 43 F.R. 8097, provided:

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)) [set out in Appendix of Title 5, Government Organization and Employees], and as President of the United States of America, in order to effectuate the transfer of certain environmental quality functions, it is hereby ordered as follows:

SECTION 1. The transfer, provided by Section 5E of Reorganization Plan No. 1 of 1977 (42 FR 56101) [set out in Appendix of Title 5, Government Organization and Employees], of those functions relating to the evaluation provided for by Section 11 of the Federal Nonnuclear Energy Research and Development Act of 1974 (88 Stat. 1878, 42 U.S.C. 5910), from the Council on Environmental Quality and the Office of Environmental Quality to the Administrator of the Environmental Protection Agency shall be effective February 26, 1978.

SEC. 2. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfer of functions provided in this Order, including the transfer of funds, personnel and positions, property, records, and other items related to the functions transferred.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4369, 5915 of this title.

§ 5912. Water resource assessments

(a) Assessments by Water Resources Council of water resource requirements and water supply availability for nonnuclear energy technologies; preparation requirements

The Water Resources Council shall undertake assessments of water resource requirements and water supply availability for any nonnuclear energy technology and any probable combinations of technologies which are the subject of Federal research and development efforts authorized by this chapter and the commercial development of which could have significant impacts on water resources. In the preparation of its assessment, the Council shall—

[*See main edition for text of (1) to (7)*]

(b) Request by Administrator that Water Resources Council prepare assessment of availability of adequate water resources for proposed demonstration projects; report; publication

For any proposed demonstration project which may involve a significant impact on water resources, the Administrator shall, as a precondition of Federal assistance to that project, request the Water Resources Council to prepare an assessment of water requirements and availability for such project. A report on the assessment shall be published in the Federal Register for public review thirty days prior to the expenditure of Federal funds on the demonstration.

[*See main edition for text of (c) to (e)*]

(f) Administrator as member of Water Resources Council

The Administrator shall, upon enactment of this subsection, be a member of the Council.

(As amended Pub. L. 95-39, title I, § 110, June 3, 1977, 91 Stat. 186.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-39, § 110(1), substituted "The Water Resources Council" for "At the request of the Administrator, the Water Resources Council".

Subsec. (b). Pub. L. 95-39, § 110(2), substituted "the Administrator shall, as a precondition of Federal assistance to that project, request the Water Resources Council to prepare an assessment of water requirements and availability for such project" for "the Administrator shall, as a precondition of Federal assistance to that project, prepare or have prepared as assessment of the availability of adequate water resources".

Subsec. (f). Pub. L. 95-39, § 110(3), added subsec. (f).

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

The functions of the Council on Environmental Quality and the Office of Environmental Quality relating to the evaluation provided for by section 5910 of this title were transferred to the Administrator of the Environmental Protection Agency by Reorg. Plan No. 1 of 1977, § 5E, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Ex. Ord. No. 12040, Feb. 24, 1978, 43 F.R. 8097, set out under section 5910 of this title, provided that the transfer of functions of the Council on Environmental Quality and the Office of Environmental Quality to the Administrator of the Environmental Protection Agency is effective Feb. 26, 1978.

§ 5913. Evaluation by National Bureau of Standards of energy-related inventions prior to awarding of grants by Administrator; promulgation of regulations

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5914. Reports to Congress

(a) Required contents

Concurrent with the submission of the President's annual budget to the Congress, the Administrator shall submit to the Congress each year—

(1) a report detailing the activities carried out pursuant to this chapter during the preceding fiscal year;

(2) a detailed description of the comprehensive plan for nuclear and nonnuclear energy research, development, and demonstration then in effect under section 5905(a) of this title;

(3) a detailed description of the comprehensive nonnuclear research, development, and demonstration program then in effect under section 5905(b) of this title including its program elements and activities; and

(4) a detailed description of the environmental and safety research, development, and demonstration activities carried out and in progress including the procedures adopted to mitigate undesirable environmental and safety impacts,

setting forth such modification in the comprehensive plan referred to in clause (2) and the comprehensive program referred to in clause (3) as may be necessary to revise appropriately such plan and program in the light of the activities referred to in clause (1) and any changes in circumstances which may have occurred since the last previous report under this subsection.

[*See main edition for text of* (*b*) *and* (*c*)]

(As amended Pub. L. 95-238, title II, § 206(b), Feb. 25, 1978, 92 Stat. 61.)

Amendments

1978—Subsec. (a)(4). Pub. L. 95-238 added par. (4).

Transfer of Functions

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Nonapplicability of Title II of Pub. L. 95-238 to Any Authorization or Appropriation for Military Application of Nuclear Energy, Etc.; Definitions

Nonapplicability of provisions of title II of Pub. L. 95-238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95-238, set out as a note under section 5821 of this title.

Classification of Recipients of Awards, Contracts, or Other Financial Arrangements; Reporting Requirement

Pub. L. 95-39, title I, § 111, June 3, 1977, 91 Stat. 186, provided that:

"(a) The Administrator [see Transfer of Functions note set out above] shall classify each recipient of any award, contract, or other financial arrangement in any nonnuclear research, development, or demonstration category as—

"(1) a Federal agency,

"(2) a non-Federal governmental entity,

"(3) a profitmaking enterprise (indicating whether or not it is a small business concern),

"(4) a nonprofit enterprise other than an educational institution, or

"(5) a nonprofit educational institution.

"(b) The information required by subsection (a), along with the dollar amount of each award, contract, or other financial arrangement made, shall be included as an appendix to the annual report required by section 15(a) of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5914): *Provided*, That small purchases or contracts of less than $10,000, which are excepted from the requirements of advertising by section 252(c)(3) of title 41, United States Code, shall be exempt from the reporting requirements of this section."

Section Referred to in Other Sections

This section is referred to in sections 5905, 5907a, 5919, 5920, 7007, 7267 of this title; title 15 section 2709.

§ 5915. Authorization of appropriations

Transfer of Functions

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

The functions of the Council on Environmental Quality and the Office of Environmental Quality relating to the evaluation provided for by section 5910 of this title were transferred to the Administrator of the Environmental Protection Agency by Reorg. Plan No. 1 of 1977, § 5E, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President. Section 6 of Reorg. Plan No. 1 of 1977 authorized the Director of the Office of Management and Budget to transfer to the appropriate agency or department unexpended balances of appropriations allocations and other funds used, held, or available in connection with functions transferred. Ex. Ord. No. 12040, Feb. 24, 1978, 43 F.R. 8097, set out under section 5910 of this title, provided that the transfer of functions of the Council on Environmental Quality and the Office of Environmental Quality to the Administrator of the Environmental Protection Agency is effective Feb. 26, 1978.

Alternative Fuels Production

Pub. L. 96-126, title II, § 201, Nov. 27, 1979, 93 Stat. 970, provided that:

"In order to expedite the domestic development and production of alternative fuels and to reduce dependence on foreign supplies of energy resources by establishing such domestic production at maximum levels at the earliest time practicable, there is hereby established in the Treasury of the United States a special fund to be designated the 'Energy Security Reserve', to which is appropriated $19,000,000,000, to remain available until expended: *Provided*, That these funds shall be available for obligation only to stimulate domestic commercial production of alternative fuels and only to the extent provided in advance in appropriations Acts: *Provided further*, That of these funds $1,500,000,000 shall be available immediately to the Secretary of Energy to carry out the provisions of the Federal Nonnuclear Energy Research and Development Act of 1974, as amended (42 U.S.C. 5901, et seq.) to remain available until expended, for the purchase or production by way of purchase commitments or price guarantees of alternative fuels: *Provided further*, That the Secretary shall immediately begin the contract process for purchases of, or commitments to purchase, or to resell alternative fuels to the extent of appropriations provided herein: *Provided further*, That of these funds an additional $708,000,000 shall be available immediately to the Secretary of Energy, to remain available until expended, to support preliminary alternative fuels commercialization activities under the Federal Nonnuclear Energy Research and Development Act of 1974, as amended [this chapter], of which (1) not to exceed $100,000,000 shall be available for project development feasibility studies, such individual awards not to exceed $4,000,000: *Provided*, That the Secretary may require repayment of such funds where studies determine that such project proposals have economic or technical feasibility; (2) not to exceed $100,000,000 shall be available for cooperative agreements with non-Federal entities, such individual agreements not to exceed $25,000,000 to support commercial scale development of alternative fuel facilities; (3) not to exceed $500,000,000 shall be available for a reserve to cover any defaults from loan guarantees issued to finance the construction of alternative fuels production facilities as authorized by the Federal Nonnuclear Energy Research and Development Act of 1974, as amended [this chapter]: *Provided*, That the indebtedness guaranteed or committed to be guaranteed under this appropriation shall not exceed the aggregate of $1,500,000,000; and (4) not to exceed $8,000,000 shall be available for program management.

"This Act [Pub. L. 96-126] shall be deemed to satisfy the requirements for congressional action pursuant to sections 7(c) and 19 of said Act [sections 5906(c) and 5919 of this title] with respect to any purchase commitment, price guarantee, or loan guarantee for which funds appropriated hereby are utilized or obligated.

"For the purposes of this appropriation the term 'alternative fuels', means gaseous, liquid, or solid fuels and chemical feedstocks derived from coal, shale, tar sands, lignite, peat, biomass, solid waste, unconventional natural gas, and other minerals or organic materials other than crude oil or any derivative thereof.

"Within ninety days following enactment of this Act [Nov. 27, 1979], the Secretary of Energy in his sole discretion shall issue a solicitation for applications which shall include criteria for project development feasibility studies described in this account.

"Loan guarantees for oil shale facilities issued under this appropriation may be used to finance construction of full-sized commercial facilities without regard to the proviso in section 19(b)(1) of said Act [section 5919(b)(1) of this title] requiring the prior demonstration of a modular facility.

"In any case in which the Government, under the provisions of this appropriation, accepts delivery of and does not resell any alternative fuels, such fuels shall be used by an appropriate Federal agency. Such Federal agency shall pay into the reserve the market price, as determined by the Secretary, for such fuels from sums appropriated to such Federal agency for the purchase of fuels. The Secretary shall pay the contractor, from sums appropriated herein, the contract price for such fuels.

"All amounts received by the Secretary under this appropriation, including fees, any other monies, property, or assets derived by the Secretary from operations under this appropriation shall be deposited in the reserve.

"All payments for obligations and appropriate expenses (including reimbursements to other Government accounts), pursuant to operations of the Secretary under this appropriation shall be paid from the reserve subject to appropriations.

"For the establishment in the Treasury of the United States of a special fund to be designated the 'Solar and Conservation Reserve', $1,000,000,000 to remain available until expended: *Provided*, That these funds shall be available for obligation only to stimulate solar energy and conservation: *Provided further*, That the withdrawal of said funds shall be subject to the passage of authorizing legislation and only to the extent provided in advance in appropriations Acts.

"Beginning six months after the date of enactment of this Act [Nov. 27, 1979], and every six months thereafter, the Secretary is required to submit to the Congress a written report detailing the activities carried out pursuant to this appropriation."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5821, 5907 of this title.

§ 5915a. Expiration of initial authorization to construct fossil energy demonstration plants

Notwithstanding any other applicable provision of law, the initial authorization in this Act or any other Act heretofore or hereafter enacted to construct, pursuant to section 5907 of this title, any fossil energy demonstration plant shall expire at the end of the three full fiscal years following the date of enactment of such authorization, unless (1) funds to construct each such plant are appropriated or otherwise provided pursuant to applicable law prior thereto, or (2) such authorization period is extended by specific Act of Congress hereafter enacted.

(Pub. L. 95-39, title I, § 105, June 3, 1977, 91 Stat. 184.)

REFERENCES IN TEXT

This Act, referred to in text, is Pub. L. 95-39, June 3, 1977, 91 Stat. 180. The provisions of this Act relating to an initial authorization for construction pursuant to section 5907 of this title are not classified to the Code.

CODIFICATION

Section was not enacted as part of the Federal Nonnuclear Energy Research and Development Act of 1974, which comprises this chapter.

§ 5916. Central source of nonnuclear energy information; acquisition of proprietary and other information; availability of information to public, Government agencies, Federal agencies and agency heads for execution of duties and responsibilities, and chairmen of Congressional Committees; disclosure restrictions

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration and the Federal Energy Administration were terminated and functions vested by law in their respective Administrators were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5589, 7135 of this title; title 15 section 2703.

§ 5917. Energy information

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5918. Organizational conflicts

(a) Conflicts of interest

The Administrator shall by regulation require any person proposing to enter into a contract, agreement, or other arrangement, with the Energy Research and Development Administration whether by advertising or negotiation, or for technical consulting and management support services or other such similar services to provide the Administrator, prior to entering into any such contract, agreement, or arrangement, with all relevant information bearing on whether that person has a possible conflict of interest with respect to (1) being able to render impartial, technically sound, or objective assistance or advice in light of other interests or relationships with other persons or (2) being given an unfair competitive advantage. Such person shall insure, in accordance with regulations published by the Administrator, compliance with this section by subcontractors of such person who are engaged to perform similar services.

(b) Requisite affirmative finding; conflicts of interest which cannot be avoided; mitigation of conflicts

The Administrator shall not enter into any such contract, agreement, or arrangement unless he affirmatively finds after evaluating all such information and any other relevant information otherwise available to him, either that (1) there is little or no likelihood that a conflict of interest would exist, or (2) that such conflict has been avoided after appropriate conditions have been included in such contract, agreement, or arrangement: *Provided*, That if he determines that such conflict of interest exists and that such conflict of interest cannot be avoided by including appropriate conditions therein, the Administrator may enter into such contract, agreement, or arrangement, if he determines that it is in the best interests of the United States to do so and includes appropriate conditions in such contract, agreement, or arrangement to mitigate such conflict.

(c) Publication of implementing rules

The Administrator shall publish rules for the implementation of this section, in accordance with section 553 of title 5 as soon as possible after June 3, 1977, but in no event later than 180 days after such date.

(Pub. L. 93-577, § 19, as added Pub. L. 95-39, title IV, § 401, June 3, 1977, 91 Stat. 190.)

CODIFICATION

Another section 19 of the Federal Nonnuclear Energy Research and Development Act of 1974 was enacted by Pub. L. 95-238, title II, § 207(b), Feb. 25, 1978, 92 Stat. 61, and is classified to section 5919 of this title.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 5919. Loan guarantees and commitments for alternative fuel demonstration facilities

(a) Statement of purpose

It is the purpose of this section—

(1) to assure adequate Federal support to foster a demonstration program to produce alternative fuels from coal, oil shale, biomass, and other domestic resources;

(2) to authorize assistance, through loan guarantees under subsection [1] (b) and (y) of this section for construction and startup and related costs, to demonstration facilities for the conversion of domestic coal, oil shale, biomass, and other domestic resources into alternative fuels; and

(3) to gather information about the technological, economic, environmental, and social costs, benefits, and impacts of such demonstration facilities.

(b) Issuance of obligations for alternative fuel conversion facilities; terms and conditions; rules and regulations; informational requirements; concurrence of Secretary of Treasury to terms and conditions; pledge of full faith and credit of United States; cooperative agreements for construction, etc., of modular facilities; bidding practices

(1) Except as provided in paragraph (5) of this subsection and subsection (y) of this section the Administrator is authorized, in accordance with such rules and regulations as he shall prescribe after consultation with the Secretary of the Treasury, to guarantee and to make commitments to guarantee, in such manner and subject to such conditions (not inconsistent with the provisions of this chapter) as he deems appropriate, the payment of interest on, and the principal balance of, bonds, debentures, notes, and other obligations issued by, or on behalf of, any borrower for the purpose of financing the construction and startup costs of demonstration facilities for the conversion of domestic coal, oil shale, biomass, and other domestic resources into alternative fuels: *Provided*, That no loan guarantee for a full sized oil shale facility shall be provided under this section until after successful demonstration of a modular facility producing between six and ten thousand barrels per day, taking into account such considerations as water usage, environmental effects, waste disposal, labor conditions, health and safety, and the socioeconomic impacts on local communities: *Provided further*, That no loan guarantee shall be available under this subsection for the manufacture of component parts for demonstration facilities eligible for assistance under this subsection.

(2) An applicant for any financial assistance under this section shall provide information to the Administrator in such form and with such content as the Administrator deems necessary.

(3) Prior to issuing any guarantee under this section the Administrator shall obtain the concurrence of the Secretary of the Treasury with respect to the timing, interest rate, and substantial terms and conditions of such guarantee. The Secretary of the Treasury shall insure to the maximum extent feasible that the timing, interest rate, and substantial terms and conditions of such guarantee will have the minimum possible impact on the capital markets of the United States, taking into account other Federal direct and indirect securities activities.

(4) The full faith and credit of the United States is pledged to the payment of all guarantees issued under this section with respect to principal and interest.

(5)(A) The Administrator is authorized, in the case of a facility for the conversion of oil shale to alternative fuels which is determined by the Administrator pursuant to the proviso in paragraph (1) of this subsection, to be constructed at a modular size, to enter into a cooperative agreement with the applicant in accordance with section 5907 of this title and the other provisions of this chapter to share the estimated total design and construction costs, plus operation and maintenance costs, of such modular facility. The Federal share shall not exceed 75 per centum of such costs. All receipts for the sale of any products produced during the operation of the facility shall be used to offset the costs incurred in the operation and maintenance of the facility. The provisions of subsections (d), (e), (k), (m), (p), (s), (t), (u), (v), (w), and (x) of this section shall apply to any such modular facility. The provisions of this section shall apply to any loan guarantee for such modular facility.

(B) After successful demonstration of the modular facility, as determined by the Administrator, the facility is eligible for financial assistance under this section for purposes of expansion to a full sized facility and the applicant may purchase the Federal interest in the modular facility as represented by the Federal share thereof by means of (i) a cash payment to the United States, or (ii) a share of the product or sales resulting from such expanded operation, as determined by the Administrator. If expansion of such facility is determined not to be warranted by the Administrator, he may, at the option of the applicant, dispose of the modular facility to the applicant at not less than fair market value, as determined by the Administrator as of the date of the disposal, or otherwise dispose of it, in accordance with applicable provisions of law, and distribute the net proceeds thereof, after expenses of such disposal, to the applicant in proportion to the applicant's share of the costs of such facility.

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[1] So in original. Probably should be "subsections".

(6) To the extent possible, loan guarantees shall be issued on the basis of competitive bidding among guarantee applicants in a particular technology area.

(c) Prerequisites

The Administrator, with due regard for the need for competition, shall guarantee or make a commitment to guarantee any obligation under subsection (b) or (y) of this section only if—

(1) the Administrator is satisfied that the financial assistance applied for is necessary to encourage financial participation;

(2) the amount guaranteed to any borrower at any time does not exceed—

(A) an amount equal to 75 per centum of the project cost of the demonstration facility as estimated at the time the guarantee is issued, which cost shall not include amounts expended for facilities and equipment used in the extraction of a mineral other than coal or shale, and in the case of coal only to the extent that the Administrator determines that the coal is to be converted to alternative fuel; and

(B) an amount equal to 60 per centum of that portion of the actual total project cost of any demonstration facility which exceeds the project cost of such facility as estimated at the time the loan guarantee is issued;

(3) the Administrator has determined that there will be a continued reasonable assurance of full repayment;

(4) the obligation is subject to the condition that it not be subordinated to any other financing;

(5) the Administrator has determined, taking into consideration all reasonably available forms of assistance under this section and other Federal and State statutes, that the impacts resulting from the proposed demonstration facility have been fully evaluated by the borrower, the Administrator, and the Governor of the affected State, and that effective steps have been taken or will be taken in a timely manner to finance community planning and development costs resulting from such facility under this section, under other provisions of law, or by other means;

(6) the maximum maturity of the obligation does not exceed twenty years, or 90 per centum of the projected useful economic life of the physical assets of the demonstration facility covered by the guarantee, whichever is less, as determined by the Administrator;

(7) the Administrator has determined that, in the case of any demonstration or modular facility planned to be located on Indian lands, the appropriate Indian tribe, with the approval of the Secretary of the Interior, has given written consent to such location;

(8) the obligation provides for the orderly and ratable retirement of the obligation and includes sinking fund provisions, installment payment provisions or other methods of payments and reserves as may be reasonably required by the Administrator. Prior to approving any repayment schedule the Administrator may consider the date on which operating revenues are anticipated to be generated by the project. To the maximum extent possible repayment or provision therefor shall be required to be made in equal payments payable at equal intervals; and

(9) the obligation provides that the Administrator shall, after a period of not less than ten years from issuance of the obligation, taking into consideration whether the Government's needs for information to be derived from the project have been substantially met and whether the project is capable of commercial operation, determine the feasibility and advisability of terminating the Federal participation in the project. In the event that such determination is positive, the Administrator shall notify the borrower and provide the borrower with not less than two nor more than three years in which to find alternative financing. At the expiration of the designated period of time, if the borrower has been unable to secure alternative financing, the Administrator is authorized to collect from the borrower an additional fee of 1 per centum per annum on the remaining obligation to which the Federal guarantee applies.

(d) Recommendations, etc., by Attorney General and Chairman of Federal Trade Commission prior to submission of required report by Administrator; referral to President subsequent to negative recommendation; further action

Prior to submitting a report to Congress pursuant to subsection (m) of this section on each guarantee and cooperative agreement, the Administrator shall request from the Attorney General and the Chairman of the Federal Trade Commission written views, comments, and recommendations concerning the impact of such guarantee or commitment or agreement on competition and concentration in the production of energy and give due consideration to views, comments, and recommendations received: *Provided*, That if either official, within sixty days after receipt of such request or at any time prior to the Administrator submitting such report to Congress, recommends against making such guarantee or commitment or agreement, the proposed guarantee or commitment or agreement shall be referred to the President, and the Administrator shall not do so unless the President determines in writing that such guarantee or commitment or agreement is in the national interest.

(e) Impact on communities, States, and Indian tribes; notice to State and local officials; procedures applicable for further action by Administrator subsequent to negative recommendation by State Governor; criteria and determinations relating to approval by Administrator of construction and operation plans; establishment, membership, etc., of advisory panel

(1) As soon as the Administrator knows the geographic location of a proposed facility for which a guarantee or a commitment to guarantee or cooperative agreement is sought under this section, he shall inform the Governor of the State, and officials of each political subdivision and Indian tribe, as appropriate, in which the facility would be located or which would be impacted by such facility. The Administrator shall not guarantee or make a commitment to guarantee or enter into a cooperative agreement under subsection (b) or subsection (y) of this section, if the Governor of the State in which the proposed facility would be located recommends that such action not be taken, unless the Administrator finds that there is an overriding national interest in taking such action in order to achieve the purpose of this section. If the Administrator decides to guarantee or make a commitment to guarantee or enter into a cooperative agreement despite a Governor's recommendation not to take such action, the Administrator shall communicate, in writing, to the Governor reasons for not concurring with such recommendation. This Administrator's decision, pursuant to this subsection, shall be final unless determined upon judicial review initiated by the Governor to be unlawful by the reviewing court pursuant to section 706(2)(A) through (D) of title 5. Such review shall take place in the United States court of appeals for the circuit in which the State involved is located, upon application made within ninety days from the date of such decision. The Administrator shall, by regulation, establish procedures for review of, and comment on, the proposed facility by States, local political subdivisions, and Indian tribes which may be impacted by such facility, and the general public.

(2) The Administrator shall review and approve the plans of the applicant for the construction and operation of any demonstration and related facilities constructed or to be constructed with assistance under this section. Such plans and the actual construction shall include such monitoring and other data-gathering costs associated with such facility as are required by the comprehensive plan and program under this section. The Administrator shall determine the estimated total cost of such demonstration facility, including, but not limited to, construction costs, startup costs, costs to political subdivisions and Indian tribe by such facility, and cost of any water storage facilities needed in connection with such demonstration facility, and determine who shall pay such costs. Such determination shall not be binding upon the States, political subdivisions, or Indian tribes.

(3) There is hereby established a panel to advise the Administrator on matters relating to the program authorized by this section, including, but not limited to, the impact of the demonstration facilities on communities and States and Indian tribes, the environmental and health and safety effects of such facilities, and the means, measures, and planning for preventing or mitigating such impacts, and other matters relating to the development of alternative fuels and other energy sources under this section. The panel shall include such Governors or their designees as shall be designated by the Chairman of the National Governors Conference. Representatives of Indian tribes, industry, environmental organizations, and the general public shall be appointed by the Administrator. The Chairman of the panel shall be selected by the Administrator. No person shall be appointed to the panel who has a financial interest in any applicant applying for assistance under this section. Members of the panel shall serve without compensation. The provisions of section 5816(e) of this title shall apply to the panel.

(f) Termination, cancellation, revocation; conclusiveness; contestability

Except in accordance with reasonable terms and conditions contained in the written contract of guarantee, no guarantee issued or commitment to guarantee made under this section shall be terminated, canceled, or otherwise revoked. Such a guarantee or commitment shall be conclusive evidence that the underlying obligation is in compliance with the provisions of this section and that such obligation has been approved and is legal as to principal, interest, and other terms. Subject to the conditions of the guarantee or commitment to guarantee, such a guarantee shall be incontestable in the hands of the holder of the guaranteed obligation, except as to fraud or material misrepresentation on the part of the holder.

(g) Default by borrower; procedures applicable to payment by Administrator and rights of subrogation; notice to Attorney General by Administrator for further action; protection for benefit of United States of patents and technologies of defaulting project through agreements, etc.

(1) If there is a default by the borrower, as defined in regulations promulgated by the Administrator and in the guarantee contract, the holder of the obligation shall have the right to demand payment of the unpaid amount from the Administrator. Within such period as may be specified in the guarantee or related agreements, the Administrator shall pay to the holder of the obligation the unpaid interest on, and unpaid principal of, the guaranteed obligation as to which the borrower has defaulted, unless the Administrator finds that there was no default by the borrower in the payment of interest or principal or that such default has been remedied. Nothing in this section shall be construed to preclude any forebearance by the holder of the obligation for the benefit of the borrower which may be agreed upon by the parties to the guaranteed obligation and approved by the Administrator.

(2) If the Administrator makes a payment under paragraph (1) of this subsection, the Administrator shall be subrogated to the rights of the recipient of such payment (and such subro-

gation shall be expressly set forth in the guarantee or related agreements), including the authority to complete, maintain, operate, lease, or otherwise dispose of any property acquired pursuant to such guarantee or related agreements, or any other property of the borrower (of a value equal to the amount of such payment) to the extent that the guarantee applies to amounts in excess of the estimated project cost under subsection (c)(2)(B) of this section, without regard to the provisions of the Federal Property and Administrative Services Act of 1949, as amended [40 U.S.C. 471 et seq.], except section 207 of that Act (40 U.S.C. 488), or any other law, or to permit the borrower, pursuant to an agreement with the Administrator, to continue to pursue the purposes of the demonstration facility if the Administrator determines that this is in the public interest. The rights of the Administrator with respect to any property acquired pursuant to such guarantee or related agreements, shall be superior to the rights of any other person with respect to such property.

(3) In the event of a default on any guarantee under this section, the Administrator shall notify the Attorney General, who shall take such action as may be appropriate to recover the amounts of any payments made under paragraph (1) including any payment of principal and interest under subsection (h) of this section from such assets of the defaulting borrower as are associated with the demonstration facility, or from any other security included in the terms of the guarantee.

(4) For purposes of this section, patents, including any inventions for which a waiver was made by the Administrator under section 5908 of this title, and technology resulting from the demonstration facility, shall be treated as project assets of such facility. The guarantee agreement shall include such detailed terms and conditions as the Administrator deems appropriate to protect the interests of the United States in the case of default and to have available all the patents and technology necessary for any person selected, including, but not limited to the Administrator, to complete and operate the defaulting project. Furthermore, the guarantee agreement shall contain a provision specifying that patents, technology, and other proprietary rights which are necessary for the completion or operation of the demonstration facility shall be available to the United States and its designees on equitable terms, including due consideration to the amount of the United States default payments. Inventions made or conceived in the course of or under such guarantee, title to which is vested in the United States under this chapter, shall not be treated as project assets of such facility for disposal purposes under this subsection, unless the Administrator determines in writing that it is in the best interests of the United States to do so.

(h) Contracts to pay, and payment of principal and interest by Administrator of unpaid balance of guaranteed obligations; prerequisites

With respect to any obligation guaranteed under this section, the Administrator is authorized to into a contract to pay, and to pay, holders of the obligations, for and on behalf of the borrowers, from the fund established by this section, the principal and interest payments which become due and payable on the unpaid balance of such obligation if the Administrator finds that—

(1) the borrower is unable to meet such payments and is not in default; it is in the public interest to permit the borrower to continue to pursue the purposes of such demonstration facility; and the probable net benefit to the Federal Government in paying such principal and interest will be greater than that which would result in the event of a default;

(2) the amount of such payment which the Administrator is authorized to pay shall be no greater than the amount of principal and interest which the borrower is obligated to pay under the loan agreement; and

(3) the borrower agrees to reimburse the Administrator for such payment on terms and conditions, including interest, which are satisfactory to the Administrator.

(i) Time for issuance of regulations; procedures applicable to issuance of regulations and amendments

Regulations required by this section shall be issued within one hundred and eighty days after February 25, 1978. All regulations under this section and any amendments thereto shall be issued in accordance with section 553 of title 5.

(j) Fees for guarantees of obligations; determination of amounts; excepted guarantees

The Administrator shall charge and collect fees for guarantees of obligations authorized by subsection (b)(1) of this section, in amounts which (1) are sufficient in the judgment of the Administrator to cover the applicable administrative costs, and (2) reflect the percentage of projects costs guaranteed. In no event shall the fee be less than 1 per centum per annum of the outstanding indebtedness covered by the guarantee. Nothing in this subsection shall be construed to apply to community planning and development assistance pursuant to subsection (k) of this section.

(k) Community development and planning assistance guarantees; terms and conditions; rules and regulations; concurrence of Secretary of Treasury to terms and conditions; payment of taxes in event of default by borrower; additional direct loans and grants; redemption of debt obligations; funding requirements and authorizations; facility title vesting and status upon default

(1) In accordance with such rules and regulations as the Administrator in consultation with the Secretary of the Treasury shall prescribe, and subject to such terms and conditions as he deems appropriate, the Administrator is authorized, for the purpose of financing essential community development and planning which directly result from, or are necessitated by, one or more demonstration facilities assisted under this section to—

(A) guarantee and make commitments to guarantee the payment of interest on, and the principal balance of obligations for such financing issued by eligible States, political subdivisions, or Indian tribes,

(B) guarantee and make commitments to guarantee the payment of taxes imposed on such demonstration facilities by eligible non-Federal taxing authorities which taxes are earmarked by such authorities to support the payment of interest and principal on obligations for such financing, and

(C) require that the applicant for assistance for a demonstration facility under this section advance sums to eligible States, political subdivisions, and Indian tribes to pay for the financing of such development and planning: *Provided*, That the State, political subdivision, or Indian tribe agrees to provide tax abatement credits over the life of the facilities for such payments by such applicant.

(2) Prior to issuing any guarantee under this subsection, the Administrator shall obtain the concurrence of the Secretary of the Treasury with respect to the timing, interest rate, and substantial terms and conditions of such guarantee. The Secretary of the Treasury shall insure to the maximum extent feasible that the timing, interest rate, and substantial terms and conditions of such guarantee will have the minimum possible impact on the capital markets of the United States, taking into account other Federal direct and indirect securities activities.

(3) In the event of any default by the borrower in the payment of taxes guaranteed by the Administrator under this subsection, the Administrator shall pay out of the fund established by this section such taxes at the time or times they may fall due, and shall have by reason of such payment a claim against the borrower for all sums paid plus interest.

(4) If after consultation with the State, political subdivision, or Indian tribe, the Administrator finds that the financial assistance programs of paragraph (1) of this subsection will not result in sufficient funds to carry out the purposes of this subsection, then the Administrator may—

(A) make direct loans to the eligible States, political subdivisions, or Indian tribes for such purposes: *Provided*, That such loans shall be made on such reasonable terms and conditions as the Administrator shall prescribe: *Provided further*, That the Administrator may waive repayment of all or part of a loan made under this paragraph, including interest, if the State or political subdivision or Indian tribe involved demonstrates to the satisfaction of the Administrator that due to a change in circumstances there will be net adverse impacts resulting from such demonstration facility that would probably cause such State, subdivision, or tribe to default on the loan; or

(B) require that any community development and planning costs which are associated with, or result from, such demonstration facility and which are determined by the Administrator to be appropriate for such inclusion shall be included in the total costs of the demonstration facility.

(5) The Administrator is further authorized to make grants to States, political subdivisions, or Indian tribes for studying and planning for the potential economic, environmental, and social consequences of demonstration facilities, and for establishing related management expertise.

(6) At any time the Administrator may, with the concurrence of the Secretary of the Treasury, redeem, in whole or in part, out of the fund established by this section, the debt obligations guaranteed or the debt obligations for which tax payments are guaranteed under this subsection.

(7) When one or more States, political subdivisions, or Indian tribes would be eligible for assistance under this subsection, but for the fact that construction and operation of the demonstration facilities occurs outside its jurisdiction, the Administrator is authorized to provide, to the greatest extent possible, arrangements for equitable sharing of such assistance.

(8) Such amounts as may be necessary for direct loans and grants pursuant to this subsection shall be available as provided in annual authorization Acts.

(9) The Administrator, if appropriate, shall provide assistance in the financing of up to 100 per centum of the costs of the required community development and planning pursuant to this subsection.

(10) In carrying out the provisions of this subsection, the Administrator shall provide that title to any facility receiving financial assistance under this subsection shall vest in the applicable State, political subdivision, or Indian tribe, as appropriate, and in the case of default by the borrower on a loan guarantee such facility shall not be considered a project asset for the purposes of subsection (g) of this section.

(*l*) Annual reporting requirements; contents, etc.

(1) The Administrator is directed to submit a report to the Congress within one hundred and eighty days after February 25, 1978, setting forth his recommendations on the best opportunities to implement a program of Federal financial assistance with the objective of demonstrating production and conservation of energy. Such report shall be updated and submitted to Congress at least annually and shall include specific comments and recommendations by the Secretary of the Treasury on the methods and procedures set forth in subparagraph (B)(viii) of this subsection, including their adequacy, and changes necessary to satisfy the objectives stated in this subsection. This report shall include—

(A) a study of the purchase or commitment to purchase by the Federal Government, for the use by the United States, of all or a portion of the products of any alternative fuel facilities constructed pursuant to this program as a direct or an alternate form of Federal assistance, which assistance, if recommended, shall be carried out pursuant to section 5906(a)(4) of this title; and

(B) a comprehensive plan and program to acquire information and evaluate the environmental, economic, social, and technological impacts of the demonstration program under this section. In preparing such a comprehensive plan and program, the Administrator shall consult with the Environmental Protection Agency, the Federal Energy Administration, the Department of Housing and Urban Development, the Department of the Interior, the Department of Agriculture, and the Department of the Treasury, and shall include therein, but not be limited to, the following:

(i) information about potential demonstration facilities proposed in the program under this section;

(ii) any significant adverse impacts which may result from any activity included in the program;

(iii) the extent to which it is feasible to commercialize the technologies as they affect different regions of the Nation;

(iv) proposed regulations required to carry out the purposes of this section;

(v) a list of Federal agencies, governmental entities, and other persons that will be consulted or utilized to implement the program;

(vi) the methods and procedures by which the information gathered under the program will be analyzed and disseminated;

(vii) a plan for the study and monitoring of the health effects of such facilities on workers and other persons, including, but not limited to, any carcinogenic effect of alternative fuels; and

(viii) the methods and procedures to insure that (I) the use of the Federal assistance for demonstration facilities is kept to the minimum level necessary for the information objectives of this section, (II) the impact of loan guarantees on the capital markets of the United States is minimized, taking into account other Federal direct and indirect securities activities, and any economic sectors which may be negatively impacted as a result of the reduction of capital by the placement of guaranteed loans, and (III) the granting of Federal loan guarantees under this chapter does not impede movement toward improvement in the climate for attracting private capital to develop alternative fuels without continued direct Federal incentives.

(2) The Administrator shall annually submit a detailed report to the Congress concerning—

(A) the actions taken or not taken by the Administrator under this section during the preceding fiscal year, and including, but not be limited to (i) a discussion of the status of each demonstration facility and related facilities financed under this section, including progress made in the development of such facilities, and the expected or actual production from each such facility, including byproduct production therefrom, and the distribution of such products and byproducts, (ii) a detailed statement of the financial conditions of each such demonstration facility, (iii) data concerning the environmental, community, and health and safety impacts of each such facility and the actions taken or planned to prevent or mitigate such impacts, (iv) the administrative and other costs incurred by the Administrator and other Federal agencies in carrying out this program, and (v) such other data as may be helpful in keeping Congress and the public fully and currently informed about the program authorized by this section; and

(B) the activities of the fund referred to in subsection (n) of this section during the preceding fiscal year, including a statement of the amount and source of fees or other moneys, property, or assets deposited into the funds, all payments made, the notes or other obligations issued by the Administrator, and such other data as may be appropriate.

(3) The annual reports required by this subsection shall be a part of the annual report required by section 5914 of this title, except that the matters required to be reported by this subsection shall be clearly set out and identified in such annual reports. Such reports and the one-hundred-and-eighty-day report required in paragraph (1) of this subsection shall be transmitted to the Speaker of the House of Representatives and the House Committee on Science and Technology and to the President of the Senate and the Committee on Energy and Natural Resources of the Senate.

(m) Congressional finalization of guarantee, etc., subsequent to report to Congressional committees; scope of authority

Prior to issuing any guarantee or commitment to guarantee or cooperative agreement pursuant to subsection (b) or subsection (y) of this section the Administrator shall submit to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate a full and complete report on the proposed demonstration facility and such guarantee, agreement, or contract. Such guarantee, commitment to guarantee, cooperative agreement, or contract shall not be finalized under the authority granted by this section prior to the expiration of ninety calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which such report is received by such committees: *Provided,* That, where the cost of a demonstration facility to be assisted with a guarantee or cooperative agreement pursuant to subsection (b) or subsection (y) of this section exceeds $50,000,000 such guarantee or commitment to guarantee or cooperative agreement shall not be finalized unless (1) the making of such guarantee or commitment or agreement is specifically authorized by legislation hereafter enacted by the Congress or (2) both Houses pass a resolution stating in substance that the Congress favors the making of such guarantee or commitment or agreement.

(n) Revolving fund; creation; funding; payments and transfers to general fund of Treasury; issuance, redemption, etc., of notes or obligations; applicability to direct loans or planning grants

(1) There is hereby created within the Treasury a separate fund (hereafter in this section called the "fund") which shall be available to the Administrator without fiscal year limitation as a revolving fund for the purpose of carrying out the program authorized by subsection

(b)(1) of this section and subsections (g), (h), (k), and (y) of this section.

(2) There are hereby authorized to be appropriated to the fund for administrative expenses from time to time such amounts as may be necessary to carry out the purposes of the applicable provisions of this section, including, but not limited to, the payments of interest and principal and the payment of interest differentials and redemption of debt. All amounts received by the Administrator as interest payments or repayments of principal on loans which are guaranteed under this section, fees, and any other moneys, property, or assets derived by him from operations under this section shall be deposited in the fund.

(3) All payments on obligations, appropriate expenses (including reimbursements to other Government accounts), and repayments pursuant to operations of the Administrator under this section shall be paid from the fund subject to appropriations. If at any time the Administrator determines that moneys in the fund exceed the present and reasonably foreseeable future requirements of the fund, such excess shall be transferred to the general fund of the Treasury.

(4) If at any time the moneys available in the fund are insufficient to enable the Administrator to discharge his responsibilities as authorized by subsections (b)(1), (g), (h), and (y) of this section, the Administrator shall issue to the Secretary of the Treasury notes or other obligations in such forms and denominations, bearing such maturities, and subject to such terms and conditions as may be prescribed by the Secretary of the Treasury. Redemption of such notes or obligations shall be made by the Administrator from appropriations or other moneys available under paragraph (2) of this subsection for loan guarantees authorized by subsection (b)(1) of this section and subsections (g), (h), (k), and (y) of this section. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, which shall be not less than a rate determined by taking into consideration the average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of the notes or other obligations. The Secretary of the Treasury may at any time sell any of the notes or other obligations acquired by him under this subsection.

(5) The provisions of this subsection do not apply to direct loans or planning grants made under subsection (k) of this section.

(*o*) Definitions

For the purposes of this section, the term—

(1) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, any territory or possession of the United States,

(2) "United States" means the several States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa,

(3) "borrower" or "applicant" shall include any individual, firm, corporation, company, partnership, association, society, trust, joint venture, joint stock company, or other non-Federal entity, and

(4) "biomass" shall include, but is not limited to, animal and timber waste, municipal and industrial waste, sewage, sludge, and oceanic and terrestrial crops.

(p) Citizenship or nationality requirements for applicants; waiver

(1) An applicant seeking a guarantee or cooperative agreement under subsection (b) or subsection (y) of this section must be a citizen or national of the United States. A corporation, partnership, firm, or association shall not be deemed to be a citizen or national of the United States unless the Administrator determines that it satisfactorily meets all the requirements of section 802 of title 46, for determining such citizenship, except that the provisions in subsection (a) of such section 802 concerning (A) the citizenship of officers or directors of a corporation, and (B) the interest required to be owned in the case of a corporation, association, or partnership operating a vessel in the coastwise trade, shall not be applicable.

(2) The Administrator, in consultation with the Secretary of State, may waive such requirements in the case of a corporation, partnership, firm, or association, controlling interest in which is owned by citizens of countries which are participants in the International Energy Agreement.

(q) Transfer of part of program to other agency or authority

No part of the program authorized by this section shall be transferred to any other agency or authority, except pursuant to Act of Congress enacted after February 25, 1978.

(r) Statutory provisions applicable to inventions

Inventions made or conceived in the course of or under a guarantee authorized by this section shall be subject to the title and waiver requirements and conditions of section 5908 of this title.

(s) Compliance by persons receiving financial assistance with Federal and State environmental, etc., laws and regulations, and licensing requirements

Nothing in this section shall be construed as affecting the obligations of any person receiving financial assistance pursuant to this section to comply with Federal and State environmental, land use, water, and health and safety laws and regulations or to obtain applicable Federal and State permits, licenses, and certificates.

(t) Availability of information; procedures applicable; scope of disclosure; persons to whom disclosure may be made; definition

The information maintained by the Administrator under this section shall be made available to the public subject to the provision of section 552 of title 5 and section 1905 of title 18 and to other Government agencies in a manner that will facilitate its dissemination: *Provided*, That upon a showing satisfactory to the Administrator by any person that any information, or portion thereof obtained under this section by the Administrator directly or indirectly from such person would, if made public, divulge

(1) trade secrets or (2) other proprietary information of such person, the Administrator shall not disclose such information and disclosure thereof shall be punishable under section 1905 of title 18: *Provided further,* That the Administrator shall, upon request, provide such information to (A) any delegate of the Administrator for the purpose of carrying out this chapter, and (B) the Attorney General, the Secretary of Agriculture, the Secretary of the Interior, the Federal Trade Commission, the Federal Energy Administration, the Environmental Protection Agency, the Federal Power Commission, the General Accounting Office, other Federal agencies, or heads of other Federal agencies, when necessary to carry out their duties and responsibilities under this and other statutes, but such agencies and agency heads shall not release such information to the public. This section is not authority to withhold information from Congress, or from any committee of Congress upon request of the Chairman. For the purposes of this subsection, the term "person" shall include the borrower.

(u) Scope of exercise of statutory authorities

Notwithstanding any other provision of this section, the authority provided in this section to make guarantees or commitments to guarantee or enter into cooperative agreements under subsection (b)(1) or subsection (y) of this section, to make guarantees or commitments to guarantees, or to make loans or grants, under subsection (k) of this section, to make contracts under subsection (h) of this section, and to use fees and receipts collected under subsections (b), (j), and (y) of this section, and the authorities provided under subsection (n) of this section shall be effective only to the extent provided, without fiscal year limitation, in appropriation Acts enacted after February 25, 1978.

(v) Nondiscrimination requirements; scope of exemption from requirements for Indian tribes

No person in the United States shall on the grounds of race, color, religion, national origin, or sex, be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with assistance made available under this section: *Provided,* That Indian tribes are exempt from the operation of this subsection: *Provided further,* That such exemption shall be limited to the planning and provision of public facilities which are located on reservations and which are provided for members of the affected Indian tribes as the primary beneficiaries.

(w) Participation by small business concerns in program

In carrying out his functions under this section, the Administrator shall provide a realistic and adequate opportunity for small business concerns to participate in the program to the optimum extent feasible consistent with the size and nature of each project.

(x) Recordkeeping requirements; audit by Comptroller General; labor standards at construction facilities

(1)(A) Recipients of financial assistance under this section shall keep such records and other pertinent documents, as the Administrator shall prescribe by regulation, including, but not limited to, records which fully disclose the disposition of the proceeds of such assistance, the cost of any facility, the total cost of the provision of public facilities for which assistance was used and such other records as the Administrator may require to facilitate an effective audit. The Administrator and the Comptroller General of the United States, or their duly authorized representative shall have access, for the purpose of audit, to such records and other pertinent documents.

(B) Within 6 months after February 25, 1978, and at 6-month intervals thereafter, the Comptroller General of the United States shall make an audit of recipients of financial assistance under this section. The Comptroller General may prescribe such regulations as he deems necessary to carry out this subparagraph.

(2) All laborers and mechanics employed by contractors or subcontractors in the performance of construction work financed in whole or in part with assistance under this section shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5). The Secretary of Labor shall have, with respect to such labor standards, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40.

(y) Issuance of obligations for synthetic fuel conversion facilities and municipal organic waste energy generation facilities; rules and regulations; statutory provisions inapplicable; limitation on outstanding indebtedness; additional procedural requirements and terms and conditions applicable

(1) The Administrator is authorized in accordance with such rules and regulations as he shall prescribe after consultation with the Secretary of the Treasury, to guarantee and to make commitments to guarantee the payment of interest on, and the principal balance of, bonds, debentures, notes, and other obligations issued by or on behalf of any borrower for the purpose of (A) financing the construction and startup costs of demonstration facilities for the conversion of municipal or industrial waste, sewage sludge, or other municipal organic wastes into synthetic fuels, and (B) financing the construction and startup costs of demonstration facilities to generate desirable forms of energy (including synthetic fuels) from municipal or industrial waste, sewage sludge, or other municipal organic waste. With respect to a guarantee or a commitment to guarantee authorized by this subsection; the following subsections of this section shall not apply: (b)(1), (b)(5), (c)(2), (c)(5), (c)(6), (c)(7), (c)(8), (c)(9), (e)(3), (j), (k), and (q).

(2) In the case where the Administrator seeks to guarantee or to make commitments to guarantee as provided by this subsection he is authorized to incur an outstanding indebtedness which at no time shall exceed $300,000,000.

(3) The Administrator shall apply the following provisions thereto:

(A) With respect to any demonstration facility for the conversion of solid waste (as the term is defined in the Resource Conservation and Recovery Act (42 U.S.C. 6903)), the Administrator, prior to issuing any guarantee under this section, must be in receipt of a certification from the Administrator of the Environmental Protection Agency and any appropriate State or areawide solid waste management planning agency that the proposed application for a guarantee is consistent with any applicable suggested guidelines published pursuant to section 1008(a) of the Resource Conservation and Recovery Act [42 U.S.C. 6907(a)], and any applicable State or regional solid waste management plan.

(B) The amount guaranteed shall not exceed 75 per centum of the total cost of the commercial demonstration facility, as determined by the Administrator: *Provided*, That the amount guaranteed may not exceed 90 per centum of the total cost of the commercial demonstration facility during the period of construction and startup.

(C) The maximum maturity of the obligation shall not exceed thirty years, or 90 per centum of the projected useful economic life of the physical assets of the commercial demonstration facility covered by the guarantee, whichever is less, as determined by the Administrator.

(D) The Administrator shall charge and collect fees for guarantees of obligations in amounts sufficient in the judgment of the Administrator to cover the applicable administrative costs and probable losses on guaranteed obligations, but in any event not to exceed 1 per centum per annum of the outstanding indebtedness covered by the guarantee.

(E) No part of the program authorized by this section shall be transferred to any other agency or authority, except pursuant to Act of Congress enacted after February 25, 1978: *Provided*, That project agreements entered into pursuant to this section for any commercial demonstration facility for the conversion or bioconversion of solid waste (as that term is defined in the Resource Conservation and Recovery Act [42 U.S.C. 6901 et seq.]) shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the Development of Energy From Solid Wastes, and provided specifically that in accordance with this agreement (i) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Energy Research and Development Administration, following which project responsibility will be assigned to one agency; (ii) energy-related projects for recovery of synthetic fuels or other forms of energy from solid waste shall be the responsibility of the Energy Research and Development Administration; and (iii) the Environmental Protection Agency shall retain responsibility for the environmental, economic, and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines pursuant to section 1008 of the Resource Conservation and Recovery Act of 1976 [42 U.S.C. 6907] and any applicable State or regional solid waste management plan.

(F) With respect to any obligation which is issued after February 25, 1978, by, or in behalf of, any State, political subdivision, or Indian tribe and which is either guaranteed under, or supported by taxes levied by said issuer which are guaranteed under, this section, the interest paid on such obligation and received by the purchaser thereof (or the purchaser's successor in interest) shall be included in gross income for the purpose of chapter 1 of title 26: *Provided*, That the Administrator shall pay to such issuer out of the fund established by this section such portion of the interest on such obligations, as determined by the Secretary of the Treasury to be appropriate after taking into account current market yields (i) on obligations of said issuer, if any, and (ii) on other obligations with similar terms and conditions the interest on which is not so included in gross income for purposes of chapter 1 of title 26, and in accordance with, such terms and conditions as the Secretary of the Treasury shall require.

(Pub. L. 93-577, § 19, as added Pub. L. 95-238, title II, § 207(b), Feb. 25, 1978, 92 Stat. 61.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, as amended, referred to in subsec. (g)(2), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of that act relating to disposal of government property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

The Davis-Bacon Act, as amended, referred to in subsec. (x)(2), is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in subsec. (x)(2), is set out in the Appendix to Title 5, Government Organization and Employees.

The Resource Conservation and Recovery Act of 1976, referred to in subsec. (y)(3)(A), (E) is Pub. L. 94-580, Oct. 21, 1976, 90 Stat. 2796, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title of 1976 Amendment note set out under section 6901 of this title and Tables.

CODIFICATION

Another section 19 of the Federal Nonnuclear Energy Research and Development Act of 1974 was enacted by Pub. L. 95-39, title IV, § 401, June 3, 1977, 91 Stat. 190, and is set out as section 5918 of this title.

NONAPPLICABILITY OF TITLE II OF PUB. L. 95-238 TO ANY AUTHORIZATION OR APPROPRIATION FOR MILITARY APPLICATION OF NUCLEAR ENERGY, ETC.; DEFINITIONS

Nonapplicability of provisions of title II of Pub. L. 95-238 with respect to any authorization or appropriation for any military application of nuclear energy, etc., see section 209 of Pub. L. 95-238, set out as a note under section 5821 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5906 of this title.

§ 5920. Financial support program for municipal waste reprocessing demonstration facilities

(a) Statement of purpose

It is the purpose of this section—

(1) to assure adequate Federal support to foster a program to demonstrate municipal waste reprocessing for the production of fuel and energy intensive products; and

(2) to gather information about the technological, economic, environmental, and social costs, benefits, and impacts of such demonstration facilities.

(b) Grants, contracts, price supports, and cooperative agreements implementing programs; aggregate amount of funds available; definition; ownership, operation, etc., of facilities; Federal share; price support program regulations for revenue producing products

(1) The Administrator is authorized and directed, to the extent provided in appropriation Acts, to establish such a demonstration program by making grants, contracts, price supports, and cooperative agreements pursuant to this chapter or any combination thereof for the establishment of municipal waste reprocessing demonstration facilities. For the purpose of this section municipal waste shall include but not be limited to municipal solid waste, sewage sludge, and other municipal organic wastes.

(2) The aggregate amount of funds available for grants, contracts, price supports, and cooperative agreements for municipal waste reprocessing demonstration facilities shall not exceed $20,000,000 in the fiscal year ending September 30, 1978.

(3) For purposes of this section the term "municipal" shall include any city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(4) Municipal waste reprocessing demonstration facilities established under this section shall be owned or operated (or both owned and operated) by the municipality and shall involve the recovery of energy or energy intensive products. Such facilities may be established by any public or private entity, by contract or otherwise, as may be determined by the local government which will own or operate (or both own and operate) such facilities and to which financial support is provided. The Federal share for any such facility to which this section applies shall not exceed 75 per centum of the cost of such facility, and not more than $40,000,000 in Federal funds under this section may be used for the construction of any one facility.

(5) The Administrator shall promulgate such regulations as he deems necessary, pursuant to sections 5906(a)(4) and (c)(1) and (6) of this title, for purposes of establishing a price support program for revenue producing products of municipal waste reprocessing demonstration facilities.

(c) Consultation with Environmental Protection Agency to insure compliance with provisions relating to solid waste disposal full-scale demonstration facilities; administration of projects by Energy Research and Development Administration subject to May 7, 1976, Interagency Agreement between Administration and Agency

(1) The Administrator shall consult with the Environmental Protection Agency to assure that the provisions of section 6984 of this title are applied in carrying out this section.

(2) Any energy-related research, development, or demonstration project for the conversion (including bioconversion) of municipal waste carried out by the Energy Research and Development Administration pursuant to this chapter or any other Act shall be administered in accordance with the May 7, 1976, Interagency Agreement between the Environmental Protection Agency and the Energy Research and Development Administration on the development of energy from solid wastes; and specifically, in accordance with such Agreement (A) for those energy-related projects of mutual interest, planning will be conducted jointly by the Environmental Protection Agency and the Energy Research and Development Administration, following which project responsibility will be assigned to one agency; (B) energy-related aspects of projects for recovery of fuels or energy intensive products from municipal waste as defined in this section shall be the responsibility of the Energy Research and Development Administration including energy-related economic and institutional aspects; and (C) the Environmental Protection Agency shall retain responsibility for the environmental and other economic and institutional aspects of solid waste projects and for assurance that such projects are consistent with any applicable suggested guidelines published pursuant to section 6907 of this title, and any applicable State or regional waste management plan.

(d) Guidelines for obtaining program information from municipalities; availability of information, etc., to Congressional committees; annual reports to Congress; contents, etc.

(1) The Administrator shall establish such guidelines as he deems necessary for purposes of obtaining pertinent information from municipalities receiving funding under this section. These guidelines shall include but not be limited to methods of assessment and evaluation of projects authorized under this section. Such assessments and evaluations shall be presented by the Administrator to the House Committee on Science and Technology and the Senate Committee on Energy and Natural Resources upon the request of either such committee.

(2) The Administrator shall annually submit a report to the Congress concerning the actions taken or not taken by the Administrator under this section during the preceding fiscal year, and including but not limited to (A) a discussion of the status of each demonstration facility and related facilities financed under this section, including progress made in the development of such facilities, and the expected or actual production from each such facility including byproduct production therefrom, and

the distribution of such products and byproducts, (B) a statement of the financial condition of each such demonstration facility, (C) data concerning the environmenal, community, and health and safety impacts of each such facility and the actions taken or planned to prevent or mitigate such impacts, (D) the administrative and other costs incurred by the Administrator and other Federal agencies in carrying out this program, and (E) such other data as may be helpful in keeping Congress and the public fully and currently informed about the program authorized by this section.

(3) The annual reports required by this subsection shall be a part of the annual report required by section 5914 of this title, except that the matters required to be reported by this subsection shall be clearly set out and identified in such annual reports. Such reports shall be transmitted to the Speaker of the House of Representatives and the House Committee on Science and Technology and to the President of the Senate and the Senate Committee on Energy and Natural Resources.

(e) Transfer of part of program to other agency or authority

No part of the program authorized by this section shall be transferred to any other agency or authority, except pursuant to Act of Congress enacted after February 25, 1978.

(f) Compliance by municipalities receiving financial assistance with Federal and State environmental, etc., laws and regulations, and licensing requirements

Nothing in this section shall be construed as abrogating any obligations of any municipality receiving financial assistance pursuant to this section to comply with Federal and State environmental, land use, water, and health and safety laws and regulations or to obtain applicable Federal and State permits, licenses, and certificates.

(Pub. L. 93-577, § 20, as added Pub. L. 95-238, title IV, § 401, Feb. 25, 1978, 92 Stat. 84.)

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

CHAPTER 75—DEVELOPMENTALLY DISABLED ASSISTANCE AND BILL OF RIGHTS

SUBCHAPTER I—GENERAL PROVISIONS

Sec.
6000. Congressional declaration of findings and purpose [New].

EXTENSION OF TERM OF PRESIDENT'S COMMITTEE ON MENTAL RETARDATION

Term of the President's Committee on Mental Retardation extended until Dec. 31, 1980, see Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note under section 14 of Appendix to Title 5, Government Organization and Employees.

EXECUTIVE ORDER NO. 11973

Ex. Ord. No. 11973, Feb. 17, 1977, 42 F.R. 10677, which related to the President's Commission on Mental Health, was revoked by Ex. Ord. No. 12110, Dec. 28, 1978, 44 F.R. 1069, set out as a note under section 14 of the Federal Advisory Committee Act in the Appendix to Title 5, Government Organization and Employees.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 217a-1, 229b, 289k-1, 300a-7, 300*l*-2, 1320a-1, 3195, 3509 of this title; title 29 sections 761a, 781.

SUBCHAPTER I—GENERAL PROVISIONS

§ 6000. Congressional declaration of findings and purpose

(a) The Congress finds that—

(1) there are more than two million persons with developmental disabilities in the United States;

(2) individuals with disabilities occurring during their developmental period are more vulnerable and less able to reach an independent level of existence than other handicapped individuals who generally have had a normal developmental period on which to draw during the rehabilitation process;

(3) persons with developmental disabilities often require specialized lifelong services to be provided by many agencies in a coordinated manner in order to meet the person's needs;

(4) general service agencies and agencies providing specialized services to disabled persons tend to overlook or exclude persons with developmental disabilities in their planning and delivery of services; and

(5) it is in the national interest to strengthen specific programs, especially programs that reduce or eliminate the need for institutional care, to meet the needs of persons with developmental disabilities.

(b)(1) It is the overall purpose of this chapter to assist States to assure that persons with developmental disabilities receive the care, treatment, and other services necessary to enable them to achieve their maximum potential through a system which coordinates, monitors, plans, and evaluates those services and which ensures the protection of the legal and human rights of persons with developmental disabilities.

(2) The specific purposes of this chapter are—

(A) to assist in the provision of comprehensive services to persons with developmental disabilities, with priority to those persons whose needs cannot be covered or otherwise met under the Education for All Handicapped Children Act, the Rehabilitation Act of 1973 [29 U.S.C. 701 et seq.], or other health, education, or welfare programs;

(B) to assist States in appropriate planning activities;

(C) to make grants to States and public and private, nonprofit agencies to establish model programs, to demonstrate innovative habilitation techniques, and to train professional and paraprofessional personnel with respect to providing services to persons with developmental disabilities;

(D) to make grants to university affiliated facilities to assist them in administering and operating demonstration facilities for the provision of services to persons with developmental disabilities, and interdisciplinary training programs for personnel needed to provide specialized services for these persons; and

(E) to make grants to support a system in each State to protect the legal and human rights of all persons with developmental disabilities.

(Pub. L. 88-164, title I, § 101, as added Pub. L. 95-602, title V, § 502, Nov. 6, 1978, 92 Stat. 3004.)

REFERENCES IN TEXT

The Education for All Handicapped Children Act, referred to in subsec. (b)(2)(A), probably means the Education for All Handicapped Children Act of 1975, which is Pub. L. 94-142, Nov. 29, 1975, 89 Stat. 773. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 1401 of Title 20, Education and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (b)(2)(A), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 3575, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

EFFECTIVE DATE

Section 515 of Pub. L. 95-602 provided that: "The amendments made by this title [enacting this section, amending sections 6001, 6008 to 6012, 6031 to 6033, 6061 to 6065, 6067, and 6081 of this title, repealing section 6007 of this title, enacting provisions set out as a note under this section, and repealing provisions set out as a note under section 6001 of this title] shall apply to payments under title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act [this chapter] for fiscal years beginning on and after October 1, 1978."

SHORT TITLE OF 1978 AMENDMENT

For short title of Pub. L. 95-602 as the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, see Short Title of 1978 Amendment note set out under section 701 of Title 29, Labor.

SHORT TITLE OF 1975 AMENDMENT

Section 1 of Pub. L. 94-103 provided that: "This Act [which enacted sections 6001 to 6006, 6009 to 6012, 6031 to 6033, 6041 to 6043, 6067, 6068, and 6081 of this title; amended sections 6007, 6008, 6061 to 6066, and 6068 of this title; eliminated sections 295 to 295d-1, 2661 to 2666, and 2678 to 2678d of this title; repealed sections 2670, 2675, 2676, 2691, and 2693 to 2697b of this title; transferred sections 2671 to 2674 and 2677 to 2677c of this title; and enacted provisions set out as notes under sections 6001, 6007, and 6010 of this title] may be cited as the 'Developmentally Disabled Assistance and Bill of Rights Act'."

SHORT TITLE

Section 1 of Pub. L. 88-164, Oct. 31, 1963, 77 Stat. 282, as amended, provided that: "This Act [which enacted this chapter and subchapter III (§ 2689 et seq.) of chapter 33 of this title, and enacted provisions set out as notes under sections 2689 and 6000 of this title] may be cited as the 'Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963'."

Pub. L. 88-164, title I, § 100, as added by Pub. L. 95-602, title V, § 502, provided that: "This title [this chapter] may be cited as the 'Developmental Disabilities Assistance and Bill of Rights Act'."

§ 6001. Definitions

For purposes of this chapter:

(1) The term "State" includes Puerto Rico, Guam, the Northern Mariana Islands, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the District of Columbia.

[*See main edition for text of (2) to (6)*]

(7) The term "developmental disability" means a severe, chronic disability of a person which—

(A) is attributable to a mental or physical impairment or combination of mental and physical impairments;

(B) is manifested before the person attains age twenty-two;

(C) is likely to continue indefinitely;

(D) results in substantial functional limitations in three or more of the following areas of major life activity: (i) self-care, (ii) receptive and expressive language, (iii) learning, (iv) mobility, (v) self-direction, (vi) capacity for independent living, and (vii) economic self-sufficiency: and

(E) reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated.

(8)(A) The term "services for persons with developmental disabilities" means priority services (as defined in subparagraph (B), and any other specialized services or special adaptations of generic services for persons with developmental disabilities, including in these services the diagnosis, evaluation, treatment, personal care, day care, domiciliary care, special living arrangements, training, education, sheltered employment, recreation, counseling of the individual with such disability and of his family, protective and other social and sociolegal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with developmental disabilities.

(B) The term "priority services" means case management services (as defined in subparagraph (C)), child development services (as defined in subparagraph (D)), alternative community living arrangement services (as defined in subparagraph (E)), and nonvocational social-developmental services (as defined in subparagraph (F)).

(C) The term "case management services" means such services to persons with developmental disabilities as will assist them in gaining access to needed social, medical, educational, and other services; and such term includes—

(i) follow-along services which ensure, through a continuing relationship, lifelong if necessary, between an agency or provider and a person with a developmental disability and the person's immediate relatives or guardians, that the changing needs of the person and the family are recognized and appropriately met; and

(ii) coordination services which provide to persons with developmental disabilities support, access to (and coordination of) other services, information on programs and services, and monitoring of the persons' progress.

(D) The term "child development services" means such services as will assist in the prevention, identification, and alleviation of developmental disabilities in children, and includes (i) early intervention services, (ii) counseling and training of parents, (iii) early identification of developmental disabilities, and (iv) diagnosis and evaluation of such developmental disabilities.

(E) The term "alternative community living arrangement services" means such services as will assist persons with developmental disabilities in maintaining suitable residential arrangements in the community, and includes in-house services (such as personal aides and attendants and other domestic assistance and supportive services), family support services, foster care services, group living services, respite care, and staff training, placement, and maintenance services.

(F) The term "nonvocational social-developmental services" means such services as will assist persons with developmental disabilities in performing daily living and work activities.

(9) The term "satellite center" means an entity which is affiliated with one or more university affiliated facilities and which functions as a community or regional extension of such university affiliated facility or facilities in the delivery of services to persons with developmental disabilities, and their families, who reside in geographical areas where adequate services are not otherwise available.

(10) The term "university affiliated facility" means a public or nonprofit facility which is associated with, or is an integral part of, a college or university and which provides for at least the following activities:

(A) Interdisciplinary training for personnel concerned with developmental disabilities.

(B) Demonstration of the provision of exemplary services relating to persons with developmental disabilities.

(C)(i) Dissemination of findings relating to the provision of services to persons with developmental disabilities, and (ii) providing researchers and government agencies sponsoring service-related research with information on the needs for further service-related research.

(11) The term "Secretary" means the Secretary of Health, Education, and Welfare.

(12) The term "State Planning Council" means a State Planning Council established under section 6067 of this title.

(As amended Pub. L. 95-602, title V, § 503(a), (b)(1), (c)-(f), Nov. 6, 1978, 92 Stat. 3004-3006.)

Amendments

1978—Par. (1). Pub. L. 95-602, § 503(a), inserted "the Northern Mariana Islands," following "Guam".

Par. (7). Pub. L. 95-602, § 503(b)(1), substituted provision defining "developmental disability" as a severe, chronic disability attributable to a mental or physical impairment, manifested before attainment of twenty-two years of age, resulting in substantial functional limitation in three or more designated major life activities, and reflecting the need for special, interdisciplinary, or generic care of lifelong or extended duration for provision defining "development disability" as a disability attributable to mental retardation, cerebral palsy, epilepsy, or autism, to any condition closely related to mental retardation, or to dyslexia, manifested before attainment of eighteen years of age, which constitutes a substantial impairment to the ability to function normally in society.

Par. (8). Pub. L. 95-602, § 503(c), designated existing provision as subpar. (A), and in subpar. (A) as so designated, substituted "means priority services (as defined in subparagraph (B)), and any other specialized services or service adaptions of generic services for persons with developmental disabilities, including in these services the" for "means specialized services or special adaptations of generic services directed toward the alleviation of a developmental disability or toward the social, personal, physical, or economic habilitation or rehabilitation of an individual with such a disability; and such term includes", and added subpars. (B) to (F).

Par. (9). Pub. L. 95-602, § 503(d), substituted "affiliated with" for "associated with" and "or facilities in the delivery of services to persons with developmental disabilities, and their families, who reside in geographical areas where adequate services are otherwise not available" for "in the delivery of training, services, and programs to the developmentally disabled and their families, to personnel of State agencies concerned with developmental disabilities, and to others responsible for the care of persons with developmental disabilities".

Par. (10). Pub. L. 95-602, § 503(e), substituted provision requiring a facility to provide at least interdisciplinary training, demonstrate provision of exemplary services, disseminate findings relating to provision of services to persons with developmental disabilities, and provide researchers and government agencies sponsoring service-related research information on needs for further service-related research for provision requiring a facility to aid in demonstrating the provision of specialized services for diagnosis and treatment and to provide education and training of personnel needed to render services to persons with developmental disabilities.

Par. (12). Pub. L. 95-602, § 503(f), added par. (12).

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

Short Title

Section 101 of Pub. L. 88-164, title I, as added by Pub. L. 94-103, title I, § 125, which provided that this chapter be cited as the Developmental Disabilities Services and Facilities Construction Act, was repealed by section 502 of Pub. L. 95-602. For Short Title of this chapter as the Developmental Disabilities Assistance and Bill of Rights Act, see Short Title note set out under section 6000 of this title.

All Short Title notes have been transferred to section 6000 of this title.

Report to Congress on Impact of Amendment by Pub. L. 95-602 in Definition of Developmentally Disabled

Section 503(b)(2) of Pub. L. 95-602 provided that:

"The Secretary of Health, Education, and Welfare shall submit to Congress, not later than January 15, 1981, a special report concerning the impact of the amendment of the definition of 'developmentally disabled' made by paragraph (1) [amending par. (7) of this section]. This report shall include—

"(A) an analysis of the impact of the amendment on each of the categories of persons with developmental disabilities receiving services under the Developmental Disabilities Assistance and Bill of Rights Act [this chapter] before the date of enactment of this Act [Nov. 6, 1978], and for the fiscal year ending on September 30, 1979 and for the succeeding fiscal year, including—

"(i) the number of persons with developmental disabilities in each category served before and after such date of enactment [Nov. 6, 1978]; and

"(ii) the amounts expended under such Act [this chapter] for each such category of persons with developmental disabilities before and after such date of enactment [Nov. 6, 1978]; and

"(B) an assessment, evaluation, and comparison of services provided to persons with developmental disabilities provided before the date of enactment of this Act [Nov. 6, 1978] and for the fiscal year ending September 30, 1979 and for the succeeding fiscal year."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1471, 6031, 6032, 6063, 6067, 6862 of this title.

§ 6007. Repealed. Pub. L. 95-602, title V, 504(a), Nov. 6, 1978, 92 Stat. 3006

Section, Pub. L. 88-164, title I, § 108, formerly § 133, as added Pub. L. 91-517, title I, § 101(b), Oct. 30, 1970, 84 Stat. 1318, and renumbered and amended Pub. L. 94-103, title I, § 126(a), Oct. 4, 1975, 89 Stat. 499, established the National Advisory Council on Services and Facilities for Developmentally Disabled and provided for membership, terms of office, compensation and traveling expenses, and duties and functions.

EFFECTIVE DATE OF REPEAL

Repeal of section applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

§ 6008. Promulgation of regulations

The Secretary, not later than 180 days after the date of enactment of any Act amending the provisions of this chapter, shall promulgate such regulations as may be required for the implementation of such amendments.

(As amended Pub. L. 95-602, title V, § 505, Nov. 6, 1978, 92 Stat. 3007.)

AMENDMENTS

1978—Pub. L. 95-602 struck out provision requiring the Secretary, by general regulation applicable uniformly to all States, to promulgate regulations prescribing the kinds of services needed, the standards as to scope and quality of these services, the manner of determining priorities for services and facilities, and the general standards for construction and equipment of facilities, and also requiring the regulations of the Secretary to provide for approval of a State application for a project to be completed by two or more political subdivisions or two or more public or nonprofit private entities, or any combination of these subdivisions or entities.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

§ 6009. Evaluation system

(a) Development

The Secretary shall develop, not later than October 1, 1979, a comprehensive system for the evaluation of services provided to persons with developmental disabilities through programs (including residential and nonresidential programs) assisted under this chapter. The Secretary shall require, as a condition to a State's receipt of assistance on and after October 1, 1980, under this chapter, that the State submit to the Secretary, in such form and manner as he shall prescribe, a time-phased plan for the implementation of such a system. The Secretary shall require, as a condition to a State's receipt of assistance on and after October 1, 1982, under this chapter, that the State provide assurances satisfactory to the Secretary that the State is using such a system.

[*See main edition for text of* (*b*)]

(c) Report to Congress

Upon development of the evaluation system described in subsection (b) of this section, the Secretary shall submit to Congress a report on the system, which report shall include an estimate of the costs to the Federal Government and the States of developing and implementing such a system.

(d) Repealed. Pub. L. 95-602, title V, § 506(c), Nov. 6, 1978, 92 Stat. 3007

(As amended Pub. L. 95-602, title V, §§ 504(b)(1), 506, Nov. 6, 1978, 92 Stat. 3006, 3007; Pub. L. 96-32, § 3(b), July 10, 1979, 93 Stat. 82.)

AMENDMENTS

1980—Subsec. (a). Pub. L. 96-32 amended the directory language of Pub. L. 95-602, § 506(a)(3), to correct a typographical error, and did not involve any change in the text. See 1978 Amendment note below.

1978—Subsec. (a). Pub. L. 95-602, §§ 504(b)(1), 506(a), as amended Pub. L. 96-32, § 3(b), substituted "The Secretary shall develop, not later than October 1, 1979," for "The Secretary, in consultation with the National Advisory Council on Services for the Developmentally Disabled, shall within two years of October 4, 1975,", "The Secretary shall" for "Within six months after the development of such a system, the Secretary shall" and "Within two years after the date of the development of such a system, the Secretary shall", "a State's receipt of assistance on or after October 1, 1980, under this chapter, that the State" for "the receipt of assistance under this chapter, that such State", and "a State's receipt of assistance on or after October 1, 1982, under this chapter, that the State" for "the receipt of assistance under this chapter, that each State".

Subsec. (c). Pub. L. 95-602, § 506(b), substituted provision requiring the Secretary, upon development of the evaluation system, to submit a report to Congress for provision requiring the Secretary, not later than two years after Oct. 4, 1975, to submit a report to Congress on the evaluation system.

Subsec. (d). Pub. L. 95-602, § 506(c), struck out subsec. (d), which authorized the Secretary to make grants and contracts with entities or individuals for assistance in developing the evaluation system, provided the entities or individuals did not have any financial or other direct interest in any program to be evaluated by that system.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

§ 6010. Congressional findings respecting rights of the developmentally disabled

Congress makes the following findings respecting the rights of persons with developmental disabilities:

[*See main edition for text of (1) to (4)*]

The rights of persons with developmental disabilities described in findings made in this section are in addition to any constitutional or other rights otherwise afforded to all persons.

(As amended Pub. L. 95-602, title V, § 507, Nov. 6, 1978, 92 Stat. 3007.)

AMENDMENTS

1978—Pub. L. 95-602 inserted provision declaring that the rights of developmentally disabled persons described in any findings are in addition to constitutional or other rights afforded to all persons.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

STUDIES AND RECOMMENDATIONS; REVIEW AND EVALUATION; REPORT TO CONGRESSIONAL COMMITTEES

Section 204 of Pub. L. 94-103 which provided that the Secretary of Health, Education, and Welfare conduct a review and evaluation and make recommendations respecting standards and quality assurance mechanisms applicable to residential facilities and community agencies under certain Federal laws administered by the Secretary and that the Secretary make a report on such review, evaluation, and development of recommendations to certain designated congressional committees within eighteen months of Oct. 4, 1975, was omitted from the Code as executed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6063 of this title.

§ 6011. Habilitation plans

(a) Condition for receipt of State allotment

The Secretary shall require as a condition to a State's receiving an allotment under subchapter III of this chapter that the State provide the Secretary satisfactory assurances that each program (including programs of any agency, facility, or project) which receives funds from the State's allotment under such part (1) has in effect for each developmentally disabled person who receives services from or under the program a habilitation plan meeting the requirements of subsection (b) of this section, and (2) provides for an annual review, in accordance with subsection (c) of this section, of each such plan.

(b) Requirements

A habilitation plan for a person with developmental disabilities shall meet the following requirements:

[*See main edition for text of (1) and (2)*]

(3) The plan shall contain a statement of the long-term habilitation goals for the person and the intermediate habilitation objectives relating to the attainments of such goals. Such objectives shall be stated specifically and in sequence and shall be expressed in behavioral or other terms that provide measurable indices of progress. The plan shall (A) describe how the objectives will be achieved and the barriers that might interfere with the achievement of them, (B) state objective criteria and an evaluation procedure and schedule for determining whether such objectives and goals are being achieved, and (C) provide for a program coordinator who will be responsible for the implementation of the plan.

[*See main edition for text of (4) and (5); (c)*]

(As amended Pub. L. 95-602, title V, § 514(a), Nov. 6, 1978, 92 Stat. 3016.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-602, § 514(a)(1), struck out "after September 30, 1976," following "subchapter III of this chapter".

Subsec. (b)(3). Pub. L. 95-602, § 514(a)(2), (3), substituted "The plan shall contain" for "Such plan shall contain" and "objective criteria" for "an objective criteria".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6009, 6063 of this title; title 29 section 796d.

§ 6012. Protection and advocacy of individual rights; reports; State allotments and reallotments; ratio; authorization of appropriations

(a) In order for a State to receive an allotment under subchapter III of this chapter, (1) the State must have in effect a system to protect and advocate the rights of persons with developmental disabilities, (2) such system must (A) have the authority to pursue legal, administrative, and other appropriate remedies to insure the protection of the rights of such persons who are receiving treatment, services, or habilitation within the State, (B) not be administered by the State Planning Council, and (C) be independent of any agency which provides treatment, services, or habilitation to persons with developmental disabilities, and (3) the State must submit to the Secretary in a form prescribed by the Secretary in regulations (A) a report, not less often than once every three years, describing the system, and (B) an annual report describing the activities carried out under the system and any changes made in the system during the previous year.

(b)(1)(A) To assist States in meeting the requirements of subsection (a) of this section, the Secretary shall allot to the States the sums appropriated under paragraph (2). Allotments and reallotments of such sums shall be made on the same basis as the allotments and reallotments are made under the first sentence of subsections (a)(1) and (d) of section 6062 of this title, except that no State (other than Guam, the Northern Mariana Islands, American Samoa, the Virgin Islands, and the Trust Territory of the Pacific Islands) in any fiscal year shall be allotted an amount under this subparagraph which is less than the greater of $50,000 or the amount of the allotment to the State under this paragraph for the previous fiscal year.

(B) Notwithstanding subparagraph (A), if the aggregate of the amounts of the allotments for grants to be made in accordance with such subparagraph for any fiscal year exceeds the total of the amounts appropriated for such allotments under paragraph (2), the amount of a State's allotment for such fiscal year shall bear the same ratio to the amount otherwise determined under such subparagraph as the total of the amounts appropriated for that year under paragraph (2) bears to the aggregate amount required to make an allotment to each of the States in accordance with subparagraph (A).

(2) For allotments under paragraph (1), there are authorized to be appropriated $3,000,000 for fiscal year 1976, $3,000,000 for fiscal year 1977, $3,000,000 for fiscal year 1978, $9,000,000 for the fiscal year ending September 30, 1979, $12,000,000 for the fiscal year ending September 30, 1980, and $15,000,000 for the fiscal year ending September 30, 1981. The provisions of section 1913 of title 18 shall be applicable to all moneys authorized under the provisions of this section.

(As amended Pub. L. 95-602, title V, § 508, Nov. 6, 1978, 92 Stat. 3007.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-602, § 508(a), substituted provision requiring a State to meet the prerequisites in order to receive an allotment for provision permitting a State to receive an allotment for a fiscal year ending before Oct. 1, 1977, upon giving the Secretary assurances that it will meet the prerequisites before Oct. 1, 1977, added subcl. (B), redesignated former subcl. (B) as (C), and in subcl. (C) as so redesignated, struck out "State" preceding "agency", added cl. (3), and struck out provision prohibiting the Secretary from making allotments for fiscal years beginning after Sept. 30, 1977, unless a system is in effect.

Subsec. (b)(1). Pub. L. 95-602, § 508(b), designated existing provision as subpar. (A), and in subpar. (A) as so designated, inserted reference to reallotments and specified $50,000 as the least amount a State may receive, and added subpar. (B).

Subsec. (b)(2). Pub. L. 95-602, § 508(c), authorized $9,000,000 for the fiscal year ending Sept. 30, 1979, $12,000,000 for the fiscal year ending Sept. 30, 1980, and $15,000,000 for the fiscal year ending Sept. 30, 1981, and made section 1913 of title 18 applicable to all moneys authorized.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4992, 6081 of this title.

SUBCHAPTER II—UNIVERSITY AFFILIATED FACILITIES

PART I—DEMONSTRATION AND TRAINING GRANTS

§ 6031. Grants

(a) Authorization

From appropriations under section 6033 of this title, the Secretary shall make grants to university affiliated facilities to assist in the administration and operation of the activities described in section 6001(10) of this title.

(b) Additional grants; activities

The Secretary may make one or more grants to a university affiliated facility receiving a grant under subsection (a) of this section to support one or more of the following activities:

(1) Conducting a feasibility study of the ways in which it, singly or jointly with other university affiliated facilities which have received a grant under subsection (a) of this section, can establish and operate one or more satellite centers which would be located in areas not served by a university affiliated facility. Such a study shall be carried out in consultation with the State Planning Council for the State in which the facility is located and where the satellite center would be established.

(2) Assessing the need for trained personnel in providing assistance to persons with developmental disabilities.

(3) Provision of service-related training to practitioners providing services to persons with developmental disabilities.

(4) Conducting an applied research program designed to produce more efficient and effective methods (A) for the delivery of services to persons with developmental disabilities, and (B) for the training of professionals, paraprofessionals, and parents who provide these services.

The amount of a grant under paragraph (1) may not exceed $25,000.

(c) Payments for cost of establishing and maintaining satellite centers; study

The Secretary may make grants to pay part of the costs of establishing satellite centers and may make grants to satellite centers to pay part of their administration and operation costs. The Secretary may approve an application for a grant under this subsection only if the feasibility of establishing or operating the satellite center for which the grant is applied for has been established by a study assisted under this section.

(As amended Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3008.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-602 substituted provisions authorizing grants for administration and operation of activities described in section 6001(10) of this title for provision authorizing grants for administration and operation of demonstration facilities and interdisciplinary training programs for personnel and providing for increase in grants for the purpose of conducting a feasibility study on the establishment and operation of satellite centers to be located in areas not served by a university affiliated facility.

Subsec. (b). Pub. L. 95-602 added subsec. (b). Former subsec. (b) redesignated (c).

Subsec. (c). Pub. L. 95-602 redesignated former subsec. (b) as (c).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

§ 6032. Administrative provisions

(a) Standards for university affiliated facilities

Not later than six months after November 6, 1978, the Secretary shall establish by regulation standards for university affiliated facilities. These standards for facilities shall reflect the special needs of persons with developmental disabilities who are of various ages, and shall include performance standards relating to each of the activities described in section 6001(10) of this title.

(b) Application; contents

No grant may be made under section 6031 of this title unless an application therefor is submitted to, and approved by, the Secretary. Such an application shall be submitted in such form and manner, and contain such information, as the Secretary may require. Such an application shall be approved by the Secretary only if the application contains or is supported by reasonable assurances that—

(1) the making of the grant will (A) not result in any decrease in the use of State, local, and other non-Federal funds for services for persons with developmental disabilities and for training of persons to provide such services, which funds would (except for such grant) be made available to the applicant, and (B) be used to supplement and, to the extent practicable, increase the level of such funds; and

(2)(A) the applicant's facility is in full compliance with the standards established under subsection (a) of this section, or

(B)(i) the applicant is making substantial progress toward bringing the facility into compliance with such standards, and (ii) the facility will, not later than three years after the date of approval of the initial application or the date standards are promulgated under subsection (a) of this section, whichever is later, fully comply with such standards.

(c) Application review procedures

The Secretary shall establish such a process for the review of applications for grants under section 6031 of this title as will ensure, to the maximum extent feasible, that each Federal agency that provides funds for the direct support of the applicant's facility reviews the application.

(d) Grant amounts

(1) The amount of any grant under section 6031(a) of this title to a university affiliated facility shall not be less than $150,000 for any fiscal year.

(2) The amount of any grant under section 6031(c) of this title to a satellite center which has received a grant under section 6031(b) of this title (as in effect before November 6, 1978) for the fiscal year ending September 30, 1978, shall not be less than $75,000 for any fiscal year.

(As amended Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3009.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-602 added subsec. (a). Former subsec. (a) redesignated (b).

Subsec. (b). Pub. L. 95-602 redesignated former subsec. (a) as (b), and in subsec. (b) as so redesignated, inserted provision requiring the application to contain assurances that the facility fully comply with the standards established by the Secretary pursuant to subsec. (a) or that substantial compliance has been made and full compliance will be reached not later than three years after approval of the initial application or the date the standards are promulgated, whichever is later. Former subsec. (b), which authorized the Secretary to give special consideration for community rather than institutional services, was struck out.

Subsecs. (c), (d). Pub. L. 95-602 added subsecs. (c) and (d).

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

§ 6033. Authorization of appropriations

(a) For the purpose of making grants under section 6031 of this title, there are authorized to be appropriated $12,000,000 for the fiscal year ending September 30, 1979, $14,000,000 for the fiscal year ending September 30, 1980, and $16,000,000 for the fiscal year ending September 30, 1981.

(b) Of the sums appropriated under subsection (a) of this section, not less than—

(1) $9,000,000 for the fiscal year ending September 30, 1979,

(2) $10,000,000 for the fiscal year ending September 30, 1980, and

(3) $11,000,000 for the fiscal year ending September 30, 1981,

shall be made available for grants under subsections (a) and (c) of section 6031 of this title to qualified applicants which received grants under section 6031 of this title during the fiscal year ending September 30, 1978. The remainder of the sums appropriated for such fiscal years shall be made available as the Secretary determines, except that not less than 40 percent of such remainder shall be made available for grants under subsections (b) and (c) of section 6031 of this title.

(As amended Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3010.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-602 substituted provision authorizing appropriations of $12,000,000 for fiscal year ending Sept. 30, 1979, $14,000,000 for fiscal year ending Sept. 30, 1980, and $16,000,000 for fiscal year ending Sept. 30, 1981 for provision authorizing appropriations of $15,000,000 for the fiscal year 1976, $18,000,000 for the fiscal year 1977, and $21,000,000 for the fiscal year 1978.

Subsec. (b). Pub. L. 95-602 substituted provision requiring not less than $9,000,000 for the fiscal year ending Sept. 30, 1979, $10,000,000 for the fiscal year ending Sept. 30, 1980, and $11,000,000 for the fiscal year ending Sept. 30, 1981 be available for grants under section 6031(a) and (c) of this section, with not less than 40 percent of the remainder available for grants under section 6031(b) and (c) of this title for provision requiring not less than $5,000,000 be made available for grants under former section 6031(a)(1) of this title for each of the fiscal years 1976 and 1977, with $750,000 available in each fiscal year for studies authorized by former section 6031(a)(2) of this title and of the remaining funds at least 40 percent available for grants under former section 6031(b) of this title, and not less than $5,500,000 be available for grants under former section 6031(a)(1) of this title for the fiscal year 1978, with at least 40 percent of the remainder available for grants under former section 6031(b) of this title.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

Part II—Construction

§§ 6041 to 6043. Omitted

Codification

Section 6041, Pub. L. 88-164, title I, § 125, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 488, which authorized construction, renovation, or modernization of buildings to be used by university-affiliated facilities, was omitted in the general revision of this subchapter by Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3008.

Section 6042, Pub. L. 88-164, title I, § 126, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 488, which related to grants for projects and to application requirements, was omitted in the general revision of this subchapter by Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3008.

Section 6043, Pub. L. 88-164, title I, § 127, as added Pub. L. 94-103, title I, § 105, Oct. 4, 1975, 89 Stat. 488, which authorized appropriations for making payments for construction, renovation, or modernization of buildings, was omitted in the general revision of this subchapter by Pub. L. 95-602, title V, § 509, Nov. 6, 1978, 92 Stat. 3008.

SUBCHAPTER III—STATE ALLOTMENTS

§ 6061. Authorization of appropriations

For allotments under section 6062 of this title, there are authorized to be appropriated $40,000,000 for fiscal year 1976, $50,000,000 for fiscal year 1977, $60,000,000 for fiscal year 1978, $55,000,000 for the fiscal year ending September 30, 1979, $65,000,000 for the fiscal year ending September 30, 1980, and $75,000,000 for the fiscal year ending September 30, 1981.

(As amended Pub. L. 95-602, title V, § 510(a), Nov. 6, 1978, 92 Stat. 3010.)

Amendments

1978—Pub. L. 95-602 inserted ", $55,000,000 for the fiscal year ending Sept. 30, 1979, $65,000,000 for the fiscal year ending Sept. 30, 1980, and $75,000,000 for the fiscal year ending Sept. 30, 1981" following "fiscal year 1978".

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

Section Referred to in Other Sections

This section is referred to in sections 6062, 6063 of this title.

§ 6062. Allotments to States

(a) Determination of amount

(1) In each fiscal year, the Secretary shall, in accordance with regulations and this paragraph, allot the sums appropriated for such year under section 6061 of this title among the States on the basis of—

(A) the population,

(B) the extent of need for services for persons with developmental disabilities, and

(C) the financial need,

of the respective States. Sums allotted to the States under this section shall be used in accordance with approved State plans under section 6063 of this title for the provision under such plans of services for persons with developmental disabilities.

(2) For any fiscal year, the allotment under paragraph (1)—

(A) to each of American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands may not be less than $100,000, and

(B) to any other State may not be less than the greater of $250,000, or the amount of the allotment (determined without regard to subsection (d) of this section) received by the State for the fiscal year ending September 30, 1978.

(3) In determining, for purposes of paragraph (1)(B), the extent of need in any State for services for persons with developmental disabilities, the Secretary shall take into account the scope and extent of the services described, pursuant to section 6063(b)(2)(B) of this title, in the State plan of the State.

(4) Repealed. Pub. L. 95-602, title V, § 510(b)(1), 92 Stat. 3010

[*See main edition for text of* (*b*) *to* (*d*)]

(As amended Pub. L. 95-602, title V, § 510(b), Nov. 6, 1978, 92 Stat. 3010.)

Amendments

1978—Subsec. (a)(1). Pub. L. 95-602, § 510(b)(1)-(3), redesignated former subpar. (A) as subsec. (a)(1), and in subsec. (a)(1) as so redesignated, substituted "services" for "services and facilities" wherever appearing, redesignated cls. (i) to (iii) as cls. (A) to (C), respectively, and struck out former subpar. (B), which provided for minimum allotments for States, the Virgin Islands, American Samoa, Guam, and the Trust Territories of the Pacific Islands and established a formula for increasing the minimum allotment of a State when amounts appropriated under section 6061 of this title exceeded $50,000,000.

Subsec. (a)(2). Pub. L. 95-602, § 510(b)(4), added par. (2). Former par. (2) redesignated (3).

Subsec. (a)(3). Pub. L. 95-602, § 510(b)(1), (4), redesignated former par. (2) as (3), and in par. (3) as so redesignated, substituted "section 6063(b)(2)(B) of this title" for "section 6063(b)(5) of this title" and struck out reference to the State plan being approved under section 6063 of this title. Former par. (3), which related to unused sums allotted to States for construction remaining available in subsequent years, was struck out.

Subsec. (a)(4). Pub. L. 95-602, § 510(b)(1), struck out par. (4), which provided that 10 percent of the State allotment for fiscal year 1976 be used to develop and implement plans to eliminate inappropriate placement of developmentally disabled persons in institutions and that in each succeeding fiscal year 30 per cent of the sums allotted be used for this purpose.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

§ 6063. State plans

[*See main edition for text of* (a)]

(b) Conditions for approval

In order to be approved by the Secretary under this section, a State plan for the provision of services for persons with developmental disabilities must meet the following requirements:

(1)(A) The plan must provide for the establishment of a State Planning Council, in accordance with section 6067 of this title, for the assignment to the Council of personnel in such numbers and with such qualifications as the Secretary determines to be adequate to enable the Council to carry out its duties under that section, and for the identification of the personnel so assigned.

(B) The plan must designate the State agency or agencies which shall administer or supervise the administration of the State plan and, if there is more than one such agency, the portion of such plan which each will administer (or the portion the administration of which each will supervise).

(C) The plan must provide that each State agency designated under subparagraph (B) will make such reports, in such form and containing such information, as the Secretary may from time to time reasonably require, and will keep such records and afford such access thereto as the Secretary finds necessary to verify such reports.

(D) The plan must provide for such fiscal control and fund accounting procedures as may be necessary to assure the proper disbursement of and accounting for funds paid to the State under this subchapter.

(2) The plan must—

(A) set out the specific objectives to be achieved under the plan and a listing of the programs and resources to be used to meet such objectives;

(B) describe (and provide for the review annually and revision of the description not less often than once every three years) (i) the extent and scope of services being provided, or to be provided, to persons with developmental disabilities under such other State plans for Federally assisted State programs as the State conducts relating to education for the handicapped, vocational rehabilitation, public assistance, medical assistance, social services, maternal and child health, crippled children's services, and comprehensive health and mental health, and under such other plans as the Secretary may specify, and (ii) how funds allotted to the State in accordance with section 6062 of this title will be used to complement and augment rather than duplicate or replace services for persons with developmental disabilities which are eligible for Federal assistance under such other State programs;

(C) for each fiscal year, assess and describe the extent and scope of the priority services (as defined in section 6001(8)(B) of this title) being or to be provided under the plan in the fiscal year; and

(D) establish a method for the periodic evaluation of the plan's effectiveness in meeting the objectives described in subparagraph (A).

(3) The plan must contain or be supported by assurances satisfactory to the Secretary that—

(A) the funds paid to the State under section 6062 of this title will be used to make a significant contribution toward strengthening services for persons with developmental disabilities through agencies in the various political subdivisions of the State;

(B) part of such funds will be made available by the State to public or nonprofit private entities;

(C) such funds paid to the State under section 6062 of this title will be used to supplement and to increase the level of funds that would otherwise be made available for the purposes for which Federal funds are provided and not to supplant such non-Federal funds; and

(D) there will be reasonable State financial participation in the cost of carrying out the State plan.

(4)(A) The plan must—

(i) provide for the examination not less often than once every three years of the provision, and the need for the provision, in the State of the four different areas of priority services (as defined in section 6001(8)(B) of this title); and

(ii) provide for the development, not later than the second year in which funds are provided under the plan after November 6, 1978, and the timely review and revision of a comprehensive statewide plan to plan, financially support, coordinate, and otherwise better address, on a statewide and comprehensive basis, unmet needs in the State for the provision of at least one of the areas of priority services, such area or areas to be specified in the plan, and (at the option of the State) for the provision of an additional area of services for the developmentally disabled, such area also to be specified in the plan.

(B)(i) Except as provided in clause (iii), the plan must provide that not less than $100,000 or 65 percent of the amount available to the State under section 6062 of this title, whichever is greater, will be expended, as provided in clause (ii), for service activities in the areas of services specified in the plan under subparagraph (A)(ii).

(ii) For any year in which the sums appropriated under section 6061 of this title do not exceed—

(I) $60,000,000, not less than $100,000 or 65 percent of the amount available to the State under section 6062 of this title, whichever is greater, must be expended for service activities in no more than two of the areas of services specified in the plan under subparagraph (A)(ii), and

(II) $90,000,000, not less than $100,000 or 65 percent of the amount available to the State under section 6062 of this title, whichever is greater, must be expended for service activities in no more than three of the areas of services specified in the plan under subparagraph (A)(ii).

(iii) A State, in order to comply with clause (i) for a fiscal year beginning before January 1, 1980, is not required to reduce the amount which is available to it under section 6062 of this title, and which is expended for planning activities below the amount so expended for planning activities in the preceding fiscal year, if substantially the remainder of the amount available to the State, which is expended for other than administration, is expended for service activities in the areas of services specified in the plan under subparagraph (A)(ii). For purposes of this clause, expenditures for planning activities do not include any expenditures for service activities (as defined in clause (iv)).

(iv) For purposes of this subparagraph, the term "service activities" includes, with respect to an area of services, provision of services in the area, model service programs in the area, activities to increase the capacity of institutions and agencies to provide services in the area, coordinating the provision of services in the area with the provision of other services, outreach to individuals for the provision of services in the area, the training of personnel to provide services in the area, and similar activities designed to expand the use and availability of services in the area.

(C) Notwithstanding subparagraph (B), upon the application of a State, the Secretary, pursuant to regulations which the Secretary shall prescribe, may permit the portion of the funds which must otherwise be expended under the State plan for service activities in a limited number of areas of services to be expended for service activities in additional areas of services if he determines that the expenditures of the State on service activities in the initially specified areas of services has reasonably met the need for those services in the State in comparison to the extent to which the need for such additional area or areas of services has been met in such State. Such additional areas shall, to the maximum extent feasible, be areas within the areas of priority services (as defined in section 6001(8)(B) of this title.

(D) The plan must provide that special financial and technical assistance shall be given to agencies or entities providing services for persons with developmental disabilities who are residents of geographical areas designated as urban or rural poverty areas.

(5)(A)(i) The plan must provide that services furnished, and the facilities in which they are furnished, under the plan for persons with developmental disabilities will be in accordance with standards prescribed by the Secretary in regulations.

(ii) The plan must provide satisfactory assurances that buildings used in connection with the delivery of services assisted under the plan will meet standards adopted pursuant to the Act of August 12, 1968 [42 U.S.C. 4151-4157] (known as the Architectural Barriers Act of 1968).

(B) The plan must provide that services are provided in an individualized manner consistent with the requirements of section 6011 of this title (relating to habilitation plans).

(C) The plan must contain or be supported by assurances satisfactory to the Secretary that the human rights of all persons with developmental disabilities (especially those persons without familial protection) who are receiving treatment, services, or habilitation under programs assisted under this chapter will be protected consistent with section 6010 of this title (relating to rights of the developmentally disabled).

(D) the plan must provide assurances that the State has undertaken affirmative steps to assure the participation in programs under this chapter of individuals generally representative of the population of the State, with particular attention to the participation of members of minority groups.

(6) The plan must provide for—

(A) an assessment of the adequacy of the skill level of professionals and paraprofessionals serving persons with developmental disabilities in the State and the adequacy of the State programs and plans supporting training of such professionals and paraprofessionals in maintaining the high quality of services provided to persons with developmental disabilities in the State; and

(B) the planning and implementation of an evaluation system (in accordance with section 6009(a) of this title).

(7)(A) The plan must provide for the maximum utilization of all available community resources including volunteers serving under the Domestic Volunteer Service Act of 1973 (Public Law 93-113) [42 U.S.C. 4951 et seq.] and other appropriate voluntary organizations, except that such volunteer services shall supplement, and shall not be in lieu of, services of paid employees.

(B) The plan must provide for fair and equitable arrangements (as determined by the Secretary after consultation with the Secretary of Labor) to protect the interests of employees affected by actions under the plan to provide alternative community living arrangement services (as defined in section 6001(8)(E) of this title), including arrangements designed to preserve employee rights and benefits and to provide training and retraining of such employees where necessary and arrangements under which maximum efforts will be made to guarantee the employment of such employees.

(8) The plan also must contain such additional information and assurances as the Secretary may find necessary to carry out the provisions and purposes of this subchapter.

[*See main edition for text of* (c)]

(d) Administrative expenditures; limitation of amount; payments; advances or reimbursement, installments

(1) At the request of any State, a portion of any allotment or allotments of such State under this subchapter for any fiscal year shall be available to pay one-half (or such smaller share as the State may request) of the expenditures found necessary by the Secretary for the proper and efficient administration of the State plan approved under this section; except that not more than 5 per centum of the total of the allotments of such State for any fiscal year, or $50,000, whichever is less, shall be available for the total expenditures for such purpose by all of the State agencies designated under subsection (b)(1)(B) of this section for the administration or supervision of the administration of the State plan. Payments under this paragraph may be made in advance or by way of reimbursement, and in such installments, as the Secretary may determine.

(2) Any amount paid under paragraph (1) to any State for any fiscal year shall be paid on condition that there shall be expended from the State sources for such year for administration of the State plan approved under this section not less than the total amount expended for such purposes from such sources during the previous fiscal year.

(As amended Pub. L. 95-602, title V, § 511, Nov. 6, 1978, 92 Stat. 3011.)

References in Text

The Act of August 12, 1968 (42 U.S.C. 4151-4157) (known as the Architectural Barriers Act of 1968), referred to in subsec. (b)(5)(A)(ii), is Pub. L. 90-480, Aug. 12, 1968, 82 Stat. 718, as amended, which is classified generally to chapter 51 (§ 4151 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

The Domestic Volunteer Service Act of 1973 (Public Law 93-113), referred to in subsec. (b)(7)(A), is Pub. L. 93-113, Oct. 1, 1973, 87 Stat. 394, which is classified principally to chapter 66 (§ 4951 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4951 of this title and Tables.

Amendments

1978—Subsec. (b). Pub. L. 95-602, § 511(a), among other changes, inserted provisions requiring the State plan to provide for an annual review of the plan description and revision of it at least once every three years, an establishment of priorities for services, and an assessment of the adequacy of the skill levels and training of professionals and paraprofessionals serving developmentally disabled persons and struck out provisions requiring the State plan to provide for personnel standards on the merit basis, annual review and evaluation of the plan by the State Planning Council, a program of construction based on existing facilities and needs, a priority for construction projects, State percentage allotments each year for construction, a hearing for construction applicants, assurances that all construction projects will be completed, assurances that all laborers and mechanics will receive wages not less than those prevailing on similar construction in the locality, a plan designed to eliminate inappropriate placement of developmentally disabled persons in institutions, early screening and evaluation of developmentally disabled infants, counseling and protective services on behalf of developmentally disabled adults, and establishment of community programs as alternatives to institutionalization.

Subsec. (d)(1). Pub. L. 95-602, § 511(b), substituted "for the total expenditures for such purpose by all of the State agencies designated under subsection (b)(1)(B) of this section for the administration or supervision of the administration of the State plan" for "for such purpose".

Subsec. (d)(2). Pub. L. 95-602, § 511(c), substituted "during the previous fiscal year" for "during the fiscal year ending June 30, 1975".

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

Section Referred to in Other Sections

This section is referred to in sections 6062, 6065, 6066, 6067, 6068 of this title.

§ 6064. Payments to the States for planning, administration, and services

From each State's allotments for a fiscal year under section 6062 of this title, the State shall be paid the Federal share of the expenditures, other than expenditures for construction, incurred during such year under its State plan approved under this subchapter. Such payments shall be made from time to time in advance on the basis of estimates by the Secretary of the sums the State will expend under the State plan, except that such adjustments as may be necessary shall be made on account of previously made underpayments or overpayments under this section.

(As amended Pub. L. 95-602, title V, § 514(b), Nov. 6, 1978, 92 Stat. 3017.)

Amendments

1978—Pub. L. 95-602 redesignated subsec. (a) as entire provision and struck out subsec. (b), which related to payments to States for construction work completed or for purchases made in relation to a construction project.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

§ 6065. Withholding of payments to States for planning, administration, and services

Whenever the Secretary, after reasonable notice and opportunity for hearing to the State Planning Council and the appropriate State agencies or agency, designated pursuant to section 6063(b)(1) of this title finds that—

(1) there is a failure to comply substantially with any of the provisions required by section 6063 of this title to be included in the State plan; or

(2) there is a failure to comply substantially with any regulations of the Secretary which are applicable to this subchapter.

the Secretary shall notify such State Council and agency or agencies that further payments will not be made to the State under section 6062 of this title (or, in his discretion, that further payments will not be made to the State under section 6062 of this title for activities in which there is such failure), until he is satisfied that there will no longer be such failure. Until he is so satisfied, the Secretary shall make no further payment to the State under section 6062 of this title, or shall limit further payment under section 6062 of this title to such State to activities in which there is no such failure.

(As amended Pub. L. 95-602, title V, § 514(c), Nov. 6, 1978, 92 Stat. 3017.)

AMENDMENTS

1978—Pub. L. 95-602 redesignated subsec. (a) as entire provision and struck out subsec. (b), which authorized the State Planning Council to review the State plan to determine if the State is complying with the requirements of the plan and to notify the Secretary of the results of any review carried out.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

§ 6067. State Planning Councils

(a) Establishment; membership

(1) Each State which receives assistance under this subchapter shall establish a State Planning Council which will serve as an advocate for persons with developmental disabilities (as defined in section 6001(7) of this title). The members of the State Planning Council of a State shall be appointed by the Governor of the State from among the residents of that State. The Governor of each State shall make appropriate provisions for the rotation of membership on the Council of his respective State. Each State Planning Council shall at all times include in its membership representatives of the principal State agencies, higher education training facilities, local agencies, and nongovernmental agencies and groups concerned with services to persons with developmental disabilities in that State.

(2) At least one-half of the membership of each such Council shall consist of persons who—

(A) are persons with developmental disabilities or parents or guardians of such persons, or

(B) are immediate relatives or guardians of persons with mentally impairing developmental disabilities,

who are not employees of a State agency which receives funds or provides services under this subchapter, who are not managing employees (as defined in section 1320a-5(b) of this title) of any other entity which receives funds or provides services under this part, and who are not persons with an ownership or control interest (within the meaning of section 1320a-3(a)(3) of this title) with respect to such an entity.

(3) Of the members of the Council described in paragraph (2)—

(A) at least one-third shall be persons with developmental disabilities, and

(B)(i) at least one-third shall be individuals described in subparagraph (B) of paragraph (2), and (ii) at least one of such individuals shall be an immediate relative or guardian of an institutionalized person with a developmental disability.

(b) Duties

Each State Planning Council shall—

(1) develop jointly with the State agency or agencies designated under section 6063(b)(1)(B) of this title the State plan required by this part, including the specification of areas of services under section 6063(b)(4)(A)(ii) of this title;

(2) monitor, review, and evaluate, not less often than annually, the implementation of such State plan;

(3) to the maximum extent feasible, review and comment on all State plans in the State which relate to programs affecting persons with developmental disabilities; and

(4) submit to the Secretary, through the Governor, such periodic reports on its activities as the Secretary may reasonably request, and keep such records and afford such access thereto as the Secretary finds necessary to verify such reports.

(c) Repealed. Pub. L. 95-602, title V, § 512(c), Nov. 6, 1978, 92 Stat. 3016

(As amended Pub. L. 95-602, title V, § 512, Nov. 6, 1978, 92 Stat. 3015.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-602, § 512(a), inserted provisions requiring Governors to make appointments from among State residents and to provide for rotation of membership, added as permanent Council members representatives of higher education training facilities, and substituted provisions requiring that one-half of the members consist of persons with developmental disabilities or their parents or guardians, or persons who are immediate relatives or guardians of persons with mentally impairing developmental disabilities, provided they are not employees of State agencies receiving funds, managing employees of any entity receiving funds, or persons with an ownership or control interest in any entity receiving funds, and also requiring that of this one-half membership, one-third be persons with developmental disabilities and one-third be persons who are immediate relatives or guardians of persons with mentally impairing developmental disabilities, with at least one from this latter group an immediate relative of an institutionalized person for provision requiring one-third of the members be persons with developmental disabilities or their parents or guardians, who are not officers or employees of State agencies or other entities receiving funds.

Subsec. (b). Pub. L. 95-602, § 512(b), substituted in par. (1), provision requiring the Council to develop the State plan jointly with the State agency, including specification of areas of service, for provision requiring the Council to supervise the development of and approve the State plan, and inserted in par. (2), provision requiring review of the plan implementation not less than annually, and in par. (4), provision requiring records be kept and access to them be afforded to the Secretary for the purpose of verifying reports.

Subsec. (c). Pub. L. 95-602, § 512(c), struck out subsec. (c), which required the State to provide the Council with necessary personnel.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6001, 6063 of this title.

SUBCHAPTER IV—SPECIAL PROJECT GRANTS

§ 6081. Grant authority

(a) Demonstrations

The Secretary may make project grants to public or nonprofit private entities for—

(1) demonstrations (and research and evaluation in connection therewith) for establishing programs which hold promise of expanding or otherwise improving services (particularly priority services) to persons with developmental disabilities (especially those who are disadvantaged or multihandicapped); and

(2) demonstrations (and research, training, and evaluation in connection therewith) for establishing programs which hold promise of expanding or otherwise improving protection and advocacy services related to the state protection and advocacy system (described in section 6012 of this title).

(b) Specific projects

Grants provided under subsection (a) of this section shall include grants for—

(1) public awareness and public education programs to assist in the elimination of social, attitudinal, and environmental barriers confronted by persons with developmental disabilities;

(2) coordinating and using all available community resources in meeting the needs of persons with developmental disabilities (especially those from disadvantaged backgrounds);

(3) demonstrations of the provision of services to persons with developmental disabilities who are also disadvantaged because of their economic status;

(4) technical assistance relating to services and facilities for persons with developmental disabilities, including assistance in State and local planning or administration respecting such services and facilities;

(5) training of specialized personnel needed for the provision of services for persons with developmental disabilities or for research directly related to such training;

(6) developing or demonstrating new or improved techniques for the provision of services to persons with developmental disabilities (including model integrated service projects);

(7) gathering and disseminating information relating to developmental disabilities;

(8) improving the quality of services provided in and the administration of programs for such persons; and

(9) developing or demonstrating innovative methods to attract and retain professionals to serve in rural areas in the habilitation of persons with developmental disabilities.

(c) Determination of priorities; procedures insuring participation of disabled

The Secretary shall establish procedures to insure participation of persons with developmental disabilities and their parents or guardians in determining priorities to be utilized by the Secretary in making grants under this section.

(d) Applications; approval by Secretary; contents; review and commentary of State Planning Councils

No grant may be made under subsection (a) of this section unless an application therefor has been submitted to, and approved by, the Secretary. Such application shall be in such form, submitted in such manner, and contain such information, as the Secretary shall by regulation prescribe. The Secretary may not approve such an application unless the State in which the applicant's project will be conducted has a State plan approved under subchapter III of this chapter. The Secretary shall provide to the State Planning Council for the State in which an applicant's project will be conducted an opportunity to review the application for such project and to submit its comments thereon.

(e) Payments; advances or reimbursement; intervals; conditions; amount of grants: exclusions

Payments under grants under subsection (a) of this section may be made in advance or by way of reimbursement, and at such intervals and on such conditions, as the Secretary finds necessary. The amount of any grant under subsection (a) of this section shall be determined by the Secretary. In determining the amount of any grant under subsection (a) of this section for the costs of any project, there shall be excluded from such costs an amount equal to the sum of (1) the amount of any other Federal grant which the applicant has obtained, or is assured of obtaining, with respect to such project, and (2) the amount of any non-Federal funds required to be expended as a condition of such other Federal grant.

(f) Authorization of appropriations

For the purpose of making payments under grants under subsection (a) of this section, there are authorized to be appropriated $18,000,000 for fiscal year 1976, $22,000,000 for fiscal year 1977, $25,000,000 for fiscal year 1978, $20,000,000 for the fiscal year ending September 30, 1979, $22,000,000 for the fiscal year ending September 30, 1980, and $26,000,000 for the fiscal year ending September 30, 1981.

(g) Funds for projects of national significance

Of the funds appropriated under subsection (f) of this section for any fiscal year, not less than 25 per centum of such funds shall be used for projects which the Secretary determines are of national significance.

(h) Use of funds; restriction

No funds appropriated under the Public Health Service Act [42 U.S.C. 201 et seq.], under this chapter (other than under subsection (f) of this section), or under section 304 of the Rehabilitation Act of 1973 [29 U.S.C. 774]

may be used to make grants under subsection (a) of this section.

(As amended Pub. L. 95-602, title V, §§ 504(b)(2), (3), 513, Nov. 6, 1978, 92 Stat. 3006, 3016; Pub. L. 96-32, § 3(a), July 10, 1979, 93 Stat. 82.)

REFERENCES IN TEXT

The Public Health Service Act, referred to in subsec. (h), is act July 1, 1944, ch. 373, 58 Stat. 682, as amended, which is classified generally to chapter 6A (§ 201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 201 of this title and Tables.

AMENDMENTS

1980—Subsec. (g). Pub. L. 96-32 amended the directory language of Pub. L. 95-602, § 504(b)(3), to correct a typographical error, and did not involve any change in the text. See 1978 Amendment note below.

1978—Subsec. (a). Pub. L. 95-602, §§ 504(b)(2), 513(a)(1), (2), (5), substituted in provision preceding par. (1), "The Secretary may" for "The Secretary, after consultation with the National Advisory Council on Services and Facilities to the Developmentally Disabled, may", inserted in par. (1), "(particularly priority services)" following "otherwise improving services", struck out requirement that demonstrations include programs for parent counseling and training, early screening and intervention, infant and preschool children, seizure control systems, legal advocacy, and community based counseling, care, housing and other services, and added par. (2). Former par. (2) redesignated as par. (1) of subsec. (b).

Subsec. (b). Pub. L. 95-602, § 513(a)(4), (5), (b), added introductory provision, redesignated former pars. (2) to (9) of subsec. (a) as pars. (1) to (8) of this subsection, respectively, and added par. (9). Former subsec. (b) redesignated (d).

Subsec. (c). Pub. L. 95-602, § 513(a)(4), (6), added subsec. (c). Former subsec. (c) redesignated (e).

Subsec. (d). Pub. L. 95-602, § 513(a)(4), redesignated former subsec. (b) as (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 95-602, § 513(a)(4), redesignated former subsec. (c) as (e). Former subsec. (e) redesignated (g).

Subsec. (f). Pub. L. 95-602, § 513(a)(4), (c), redesignated former subsec. (d) as (f), and in subsec. (f) as so redesignated, inserted ", $20,000,000 for the fiscal year ending September 30, 1979, $22,000,000 for the fiscal year ending September 30, 1980, and $26,000,000 for the fiscal year ending September 30, 1981" following "fiscal year 1978". Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 95-602, §§ 504(b)(3), 513(a)(3), (4), as amended by Pub. L. 96-32, § 3(a), redesignated former subsec. (e) as (g), and in subsec. (g) as so redesignated, substituted "subsection (f) of this section" for "subsection (d) of this section" and struck out "(after consultation with the National Advisory Council on Services and Facilities to the Developmentally Disabled)" following "Secretary determines".

Subsec. (h). Pub. L. 95-602, § 513(a)(3), (4), redesignated former subsec. (f) as (h), and in subsec. (h) as so redesignated, substituted "subsection (f) of this section" for "subsection (d) of this section".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-602 applicable to payments under this chapter for fiscal years beginning on or after Oct. 1, 1978, see section 515 of Pub. L. 95-602, set out as an Effective Date note under section 6000 of this title.

CHAPTER 76—AGE DISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Sec.
6106a. Reports to the Secretary and Congress [New].

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 5057, 6727 of this title; title 31 section 1242.

§ 6101. Statement of purpose

It is the purpose of this chapter to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance, including programs or activities receiving funds under the State and Local Fiscal Assistance Act of 1972 (31 U.S.C. 1221 et seq.).

(As amended Pub. L. 95-478, title IV, § 401(a), Oct. 18, 1978, 92 Stat. 1555.)

AMENDMENTS

1978—Pub. L. 95-478 struck out "unreasonable" preceding "discrimination".

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 6102. Prohibition of discrimination

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6103, 6106a of this title.

§ 6103. Regulations

(a) Publication in Federal Register of proposed general regulations, final general regulations, and anti-discrimination regulations; effective date

[*See main edition for text of* (*1*) *to* (*3*)]

(4) Not later than ninety days after the Secretary published final general regulations under paragraph (a)(3), the head of each Federal department or agency which extends Federal financial assistance to any program or activity by way of grant, entitlement, loan, or contract other than a contract of insurance or guaranty, shall transmit to the Secretary and publish in the Federal Register proposed regulations to carry out the provisions of section 6102 of this title and to provide appropriate investigative, conciliation, and enforcement procedures. Such regulations shall be consistent with the final general regulations issued by the Secretary, and shall not become effective until approved by the Secretary.

(5) Notwithstanding any other provision of this section, no regulations issued pursuant to this section shall be effective before July 1, 1979.

[*See main edition for text of* (b) *and* (c)]

(As amended Pub. L. 95-478, title IV, § 401(b), Oct. 18, 1978, 92 Stat. 1555.)

REFERENCES IN TEXT

The Comprehensive Employment and Training Act of 1973, referred to in subsec. (c)(1), is Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 839, as amended, now known as the Comprehensive Employment and Training Act, which is classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 29 and Tables.

AMENDMENTS

1978—Subsec. (a)(4). Pub. L. 95-478, § 401(b)(1), provided that the regulations shall not become effective until approved by the Secretary.

Subsec. (a)(5). Pub. L. 95-478, § 401(b)(2), substituted "July 1, 1979" for "January 1, 1979".

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 6104. Enforcement

[*See main edition for text of* (*a*)]

(b) Limitations on termination of, or on refusal to grant or to continue, assistance; disbursement of withheld funds to achiever agencies

Any termination of, or refusal to grant or to continue, assistance under subsection (a)(1) of this section shall be limited to the particular political entity or other recipient with respect to which a finding has been made under subsection (a)(1) of this section. Any such termination or refusal shall be limited in its effect to the particular program or activity, or part of such program or activity, with respect to which such finding has been made. No such termination or refusal shall be based in whole or in part on any finding with respect to any program or activity which does not receive Federal financial assistance. Whenever the head of any Federal department or agency who prescribes regulations under section 6103 of this title withholds funds pursuant to subsection (a) of this section, he may, in accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency, or State or political subdivision thereof, which demonstrates the ability to achieve the goals of the Federal statute authorizing the program or activity while complying with regulations issued under section 6103 of this title.

[*See main edition for text of* (*c*) *and* (*d*)]

(e) Injunctions; notice of violations; costs; conditions for actions

(1) When any interested person brings an action in any United States district court for the district in which the defendant is found or transacts business to enjoin a violation of this Act by any program or activity receiving Federal financial assistance, such interested person shall give notice by registered mail not less than 30 days prior to the commencement of that action to the Secretary of Health, Education, and Welfare, the Attorney General of the United States, and the person against whom the action is directed. Such interested person may elect, by a demand for such relief in his complaint, to recover reasonable attorney's fees, in which case the court shall award the costs of suit, including a reasonable attorney's fee, to the prevailing plaintiff.

(2) The notice referred to in paragraph (1) shall state the nature of the alleged violation, the relief to be requested, the court in which the action will be brought, and whether or not attorney's fees are being demanded in the event that the plaintiff prevails. No action described in paragraph (1) shall be brought (A) if at the time the action is brought the same alleged violation by the same defendant is the subject of a pending action in any court of the United States; or (B) if administrative remedies have not been exhausted.

(f) Exhaustion of administrative remedies

With respect to actions brought for relief based on an alleged violation of the provisions of this chapter, administrative remedies shall be deemed exhausted upon the expiration of 180 days from the filing of an administrative complaint during which time the Federal department or agency makes no finding with regard to the complaint, or upon the day that the Federal department or agency issues a finding in favor of the recipient of financial assistance, whichever occurs first.

(As amended Pub. L. 95-478, title IV, § 401(c), (d), Oct. 18, 1978, 92 Stat. 1555, 1556.)

REFERENCES IN TEXT

This Act, referred to in subsec. (e)(1), probably means Pub. L. 94-135, Nov. 28, 1975, 89 Stat. 713, known as the Older Americans Amendments of 1975. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 3001 of this title and Tables.

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-478, § 401(d), authorized disbursement of withheld funds directly to organization or agency demonstrating ability to achieve the goals of the Federal statute authorizing the program or activity while complying with the regulations.

Subsec. (e). Pub. L. 95-478, § 401(c), substituted provisions relating to injunctions, notice of violations, and costs for provision making this section the exclusive remedy for the enforcement of the provisions of this chapter.

Subsec. (f). Pub. L. 95-478, § 401(c), added subsec. (f).

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-478 effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 6106. Study of discrimination based on age

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Report to President and Congress; copies to affected Federal departments and agencies; information and technical assistance

Not later than two years after November 28, 1975, the Commission shall transmit a report of its findings and its recommendations for statutory changes (if any) and administrative action, including suggested general regulations, to the Congress and to the President and shall provide a copy of its report to the head of each Federal department and agency with respect to which the Commission makes findings or recommendations. The Commission is authorized to provide, upon request, information and technical assistance regarding its findings and recommendations to Congress, to the President, and to the heads of Federal departments and agencies for a ninety-day period following the transmittal of its report.

(e) Comments and recommendations of Federal departments and agencies; submission to President and congressional committees

Not later than forty-five working days after receiving a copy of the report required by subsection (d) of this section, each Federal department or agency with respect to which the Commission makes findings or recommendations shall submit its comments and recommendations regarding such report to the President and to the Committee on Labor and Human Resources of the Senate and the Committee on Education and Labor of the House of Representatives.

[*See main edition for text of (f) and (g)*]

(As amended Pub. L. 95-65, § 1, July 11, 1977, 91 Stat. 269; S. Res. 30, Mar. 7, 1979.)

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-65 substituted "two years" for "eighteen months" and authorized the Commission to provide information and technical assistance regarding its findings and recommendations to Congress, the President, and heads of Federal departments and agencies for a ninety-day period following the transmittal of its report.

CHANGE OF NAME

The name of the Committee on Human Resources of the Senate was changed to the Committee on Labor and Human Resources effective Mar. 7, 1979, by Senate Resolution 30, 96th Congress. See Rule XXV of the Standing Rules of the Senate adopted Nov. 14, 1979.

§ 6106a. Reports to the Secretary and Congress

(a) Not later than December 31 of each year (beginning in 1979), the head of each Federal department or agency shall submit to the Secretary of Health, Education, and Welfare a report (1) describing in detail the steps taken during the preceding fiscal year by such department or agency to carry out the provisions of section 6102 of this title; and (2) containing specific data about program participants or beneficiaries, by age, sufficient to permit analysis of how well the department or agency is carrying out the provisions of section 6102 of this title.

(b) Not later than March 31 of each year (beginning in 1980), the Secretary of Health, Education, and Welfare shall compile the reports made pursuant to subsection (a) of this section and shall submit them to the Congress, together with an evaluation of the performance of each department or agency with respect to carrying out the provisions of section 6102 of this title.

(Pub. L. 94-135, title III, § 308, as added Pub. L. 95-478, title IV, § 401(e), Oct. 18, 1978, 92 Stat. 1556.)

PRIOR PROVISIONS

A prior section 308 of Pub. L. 94-135, title III, Nov. 28, 1975, 89 Stat. 731, renumbered Pub. L. 94-135, § 309 by Pub. L. 95-478, title IV, § 401(e), Oct. 18, 1978, 92 Stat. 1556, which related to definition, is classified to section 6107 of this title.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

EFFECTIVE DATE

Section effective at the close of Sept. 30, 1978, see section 504 of Pub. L. 95-478, set out as an Effective Date of 1978 Amendment note under section 3001 of this title.

§ 6107. Definitions

[*See main edition for text of section*]

(Pub. L. 94-135, title III, § 309, formerly § 308, Nov. 28, 1975, 89 Stat. 731; renumbered Pub. L. 95-478, title IV, § 401(e), Oct. 18, 1978, 92 Stat. 1556.)

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

CHAPTER 77—ENERGY CONSERVATION

SUBCHAPTER I—DOMESTIC SUPPLY AVAILABILITY

PART A—DOMESTIC SUPPLY

Sec.
6215. Major fuel burning stationary source [New].
  (a) Restrictions on issuance of orders or rules by Governor pursuant to section 7425 of this title.
  (b) Petition to President.
  (c) Action to be taken by President.
  (d) Effect on authority of President to allocate coal or coal derivatives.
  (e) Definitions.

SUBCHAPTER III—IMPROVING ENERGY EFFICIENCY

PART A-1—CERTAIN INDUSTRIAL EQUIPMENT [NEW]

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6312. Purposes and coverage.
  (a) Congressional statement of purpose.
  (b) Inclusion of industrial equipment as covered equipment.
  (c) Inclusion of component parts of consumer products as industrial equipment.
6313. Evaluations.
  (a) Electric motors and pumps; report to Congress.
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  (c) Duties of Secretary.
6314. Test procedures.
  (a) Prescription by Secretary; requirements.
  (b) Publication in Federal Register; presentment of oral and written data, views, and arguments by interested persons.
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Sec.
- (d) Prohibited representations.
- (e) Assistance by National Bureau of Standards.

- 6315. Labeling.
  - (a) Prescription by Secretary.
  - (b) Disclosure of energy efficiency of articles of covered equipment.
  - (c) Inclusion of requirements.
  - (d) Consultation with Federal Trade Commission.
  - (e) Publication in Federal Register; presentment of oral and written data, views, and arguments of interested persons.
  - (f) Restrictions on Secretary's authority to promulgate rules.
  - (g) Tests for accuracy of information contained on labels.
  - (h) Products completed prior to effective date of rules.
  - (i) Labeling authority under Federal Trade Commission Act.
- 6316. Administration, penalties, and enforcement.
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PART C—INDUSTRIAL ENERGY CONSERVATION

- 6344a. Targets for use of recovered materials [New].
  - (a) "Energy saving recovered materials" defined.
  - (b) Establishment of targets.
  - (c) Consultation with Administrator of the Environmental Protection Agency.
  - (d) Modification of targets.
  - (e) Notification to major energy consumers; report to Secretary.
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PART E—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS [NEW]

- 6371. Definitions.
- 6371a. Guidelines.
  - (a) Energy audits.
  - (b) State plans for implementation of energy conservation projects in schools and hospitals.
  - (c) Revisions.
  - (d) Determination of severe hardship class for schools and hospitals.
- 6371b. Preliminary energy audits and energy audits.
  - (a) Application by Governor.
  - (b) Grants for conduct of preliminary energy audits.
  - (c) Grants for conduct of energy audits.
  - (d) Audits conducted prior to grant of financial assistance.
  - (e) Restriction on use of funds; grant covering total cost of energy audits.
- 6371c. State plans.
  - (a) Invitation to State energy agency to submit plan; contents.
  - (b) Approval of plans.
  - (c) Development and implementation of approved plans; submission of proposed State plan.
- 6371d. Applications for financial assistance.
  - (a) Limitation on number of applications by States, schools, and hospitals; submittal to State energy agency.
  - (b) Required information.
  - (c) Conditions for financial assistance; applications consistent with related State programs and health plans.
  - (d) Compliance required for approval; reasons for disapproval; resubmittal; amendment.
  - (e) Suspension of further assistance for failure to comply.

Sec.
- 6371e. Grants for project costs and technical assistance.
  - (a) Authorization of Secretary; project costs.
  - (b) Restrictions on use of funds.
  - (c) Allocation requirements.
  - (d) Technical assistance costs.
  - (e) Buildings used principally for administration.
- 6371f. Authorization of appropriations.
- 6371g. Allocation of grants.
  - (a) Section 6371e grants.
  - (b) Restrictions on allocations to States.
  - (c) Prescription of rules governing allocations among States with regard to energy audits.
  - (d) Prescription of rules limiting allocations to States for administrative expenses.
  - (e) Reallocations.
- 6371h. Administration; annual reports.
- 6371i. Records.
- 6371j. Application of Davis-Bacon Act.

PART F—ENERGY CONSERVATION PROGRAM FOR BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS [NEW]

- 6372. Definitions.
- 6372a. Guidelines.
  - (a) Energy audits.
  - (b) Implementation of technical assistance program.
  - (c) Revisions.
- 6372b. Preliminary energy audits and energy audits.
  - (a) Application by Governor.
  - (b) Grants for conduct of preliminary energy audits.
  - (c) Application by Governor, unit of local government or public care institution.
  - (d) Grants for conduct of energy audits.
  - (e) Audits conducted prior to grant of financial assistance.
  - (f) Restriction on use of funds.
- 6372c. State plans.
- 6372d. Applications for grants for technical assistance.
  - (a) Limitation on number of applications by units of local government and public care institutions; submittal to State energy agency.
  - (b) Required information.
  - (c) Compliance required for approval; reasons for disapproval; resubmittal; amendment.
  - (d) Suspension of further assistance for failure to comply.
- 6372e. Grants for technical assistance.
  - (a) Authorization of Secretary.
  - (b) Restriction on use of funds.
  - (c) Allocation requirements.
  - (d) Prescription of rules limiting allocations to States for administrative expenses.
- 6372f. Authorization of appropriations.
- 6372g. Allocation of grants.
- 6372h. Administration; annual reports.
- 6372i. Records.

PART G—OFF HIGHWAY MOTOR VEHICLES [NEW]

- 6373. Omitted.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 7135, 7152, 7194, 7521 of this title; title 15 sections 719j, 759.

§ 6201. Congressional statement of purpose

EX. ORD. NO. 11912. DELEGATION OF AUTHORITIES

Ex. Ord. No. 11912, April 13, 1976, 41 F.R. 15825, as amended by Ex. Ord. No. 12003, July 20, 1977, 42 F.R.

37523; Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

[*See main edition for text of first par.*]

SECTION 1. (a) The Administrator of General Services is designated and empowered to perform, without approval, ratification or other action by the President, the function vested in the President by Section 510 of the Motor Vehicle Information and Cost Savings Act, as amended (89 Stat. 915, 15 U.S.C. 2010). In performing this function, the Administrator of General Services shall:

(1) Promulgate rules which will ensure that the minimum statutory requirement for fleet average fuel economy is exceeded (i) for fiscal year 1978 by 2 miles per gallon, (ii) for fiscal year 1979 by 3 miles per gallon, and (iii) for fiscal years 1980 and after by 4 miles per gallon.

(2) Promulgate rules which will ensure that Executive agencies do not acquire, subsequent to fiscal year 1977, any passenger automobile unless such automobile meets or exceeds the average fuel economy standard for the appropriate model year established by, or pursuant to, Section 502(a) of the Motor Vehicle Information and Cost Savings Act, as amended (15 U.S.C. 2002(a)); except that, such rules (i) shall not apply to automobiles designed to perform combat-related missions for the Armed Forces or designed to be used in law enforcement work or emergency rescue work, and (ii) may provide for granting exemptions for individual automobiles used for special purposes as determined to be appropriate by the Administrator of General Services with the concurrence of the Secretary of Energy.

(b) The Administrator of General Services shall promulgate rules which will ensure that each class of nonpassenger automobiles acquired by all Executive agencies in each fiscal year, beginning with fiscal year 1979, achieve for such fiscal year a fleet average fuel economy not less than the average fuel economy standard for such class, established pursuant to Section 502(b) of the Motor Vehicle Information and Cost Savings Act, as amended (89 Stat. 903, 15 U.S.C. 2002(b)), for the model year which includes January 1 of such fiscal year; except that, such rules (1) shall not apply to automobiles designed to perform combat-related missions for the Armed Forces or designed to be used in law enforcement work or emergency rescue work, and (2) may provide for granting exceptions for other categories of automobiles used for special purposes as determined to be appropriate by the Administrator of General Services with the concurrence of the Secretary of Energy.

[*See main edition for text of Secs. 2 and 3*]

SEC. 4. (a) The Secretary of Energy, in consultation with the heads of appropriate agencies, is hereby authorized and directed to develop for the President's consideration, in accord with section 201 of the Energy Policy and Conservation Act (89 Stat. 890, 42 U.S.C. 6261), the energy conservation and rationing contingency plans prescribed under sections 202 and 203 of the Energy Policy and Conservation Act (89 Stat. 892, 42 U.S.C. 6262 and 6263).

(b) The Secretary of Energy shall prepare, with the assistance of the heads of appropriate agencies, for the President's consideration, the annual reports provided by section 381(c) of the Energy Policy and Conservation Act (89 Stat. 939, 42 U.S.C. 6361(c)).

[*See main edition for text of Sec. 5*]

SEC. 6. The Secretary of Energy is designated and empowered to perform without approval, ratification, or other action by the President, the functions vested in the President by:

(a) Section 251 of the Energy Policy and Conservation Act (89 Stat. 894, 42 U.S.C. 6271), except the making of the findings provided by subparagraph (b)(1)(B) thereof; however, in performing these functions, the Secretary shall consult with the Secretary of Commerce with respect to the international allocation of petroleum products which are within the territorial jurisdiction of the United States; and *provided that* the Secretary of Commerce shall promulgate rules, pursuant to the procedures established by the Export Administration Act of 1969, as amended [section 2401 et seq. of Title 50, App., War and National Defense], to authorize the export of petroleum and petroleum products, as may be necessary for implementation of the obligations of the United States under the International Energy Program, and in accordance with the rules promulgated under Section 251 of the Energy Policy and Conservation Act [section 6271 of this title] by the Secretary pursuant to this subsection.

[*See main edition for text of* (b) *and* (c)]

(d) Section 254(b) of the Energy Policy and Conservation Act (89 Stat. 900, 42 U.S.C. 6274(b)); *provided that,* in determining whether the transmittal of data would prejudice competition or violate the antitrust laws, the Secretary shall consult with the Attorney General, and in determining whether the transmittal of data would be inconsistent with national security interests, he shall consult with the Secretaries of State and Defense, and the heads of such other agencies as he deems appropriate;

(e) Section 523(a)(2)(A) of the Energy Policy and Conservation Act (89 Stat. 962, 42 U.S.C. 6393(a)(2)(A)), but only to the extent applicable to other functions delegated or assigned by this Order to the Secretary of Energy.

SEC. 7. (a) The Director of the Federal Emergency Management Agency is designated and empowered to perform without approval, ratification, or other action by the President, the functions vested in the President by section 101(c) of the Defense Production Act of 1950, as amended (89 Stat. 878, 50 U.S.C. App. 2071(c)).

(b) The Director of the Federal Emergency Management Agency shall redelegate the functions provided by section 101(c)(1) of the Defense Production Act of 1950, as amended [section 2071(c)(1) of Title 50, App., War and National Defense], to the Secretary of Commerce.

(c) The Director of the Federal Emergency Management Agency shall redelegate the functions provided by section 101(c)(3) of the Defense Production Act of 1950, as amended [section 2071(c)(3) of Title 50, Appendix, War and National Defense], to the Secretary of Commerce, who shall redelegate those functions, except the findings that the supplies are scarce and that it is necessary to exercise the authority provided by section 101(c)(1) [section 2071(c)(1) of Title 50, App.], to the Secretary of Energy.

(d) The Director of the Federal Emergency Management Agency shall provide for the overall coordination and direction of the functions provided by section 101(c) of the Defense Production Act of 1950, as amended [section 2071(c) of Title 50, App., War and National Defense], in a manner similar to the exercise of functions under sections 101(a) and (b) of that Act [section 2071(a) and (b) of Title 50, App.], except that, the Administrator shall first obtain the approval of the President if the implementation of any authority under section 101(c) of that Act [section 2071(c) of Title 50, App.] would result in controlling the general distribution of materials in the civilian market, as that phrase is used in section 101(b) of that Act [section 2071(b) of Title 50, App.].

[*See main edition for text of Secs. 8 and 9*]

SEC. 10. (a)(1) The Secretary of Energy, hereinafter referred to as the Secretary, shall develop, with the concurrence of the Director of the Office of Management and Budget, and in consultation with the Secretary of Defense, the Secretary of Housing and Urban Development, the Administrator of Veterans' Affairs, the Administrator of General Services, and the heads of such other Executive agencies as he deems appropriate, the ten-year plan for energy conservation with respect to Government buildings, as provided by section 381(a)(2) of the Energy Policy and Conservation Act (42 U.S.C. 6361(a)(2)).

(2) The goals established in subsection (b) shall apply to the following categories of Federally-owned buildings: (i) office buildings, (ii) hospitals, (iii) schools, (iv) prison facilities, (v) multi-family dwellings, (vi) storage facilities, and (vii) such other categories of buildings for which the Administrator determines the establishment of energy-efficiency performance goals is feasible.

(b) The Secretary shall establish requirements and procedures, which shall be observed by each agency unless a waiver is granted by the Secretary, designed to ensure that each agency to the maximum extent practicable aims to achieve the following goals:

(1) For the total of all Federally-owned existing buildings the goal shall be a reduction of 20 percent in the average annual energy use per gross square foot of floor area in 1985 from the average energy use per gross square foot of floor area in 1975. This goal shall apply to all buildings for which construction was or design specifications were completed prior to the date of promulgation of the guidelines pursuant to subsection (d) of this Section.

(2) For the total of all Federally-owned new buildings the goal shall be a reduction of 45 percent in the average annual energy requirement per gross square foot of floor area in 1985 from the average annual energy use per gross square foot of floor area in 1975. This goal shall apply to all new buildings for which design specifications are completed after the date of promulgation of the guidelines pursuant to subsection (d) of this Section.

(c) The Secretary with the concurrence of the Director of the Office of Management and Budget, in consultation with the heads of the Executive agencies specified in subsection (a) and the Director of the National Bureau of Standards, shall establish, for purposes of developing the ten-year plan, a practical and effective method for estimating and comparing life cycle capital and operating costs for Federal buildings, including residential, commercial, and industrial type categories. Such method shall be consistent with the Office of Management and Budget Circular No. A-94, and shall be adopted and used by all agencies in developing their plans pursuant to subsection (e), annual reports pursuant to subsection (g), and budget estimates pursuant to subsection (h). For purposes of this paragraph, the term "life cycle cost" means the total costs of owning, operating, and maintaining a building over its economic life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems.

(d) Not later than November 1, 1977, the Secretary, with the concurrence of the Director of the Office of Management and Budget, and after consultation with the Administrator of General Services and the heads of the Executive agencies specified in subsection (a) shall issue guidelines for the plans to be submitted pursuant to subsection (e).

(e)(1) The head of each Executive agency that maintains any existing building or will maintain any new building shall submit no later than six months after the issuance of guidelines pursuant to subsection (d), to the Secretary a ten-year plan designed to the maximum extent practicable to meet the goals in subsection (b) for the total of existing or new Federal buildings. Such ten-year plans shall only consider improvements that are cost-effective consistent with the criteria established by the Director of the Office of Management and Budget (OMB Circular A-94) and the method established pursuant to subsection (c) of this Section. The plan submitted shall specify appropriate energy-saving initiatives and shall estimate the expected improvements by fiscal year in terms of specific accomplishments—energy savings and cost savings—together with the estimated costs of achieving the savings.

(2) The plans submitted shall, to the maximum extent practicable, include the results of preliminary energy audits of all existing buildings with over 30,000 gross square feet of space owned and maintained by Executive agencies. Further, the second annual report submitted under subsection (g)(2) of this Section shall, to the maximum extent practicable, include the results of preliminary energy audits of all existing buildings with more than 5,000 but not more than 30,000 gross square feet of space. The purpose of such preliminary energy audits shall be to identify the type, size, energy use level and major energy using systems of existing Federal buildings.

(3) The Secretary shall evaluate agency plans relative to the guidelines established pursuant to subsection (d) for such plans and relative to the cost estimating method established pursuant to subsection (c). Plans determined to be deficient by the Secretary will be returned to the submitting agency head for revision and resubmission within 60 days.

(4) The head of any Executive agency submitting a plan, should he disagree with the Secretary's determination with respect to that plan, may appeal to the Director of the Office of Management and Budget for resolution of the disagreement.

(f) The head of each agency submitting a plan or revised plan determined not deficient by the Secretary or, on appeal, by the Director of the Office of Management and Budget, shall implement the plan in accord with approved budget estimates.

(g)(1) Each Executive agency shall submit to the Secretary an overall plan for conserving fuel and energy in all operations of the agency. This overall plan shall be in addition to and include any ten-year plan for energy conservation in Government buildings submitted in accord with Subsection (e).

(2) By July 1 of each year, each Executive agency shall submit a report to the Secretary on progress made toward achieving the goals established in the overall plan required by paragraph (1) of this subsection. The annual report shall include quantitative measures and accomplishment with respect to energy saving actions taken, the cost of these actions, the energy saved, the costs saved, and other benefits realized.

(3) The Secretary shall prepare a consolidated annual report on Federal government progress toward achieving the goals, including aggregate quantitative measures of accomplishment as well as suggested revisions to the ten-year plan, and submit the report to the President by August 15 of each year.

(h) Each agency required to submit a plan shall submit to the Director of the Office of Management and Budget with the agency's annual budget submission, and in accordance with procedures and requirements that the Director shall establish, estimates for implementation of the agency's plan. The Director of the Office of Management and Budget shall consult with the Secretary about the agency budget estimates.

(i) Each agency shall program its proposed energy conservation improvements of buildings so as to give the highest priority to the most cost-effective projects.

(j) No agency of the Federal government may enter into a lease or a commitment to lease a building the construction of which has not commenced by the effective date of this Order unless the building will likely meet or exceed the general goal set forth in subsection (b)(2).

(k) The provisions of this Section do not apply to housing units repossessed by the Federal Government.

Cross References

Emergency energy conservation, see section 8501 et seq. of this title.

Energy conservation for existing buildings, see section 6851 et seq. of this title.

Energy conservation standards for new buildings, see section 6831 et seq. of this title.

Federal buildings, energy conservation, see sections 8241 et seq. and 8251 et seq. of this title.

Photovoltaic solar electric systems, Federal utilization, see section 8271 et seq. of this title.

Powerplant and industrial fuel use, see section 8301 et seq. of this title.

Residential energy conservation, see section 8211 et seq. of this title.

Solar energy heating, cooling, research, development, and demonstration, see section 5501 et seq. of this title.

§ 6202. Definitions

As used in this chapter:

(1) The term "Secretary" means the Secretary of energy.

[*See main edition for text of (2) of (10)*]

(As amended Pub. L. 95-619, title VI, § 691(a), Nov. 9, 1978, 92 Stat. 3287.)

AMENDMENTS

1978—Par. (1). Pub. L. 95-619 substituted a definition of the term "Secretary" as meaning the Secretary of Energy for a definition of the term "Administrator" as meaning the Administrator of the Federal Energy Administration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6341, 8374, 8502 of this title; title 15 sections 760d, 760e.

SUBCHAPTER I—DOMESTIC SUPPLY AVAILABILITY

PART A—DOMESTIC SUPPLY

§ 6211. Incentives to develop underground coal mines

(a) Loan guarantees

The Secretary may, in accordance with subsection (b) of this section and rules prescribed under subsection (d) of this section, guarantee loans made to eligible persons described in subsection (c)(1) of this section for the purpose of developing new underground coal mines.

(b) Secretary's determinations prerequisite to loan guarantee; maximum guarantees; aggregate outstanding guaranteed loans; new underground coal mines

(1) A person may receive for a loan guarantee under subsection (a) of this section only if the Secretary determines that—

[*See main edition for text of (A) to (C)*]

(D) such person has obtained a contract, of at least the duration of the period during which the loan is required to be repaid, for the sale or resale of coal to be produced from such mine to a person who the Administrator of the Environmental Protection Agency certifies will be able to burn such coal in compliance with all applicable requirements of the Clean Air Act [42 U.S.C. 7401 et seq.], and of any applicable implementation plan (as defined in section 110 of such Act) [42 U.S.C. 7410].

[*See main edition for text of (E) to (H); (2) and (3)*]

(c) Construction and definition of terms

For purposes of this section—

[*See main edition for text of (1)*]

(2) A person is affiliated with another person if he controls, is controlled by, or is under common control with such other person, as such term may be further defined by rule by the Secretary.

[*See main edition for text of (3)*]

(4) The term "developing new underground coal mine" includes expansion of any existing underground coal mine in a manner designed to increase the rate of production of such mine, and the reopening of any underground coal mine which had previously been closed. Such term also includes construction of a coal preparation plant which is designed to reduce the sulfur content of coal produced from any coal mine.

(d) Rules and regulations

The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out this section. Such rules shall require that each application for a guarantee under this section shall be made in writing to the Secretary in such form and with such content and other submissions as the Secretary shall require, in order reasonably to protect the interests of the United States. Each guarantee shall be issued in accordance with subsections (a) through (c) of this section, and—

(1) under such terms and conditions as the Secretary, in consultation with the Secretary of the Treasury, considers appropriate;

(2) with such provisions with respect to the date of issue of such guarantee as the Secretary, with the concurrence of the Secretary of the Treasury, considers appropriate, except that the required concurrence of the Secretary of the Treasury may not, without the consent of the Secretary, result in a delay in the issuance of such guarantee for more than 60 days; and

(3) in such form as the Secretary considers appropriate.

(e) Recordkeeping

Each person who receives a loan guarantee under this section shall keep such records as the Secretary or the Secretary of the Treasury shall require, including records which fully disclose the total cost of the project for which a loan is guaranteed under this section and such other records as the Secretary or the Secretary of the Treasury determines necessary to facilitate an effective audit and performance evaluation. The Secretary, the Secretary of the Treasury, and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination to any pertinent books, documents, papers, and records of any person who receives a loan guarantee under this section.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 95-620, title VIII, § 802, Nov. 9, 1978, 92 Stat. 3347.)

REFERENCES IN TEXT

The Federal Coal Mine Health and Safety Act, referred to in subsec. (b)(1)(B), probably means the Federal Coal Mine Health and Safety Act of 1969, Pub. L. 91-173, Dec. 30, 1969, 83 Stat. 742, as amended, which is classified generally to chapter 22 (§ 801 et seq.) of Title 30, Mineral Lands and Mining. The Act was redesignated the Federal Mine Safety and Health Act of 1977 by Pub. L. 95-164, § 101, Nov. 9, 1977, 91 Stat. 1290. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 30 and Tables.

The Clean Air Act, referred to in subsec. (b)(1)(D), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see short Title note set out under section 7401 of this title and Tables.

Codification

Subsec. (b)(1)(D) is set out in this supplement to reflect the current citation for the Clean Air Act, which was reclassified to chapter 85 (§ 7401 et seq.) of this title on enactment of Pub. L. 95-95.

Amendments

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

Subsec. (c)(4). Pub. L. 95-620 inserted provision expanding the term "developing new underground coal mine" to include construction of a coal preparation plant designed to reduce the sulfur content of coal produced from any coal mine.

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-620 effective 180 days after Nov. 9, 1978, see section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

§ 6212. Domestic use of energy supplies and related materials and equipment

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Implementing restrictions

In order to implement any rule promulgated under subsection (a) of this section, the President may request and, if so, the Secretary of Commerce shall, pursuant to the procedures established by the Export Administration Act of 1979 [50 App. U.S.C. 2401 et seq.] (but without regard to the phrase "and to reduce the serious inflationary impact of foreign demand" in section 3(2)(C) of such Act [50 App. U.S.C. 2402(2)(C)]), impose such restrictions as specified in any rule under subsection (a) of this section on exports of coal, petroleum products, natural gas, or petrochemical feedstocks, and such supplies of materials and equipment.

[*See main edition for text of* (*d*) *to* (*f*)]

(As amended Pub. L. 96-72, § 22(b)(1), Sept. 29, 1979, 93 Stat. 535.)

References in Text

The Export Administration Act of 1979, referred to in subsec. (c), is Pub. L. 96-72, Sept. 29, 1979, 93 Stat. 503, which is classified principally to sections 2401 to 2420 of the Appendix to Title 50, War and National Defense. For complete classification of this Act to the Code, see Short Title note set out under section 2401 of the Appendix to Title 50 and Tables.

The Export Administration Act of 1969, referred to in subsec. (e)(3), is Pub. L. 91-184, Dec. 30, 1969, 83 Stat. 841, as amended, which was formerly classified to sections 2401 to 2413 of the Appendix to Title 50 and was terminated on Sept. 30, 1979, pursuant to the terms of that Act.

Amendments

1979—Subsec. (c). Pub. L. 96-72 substituted "1979" for "1969" and "(C)" for "(A)".

Effective Date of 1979 Amendment

Amendment by Pub. L. 96-72 effective upon the expiration of the Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which the Congress by concurrent resolution or the President by proclamation designated, see section 2418 of the Appendix to Title 50, War and National Defense.

§ 6213. Certain lease bidding arrangements prohibited

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Exemptions

The Secretary may, in his discretion, consider a request from any person described in subsection (a) of this section for an exemption from the prohibition of this section. In considering any such request, the Secretary may exempt bidding for leases for lands in any area only if the Secretary finds, on the record after opportunity for an agency hearing, that—

(1) such lands have extremely high cost exploration or development problems; and

(2) exploration and development will not occur on such lands unless such exemption is granted.

Findings of the Secretary under this subsection shall be final, and shall not be invalidated unless found to be arbitrary or capricious.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended Pub. L. 95-372, title II, § 205(c), Sept. 18, 1978, 92 Stat. 646.)

Amendments

1978—Subsec. (c). Pub. L. 95-372 substituted "in his discretion, consider a request from any person described in subsection (a) of this section for an exemption from the prohibition of this section" for "by amendment to the rule, exempt bidding for leases for lands located in frontier or other areas determined by the Secretary to be extremely high risk lands or to present unusually high cost exploration, or development, problems" in the existing provisions and added provisions setting out the requisite finding of the Secretary and making arbitrariness and capriciousness of the Secretary's findings the only bases for invalidation of those findings.

Transfer of Functions

The functions of the Secretary of the Interior to promulgate regulations under this chapter relating to the fostering of competition for Federal leases and to the implementation of alternative bidding systems authorized for the award of Federal leases were transferred to the Secretary of Energy by section 7152(b) of this title.

Section Referred to in Other Sections

This section is referred to in section 7172 of this title.

§ 6214. Production of oil or gas at the maximum efficient rate and temporary emergency production rate

TRANSFER OF FUNCTIONS

The functions of the Secretary of the Interior to promulgate regulations under this chapter relating to the setting of rates for production of Federal leases to establish production rates for all Federal leases were transferred to the Secretary of Energy by section 7152(b) and (c) of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7172 of this title.

§ 6215. Major fuel burning stationary source

(a) Restrictions on issuance of orders or rules by Governor pursuant to section 7425 of this title

No Governor of a State may issue any order or rule pursuant to section 7425 of this title to any major fuel burning stationary source (or class or category thereof)—

(1) prohibiting such source from using fuels other than locally or regionally available coal or coal derivatives, or

(2) requiring such source to enter into a contract (or contracts) for supplies of locally or regionally available coal or coal derivatives.

(b) Petition to President

(1) The Governor of any State may petition the President to exercise the President's authorities pursuant to section 7425 of this title with respect to any major fuel burning stationary source located in such State.

(2) Any petition under paragraph (1) shall include documentation which could support a finding that significant local or regional economic disruption or unemployment would result from use by such source of—

(A) coal or coal derivatives other than locally or regionally available coal,

(B) petroleum products,

(C) natural gas, or

(D) any combination of fuels referred to in subparagraphs (A) through (C), to comply with the requirements of a State implementation plan pursuant to section 7410 of this title.

(c) Action to be taken by President

Within 90 days after the submission of a Governor's petition under subsection (b) of this section, the President shall either issue an order or rule pursuant to section 7425 of this title or deny such petition, stating in writing his reasons for such denial. In making his determination to issue such an order or rule pursuant to this subsection, the President must find that such order or rule would—

(1) be consistent with section 7425 of this title;

(2) result in no significant increase in the consumption of energy;

(3) not subject the ultimate consumer to significantly higher energy costs; and

(4) not violate any contractual relationship between such source and any supplier or transporter of fuel to such source.

(d) Effect on authority of President to allocate coal or coal derivatives

Nothing in subsection (a) or (b) of this section shall affect the authority of the President or the Secretary of the Department of Energy to allocate coal or coal derivatives under any provision of law.

(e) Definitions

The terms "major fuel burning stationary source (or class or category thereof)" and "locally or regionally available coal or coal derivatives" shall have the meanings assigned to them for the purposes of section 7425 of this title.

(Pub. L. 94-163, title I, § 107, as added Pub. L. 95-619, title VI, § 661, Nov. 9, 1978, 92 Stat. 3285.)

PART B—STRATEGIC PETROLEUM RESERVE

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 10 section 7430; title 12 section 1701z-8.

§ 6233. Strategic Petroleum Reserve Office

There is established, in the Federal Energy Administration, a Strategic Petroleum Reserve Office. The Secretary, acting through such Office and in accordance with this part, shall exercise authority over the establishment, management, and maintenance of the Reserve.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration.

§ 6234. Strategic Petroleum Reserve

[*See main edition for text of* (*a*)]

(b) Strategic Petroleum Reserve Plan

The Secretary, not later than December 15, 1976, shall prepare and transmit to the Congress, in accordance with section 6421 of this title, a Strategic Petroleum Reserve Plan. Such Plan shall comply with the provisions of this section and shall detail the Secretary's proposals for designing, constructing, and filling the storage and related facilities of the Reserve.

[*See main edition for text of* (*c*)]

(d) Plan objectives

The Strategic Petroleum Reserve Plan shall be designed to assure, to the maximum extent practicable, that the Reserve will minimize the impact of any interruption or reduction in imports of refined petroleum products and residual fuel oil in any region which the Secretary determines is, or is likely to become, dependent upon such imports for a substantial portion of the total energy requirements of such region. The Strategic Petroleum Reserve Plan shall be designed to assure, to the maximum extent practicable, that each noncontiguous area of the United States which does not have overland access to domestic crude oil production has its component of the Strategic Petroleum Reserve within its respective territory.

[*See main edition for text of* (e)]

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsecs. (b), (d). Pub. L. 95-619 substituted "Secretary" and "Secretary's" for "Administrator" and "Administrator's", meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6235. Early Storage Reserve

(a) Establishment; design; ownership of stored petroleum products; minimum number of barrels of petroleum products in Reserve if Strategic Petroleum Reserve Plan has not become effective

(1) The Secretary shall establish an Early Storage Reserve as part of the Strategic Petroleum Reserve. The Early Storage Reserve shall be designed to store petroleum products, to the maximum extent practicable, in existing storage capacity. Petroleum products stored in the Early Storage Reserve may be owned by the United States or may be owned by others and stored pursuant to section 6236(b) of this title.

[*See main edition for text of* (2)]

(b) Meeting regional needs for residual fuel oil and refined petroleum products

The Early Storage Reserve shall provide for meeting regional needs for residual fuel oil and refined petroleum products in any region which the Secretary determines is, or is likely to become, dependent upon imports of such oil or products for a substantial portion of the total energy requirements of such region.

(c) Early Storage Reserve Plan

Within 90 days after December 22, 1975, the Secretary shall prepare and transmit to the Congress an Early Storage Reserve Plan which shall provide for the storage of not less than 150 million barrels of petroleum products by the end of 3 years from December 22, 1975. Such plan shall detail the Secretary's proposals for implementing the Early Storage Reserve requirements of this section. The Early Storage Reserve Plan shall, to the maximum extent practicable, provide for, and set forth the manner in which, Early Storage Reserve facilities will be incorporated into the Strategic Petroleum Reserve after the Strategic Petroleum Reserve Plan has become effective under section 6239(a) of this title. The Early Storage Reserve Plan shall include, with respect to the Early Storage Reserve, the same or similar assessments, statements, estimates, evaluations, projections, and other information which section 6234(e) of this title requires to be included in the Strategic Petroleum Reserve Plan, including a Distribution Plan for the Early Storage Reserve.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" and "Secretary's" for "Administrator" and "Administrator's", respectively, meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6236. Industrial Petroleum Reserve

(a) Establishment

The Secretary may establish an Industrial Petroleum Reserve as part of the Strategic Petroleum Reserve.

(b) Amounts of petroleum products required to be stored by importers and refiners; exemption of products from tariff or import license fee

To implement the Early Storage Reserve Plan or the Strategic Petroleum Reserve Plan which has taken effect pursuant to section 6239(a) of this title, the Secretary may require each importer of petroleum products and each refiner to (1) acquire, and (2) store and maintain in readily available inventories, petroleum products in amounts determined by the Secretary, except that the Secretary may not require any such importer or refiner to store such petroleum products in an amount greater than 3 percent of the amount imported or refined by such person, as the case may be, during the previous calendar year. Petroleum products imported and stored in the Industrial Petroleum Reserve shall be exempt from any tariff or import license fee.

(c) Implementation of section by Secretary

The Secretary shall implement this section in a manner which is appropriate to the maintenance of an economically sound and competitive petroleum industry. The Secretary shall take such steps as are necessary to avoid inequitable economic impacts on refiners and importers, and he may grant relief to any refiner or importer who would otherwise incur special hardship, inequity, or unfair distribution of burdens as the result of any rule, regulation, or order promulgated under this section. Such relief may include full or partial exemption from any such rule, regulation, or order and the issuance of an order permitting such an importer or refiner to store petroleum products owned by such importer or refiner in surplus storage capacity owned by the United States.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6237. Regional Petroleum Reserve

(a) Federal Energy Administration Regions in which Reserve may be established and maintained

The Strategic Petroleum Reserve Plan shall provide for the establishment and maintenance of a Regional Petroleum Reserve in, or readily accessible to, each Federal Energy Administration Region, as defined in title 10, Code of Federal Regulations in effect on November 1, 1975, in which imports of residual fuel oil or any refined petroleum product, during the 24-month period preceding the date of computation, equal more than 20 percent of demand for such oil or product in such regions during such period, as determined by the Secretary. Such volume shall be computed annually.

(b) Level of Reserve

To implement the Strategic Petroleum Reserve Plan, the Secretary shall accumulate and maintain in or near any such Federal Energy Administration Region described in subsection (a) of this section, a Regional Petroleum Reserve containing volumes of such oil or product, described in subsection (a) of this section, at a level adequate to provide substantial protection against an interruption or reduction in imports of such oil or product to such region, except that the level of any such Regional Petroleum Reserve shall not exceed the aggregate volume of imports of such oil or product into such region during the period of the 3 consecutive months, during the 24-month period specified in subsection (a) of this section, in which average monthly import levels were the highest, as determined by the Secretary. Such volume shall be computed annually.

(c) Substitutions for all or part of volume stored in Reserve

The Secretary may place in storage crude oil, residual fuel oil, or any refined petroleum product in substitution for all or part of the volume of residual fuel oil or any refined petroleum product stored in any Regional Petroleum Reserve pursuant to the provisions of this section if he finds that such substitution (1) is necessary or desirable for purposes of economy, efficiency, or for other reasons, and (2) may be made without delaying or otherwise adversely affecting the fulfillment of the purpose of the Regional Petroleum Reserve.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 6238. Utility Reserves; Coal Reserves; Remote Crude Oil and Natural Gas Reserves

Within 6 months after the Strategic Petroleum Reserve Plan is transmitted to the Congress, pursuant to the requirements of section 6234(b) of this title, the Secretary shall prepare and transmit to the Congress a report setting forth his recommendations concerning the necessity for, and feasibility of, establishing—

[*See main edition for text of* (*1*) *to* (*3*)]

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator" meaning the Administrator of the Federal Energy Administration.

§ 6239. Congressional review of Strategic Petroleum Reserve Plan; implementation

(a) Congressional review of Strategic Petroleum Reserve Plan as prerequisite to implementation

The Strategic Petroleum Reserve Plan shall not become effective and may not be implemented, unless—

(1) the Secretary has transmitted such Plan to the Congress pursuant to section 6234(b) of this title; and

[*See main edition for text of* (*2*); (*b*)]

(c) Preparation and transmittal to Congress of proposals for designing, constructing, and filling storage or related facilities; statement accompanying proposal

The Secretary may, prior to transmittal of the Strategic Petroleum Reserve Plan, prepare and transmit to the Congress proposals for designing, constructing, and filling storage or related facilities. Any such proposal shall be accompanied by a statement explaining (1) the need for action on such proposals prior to completion of such Plan, (2) the anticipated role of the proposed storage or related facilities in such Plan, and (3) to the maximum extent practicable, the same or similar assessments, statements, estimates, evaluations, projections, and other information which section 6234(e) of this title requires to be included in the Strategic Petroleum Reserve Plan.

(d) Preparation and transmittal to Congress of amendments to Strategic Petroleum Reserve Plan or Early Storage Reserve Plan; statement accompanying amendment

The Secretary may prepare amendments to the Strategic Petroleum Reserve Plan or to the Early Storage Reserve Plan. He shall transmit any such amendment to the Congress together with a statement explaining the need for such amendment and, to the maximum extent practicable, the same or similar assessments, statements, estimates, evaluations, projections, and other information which section 6234(e) of this title requires to be included in the Strategic Petroleum Reserve Plan.

(e) Congressional review of proposals and amendments as prerequisite to implementation

Any proposal transmitted under subsection (c) of this section and any amendment transmitted under subsection (d) of this section, other than a technical or clerical amendment or an amendment to the Early Storage Reserve Plan, shall not become effective and may not be implemented unless—

(1) the Secretary has transmitted such proposal or amendment to the Congress in accordance with subsection (c) or (d) of this section (as the case may be), and

[*See main edition for text of* (*2*)]

(f) Powers of Secretary in implementing Strategic Petroleum Reserve Plan, Early Storage Reserve Plan, proposals, and amendments

To the extent necessary or appropriate to implement—

[*See main edition for text of* (*1*) *to* (*4*)]

the Secretary may:

[*See main edition for text of* (*A*) *to* (*H*)]

(I) require the storage of petroleum products in the Industrial Petroleum Reserve, pursuant to section 6236 of this title, on such reasonable terms as the Secretary may specify in storage facilities owned and controlled by the United States or in storage facilities other than those owned by the United States if such facilities are subject to audit by the United States;

[*See main edition for text of* (*J*) *to* (*L*)]

(g) Acquisition of property by negotiation as prerequisite to condemnation

Before any condemnation proceedings are instituted, an effort shall be made to acquire the property involved by negotiation, unless, the effort to acquire such property by negotiation would, in the judgement of the Secretary be futile or so time-consuming as to unreasonably delay the implementation of the Strategic Petroleum Reserve Plan, because of (1) reasonable doubt as to the identity of the owners, (2) the large number of persons with whom it would be necessary to negotiate, or (3) other reasons.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsecs. (a)(1), (c), (d), (e)(1), (f), (f)(I), (g). Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6240. Petroleum products for storage; objectives in determining manner of acquisition

(a) The Secretary is authorized, for purposes of implementing the Strategic Petroleum Reserve Plan or the Early Storage Reserve Plan, to place in storage, transport, or exchange—

[*See main edition for text of* (*1*) *to* (*3*)]

(b) The Secretary shall, to the greatest extent practicable, acquire petroleum products for the Reserve, including the Early Storage Reserve and the Regional Petroleum Reserve in a manner consonant with the following objectives:

[*See main edition for text of* (*1*) *to* (*5*)]

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6241. Drawdown and distribution of Reserve

(a) Power of Secretary

The Secretary may drawdown and distribute the Reserve only in accordance with the provisions of this section.

[*See main edition for text of* (*b*) *to* (*d*)]

(e) Price levels and allocation procedures

The Secretary may, by rule, provide for the allocation of any petroleum product withdrawn from the Strategic Petroleum Reserve in amounts specified in (or determined in a manner prescribed by) and at prices specified in (or determined in a manner prescribed by) such rules. Such price levels and allocation procedures shall be consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 753(b)(1) of title 15.

(f) Removal or disposal of products in Industrial Petroleum Reserve

The Secretary may permit any importer or refiner who owns any petroleum products stored in the Industrial Petroleum Reserve pursuant to section 6236 of this title to remove or otherwise dispose of such products upon such terms and conditions as the Secretary may prescribe.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsecs. (a), (e), (f). Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6243. Records and accounts

(a) Preparation and maintenance

The Secretary may require any person to prepare and maintain such records or accounts as the Secretary, by rule, determines necessary to carry out the purposes of this part.

(b) Audit of operations of storage facility

The Secretary may audit the operations of any storage facility in which any petroleum product is stored or required to be stored pursuant to the provisions of this part.

(c) Access to and inspection of records or accounts and storage facilities

The Secretary may require access to, and the right to inspect and examine, at reasonable times, (1) any records or accounts required to be prepared or maintained pursuant to subsection (a) of this section and (2) any storage facilities subject to audit by the United States under the authority of this part.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6244. Report on development of Naval Petroleum Reserve Number 4

The Secretary shall, in cooperation and consultation with the Secretary of the Navy and the Secretary of the Interior, develop and submit to the Committees on Interior and Insular Affairs of the Senate and House of Representatives within 180 days after December 22, 1975, a written report recommending procedures for the exploration, development, and production of Naval Petroleum Reserve

Number 4. Such report shall include recommendations for protecting the economic, social, and environmental interests of Alaska Natives residing within the Naval Petroleum Reserve Number 4 and analyses of arrangements which provide for (1) participation by private industry and private capital, and (2) leasing to private industry. The Secretary of the Navy and the Secretary of the Interior shall cooperate fully with one another and with the Secretary; the Secretary of the Navy shall provide to the Secretary and Secretary of the Interior all relevant data on Naval Petroleum Reserve Number 4 in order to assist the Secretary in the preparation of such report.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6245. Annual report

The Secretary shall report to the President and the Congress, not later than one year after the transmittal of the Strategic Petroleum Reserve Plan to the Congress and each year thereafter, on all actions taken to implement this part. Such report shall include—

[*See main edition for text of (1) to (4)*]

(5) any recommendations for supplemental legislation deemed necessary or appropriate by the Secretary to implement the provisions of this part.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6246. Authorization of appropriations

There are authorized to be appropriated—

(1) such funds as are necessary to develop and implement the Early Storage Reserve Plan (including planning, administration, acquisition, and construction of storage and related facilities) and as are necessary to permit the acquisition of petroleum products for storage in the Early Storage Reserve or, if the Strategic Petroleum Reserve Plan has become effective under section 6239(a) of this title, for storage in the Strategic Petroleum Reserve in the minimum volume specified in section 6234(a) or 6235(a)(2) of this title, whichever is applicable;

(2) $1,100,000,000 to remain available until expended to carry out the provisions of this part to develop the Strategic Petroleum Reserve Plan and to implement such plan which has taken effect pursuant to section 6239(a) of this title, including planning, administration, and acquisition and construction of storage and related facilities, but no funds are authorized to be appropriated under this paragraph for the purchase of petroleum products for storage in the Strategic Petroleum Reserve; and

(3) such funds for the fiscal year ending September 30, 1978, not to exceed $1,210,000,000, as are necessary to permit the acquisition and storage of petroleum products in the Strategic Petroleum Reserve, in accordance with the storage schedule set forth in the Strategic Petroleum Reserve Plan then in effect in excess of the minimum volume specified in section 6234(a) of this title, but not in excess of 500,000,000 barrels.

(As amended Pub. L. 95-70, § 4, July 21, 1977, 91 Stat. 277.)

AMENDMENTS

1977—Par. (3). Pub. L. 95-70 added par. (3).

SUBCHAPTER II—STANDBY ENERGY AUTHORITIES

PART A—GENERAL EMERGENCY AUTHORITIES

§ 6261. Contingency plans

[*See main edition for text of (a)*]

(b) Prerequisites to plan becoming effective

Except as otherwise provided in subsection (c) of this section, no energy conservation contingency plan may become effective, unless—

[*See main edition for text of (1) to (3)*]

(c) Amendment of plan

(1) Except as provided in paragraph (2) or (3), an energy conservation contingency plan may not be amended unless the President has transmitted such amendment to the Congress in accordance with section 6422 of this title and each House of Congress has approved such amendment in accordance with the procedures specified in section 6422 of this title.

(2) An amendment to an energy conservation contingency plan which is transmitted to the Congress during any period in which such plan is in effect may take effect if the President has transmitted such amendment to the Congress in accordance with section 6421(b) of this title and neither House of Congress has disapproved (or both Houses have approved) such amendment in accordance with the procedures specified in section 6421 of this title.

(3) The President may prescribe technical or clerical amendments to an energy conservation contingency plan in accordance with section 6393 of this title.

(d) Plan approval and implementation

(1) For purposes of this subsection, any rationing contingency plan shall be considered to be approved if—

(A) the President has transmitted such rationing contingency plan to the Congress in accordance with section 6422 of this title, and

(B) such rationing contingency plan has not been disapproved by a joint resolution adopted into law after passage by both Houses of the Congress in accordance with section 6422 of this title.

(2)(A) Except to the extent provided under subparagraph (B), the President may put into effect a rationing contingency plan which is considered approved under the preceding provisions of this subsection only if—

(i) the President has found, in his discretion, that putting such rationing contingency plan into effect is required by a severe energy supply interruption or is necessary to comply with obligations of the United States under the international energy program, subject to paragraph (3);

(ii) the President has transmitted such finding to the Congress in accordance with section 6421 of this title, together with a request to put such rationing contingency plan into effect; and

(iii) neither House of the Congress has disapproved (or both Houses have approved) such request in accordance with the procedures specified in section 6421 of this title.

(B)(i) The President may put into effect such an approved rationing plan without the finding required under subparagraph (A)(i) (and without regard to the requirements of subparagraph (A)(ii) and (iii)) if—

(I) the President has transmitted to the Congress in accordance with section 6422 of this title a request to waive such requirements; and

(II) such request has been approved by a resolution by each House of the Congress within 30 days of continuous session of Congress after the date of its transmittal, in accordance with the provisions of section 6422 of this title applicable thereunder to energy conservation contingency plans.

(ii) Any authority to put a rationing contingency plan into effect under clause (i) pursuant to a request under such clause shall terminate on the 60th calendar day after the date on which a resolution approving that request is adopted by the second House to have so approved that request.

(iii) In applying the provisions of section 6422 of this title for purposes of this subparagraph—

(I) subsections (b), (d)(2)(B), and (d)(7) shall not apply;

(II) the references to 60 calendar days and 20 calendar days shall be considered to refer to 30 calendar days and 10 calendar days, respectively; and

(III) the references to any contingency plan shall be considered to refer to a request under this subparagraph.

(3) For purposes of paragraph (2)—

(A) The term "severe energy supply interruption" means a national energy supply shortage which the President determines—

(i) has resulted or is likely to result in a daily shortfall in the United States of gasoline, diesel fuel, and No. 2 heating oil supplies for a period in excess of 30 days (including reductions as a result of an allocation away from the United States under the international energy program) of an amount equal to 20 percent or more of projected daily demand for such supplies;

(ii) is not manageable under other energy emergency authorities, including any energy conservation contingency plans approved under subsection (b) of this section and any emergency conservation authority available under title II of the Emergency Energy Conservation Act of 1979 [42 U.S.C. 8501 et seq.];

(iii) is expected to persist for a period of time sufficient to seriously threaten the adequacy of domestic stocks of gasoline, diesel fuel, and No. 2 heating oil; and

(iv) is having or can reasonably be expected to have a major adverse impact on national health or safety or the national economy.

(B) For purposes of determining the shortfall of supplies under subparagraph (A)(i), the projected daily demand for gasoline, diesel fuel, and No. 2 heating oil supplies shall be the amount of such supplies that were available during any consecutive period of 12 calendar months which the President considers appropriate and which occurred during the 36 calendar month period which immediately precedes the month in which such finding is made, such amount to be adjusted—

(i) to take into account, for the period between the base period and the month in which the determination is made, the normal growth in demand for gasoline, diesel fuel, and No. 2 heating oil, as determined by the President on the basis of growth experienced during the 36-month period from which the base period was selected; and

(ii) to take into account seasonal variations in demand for such fuels, as determined by the President.

(C) The term "necessary to comply with obligations of the United States under the international energy program" refers to a necessity which the President determines to have impacts comparable to those provided for in subparagraph (A) of this paragraph.

(4)(A) A rationing contingency plan may not be amended after it is transmitted to the Congress and before it is considered approved under paragraph (1).

(B) Except as provided in subparagraphs (C) and (D), a rationing contingency plan which is considered approved under this subsection may not be amended other than by an amendment with respect to which—

(i) a period of 15 calendar days of continuous session (within the meaning of section 6422(c) of this title has passed after the receipt of the proposed amendment by the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate; or

(ii) each such committee before the expiration of such period has transmitted to the President written notice stating in substance that such committee has no objection to the proposed amendment.

(C) Except as provided in subparagraph (D), a rationing contingency plan may not be amended during any period in which such plan is in effect pursuant to paragraph (2) unless the President has transmitted such amendment to the Congress in accordance with section 6421(b) of this title, and neither House of Congress has disapproved (or both Houses have approved) such amendment in accordance with the procedures specified in section 6421 of this title.

(D) The requirements of subparagraphs (B) and (C) shall not apply with respect to any amendment which is a technical or clerical amendment.

(e) Statement accompanying transmittal of plan to Congress; elimination of certain administrative requirements

Any contingency plan which the President transmits to the Congress pursuant to subsection (b)(1) or (d)(1) of this section shall contain a specific statement explaining the need for and the rationale and operation of such plan and shall be based upon a consideration of, and to the extent practicable, be accompanied by an evaluation of, the potential economic impacts of such plan, including an analysis of—

(1) any effects of such plan on—

(A) vital industrial sectors of the economy;

(B) employment (on a national and regional basis);

(C) the economic vitality of States and regional areas;

(D) the availability and price of consumer goods and services; and

(E) the gross national product; and

(2) any potential anticompetitive effects.

Notwithstanding the preceding provisions of this subsection, such economic analysis and evaluation is not required to be performed, or transmitted to the Congress, under this subsection in the case of any rationing contingency plan.

(As amended Pub. L. 96-102, title I, §§ 103(b)(1), (c)(1), 105(a)(1)-(3), (5), Nov. 5, 1979, 93 Stat. 751, 755, 756.)

REFERENCES IN TEXT

The Emergency Energy Conservation Act of 1979, referred to in subsec. (d)(3)(A)(ii), is Pub. L. 96-102, Nov. 5, 1979, 93 Stat. 749. Title II of the Emergency Energy Conservation Act of 1979 is classified generally to chapter 93 (§ 8501 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 8501 of this title and Tables.

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-102, § 105(a)(2), substituted "Except as otherwise provided in subsection (c) of this section, no energy conservation contingency plan may become effective" for "Except as otherwise provided in subsection (d) or (e) and subject to the requirements of subsection (c), no contingency plan may become effective".

Subsec. (c). Pub. L. 96-102, § 105(a)(1), (3), redesignated former subsec. (d) as (c) and, as so redesignated, substituted "an energy conservation contingency plan" for "a contingency plan" wherever appearing. Former subsec. (c), relating to additional prerequisites for rationing contingency plans, was struck out.

Subsec. (d). Pub. L. 96-102, §§ 103(b)(1), 105(a)(1), redesignated former subsec. (e) as (d) and, as so redesignated, substituted provisions relating to approval and implementation of any rationing contingency plan for provisions relating to implementation of a temporary contingency plan. Former subsec. (d) redesignated (c).

Subsec. (e). Pub. L. 96-102, §§ 103(c)(1), 105(a)(1), (5), redesignated former subsec. (f) as (e) and, as so redesignated, added provisions eliminating certain administrative requirements under this subsection in the case of any rationing contingency plan and substituted "or (d)(1)" for "or (e)(1)(B)". Former subsec. (e) redesignated (d).

Subsec. (f). Pub. L. 96-102, § 105(a)(1), redesignated former subsec. (f) as (e).

EFFECTIVE DATE OF 1979 AMENDMENT

Section 302 of Pub. L. 96-102 provided that: "The amendments made by this Act [enacting chapter 93 of this title, amending this section and sections 6262, 6263, and 6422 of this title, and enacting provisions set out as notes under this section and section 8501 of this title] shall take effect on the date of the enactment of this Act [Nov. 5, 1979]."

CONGRESSIONAL FINDINGS

Section 101 of Pub. L. 96-102 provided that:

"The Congress finds that—

"(1) a standby rationing plan for gasoline and diesel fuel should provide, to the maximum extent practicable, that the burden of reduced supplies of gasoline and diesel fuel be shared by all persons in a fair and equitable manner and that the economic and social impacts of such plan be minimized; and

"(2) such a plan should be sufficiently flexible to respond to changed conditions and sufficiently simple to be effectively administered and enforced."

REPORT ON PLAN DEVELOPMENT

Section 102 of Pub. L. 96-102 provided that:

"(a) REPORT—As soon as practicable after the date of the enactment of this Act [Nov. 5, 1979] (but in no event later than 120 days after such date of enactment), the President shall prepare, and transmit to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, a report describing the measures taken after such date of enactment (and the costs thereof) to establish a system of rationing of gasoline and diesel fuel pursuant to sections 201 and 203 of the Energy Policy and Conservation Act (42 U.S.C. 6261, 6263), together with a description of the additional measures to be taken in establishing such system, a timetable for completion of such measures, and an estimate of the costs thereof.

"(b) SPECIFIC ISSUES TO BE ADDRESSED IN REPORT.—The report under subsection (a) shall include—

"(1) a description of the extent to which ration coupons or other evidences of right under such a rationing system would be distributed to each end-user of gasoline or diesel fuel on the basis of such end-user's needs, and an explanation of the extent to which such distribution would not be based on such end-user's needs;

"(2) an analysis of having the entitlement under the rationing system to such end-user rights be granted on the basis of individuals licensed to operate motor vehicles on the public roads and highways, and an explanation of the extent to which such entitlement will be granted on that basis;

"(3) a description of the extent to which the rationing system would meet the needs and hardships of end-users by the use of local boards as provided for under section 203(d) of such Act (42 U.S.C. 6263(d)), and an explanation of the extent to which such boards would not be used;

"(4) a description of how the rationing system complies with the objective of providing for the mobility needs of handicapped persons (including means for their obtaining such end-user rights) as required under section 203(a)(2)(A) of such Act (42 U.S.C. 6263(a)(2)(A)); and

"(5) a description of the steps to be taken to provide adequate end-user allocation under the rationing system for the needs of those in suburban and rural areas, particularly mid-sized cities, small towns, and rural communities, not adequately served by any public transportation system.

"(c) COMMITTEES TO BE KEPT CURRENTLY INFORMED.—The President shall keep such committees fully and currently informed about the progress in establishing and administering a system of rationing and of any problems and delays in establishing and administering the system.

"(d) ADDITIONAL REPORT.—90 days after the report is transmitted under subsection (a), the President shall prepare and transmit to each such committee another report unless a rationing contingency plan has been prescribed and transmitted to each House of the Congress during the preceding 90-day period. Such report shall contain the same information as required for the report under subsection (a), except that such information shall be made current to the date of the report.

"(e) PUBLIC NOTICE OF REPORTS.—The President shall provide public notice of any report under subsection (a) or (d) at the time of its transmittal, shall make such report available to the public, and shall transmit copies of such report to the Governors of the various States."

FUNDING FOR FISCAL YEARS 1979 AND 1980

For treatment of Pub. L. 96-102 as if it were a contingency plan under sections 6262 and 6263 of this title for purposes of any law relating to appropriations or authorizations for appropriations as such law relates to the fiscal years ending Sept. 30, 1979, and Sept. 30, 1980, see section 301 of Pub. L. 96-102, set out as a note under section 8501 of this title.

PROC. NO. 4667. NATIONAL ENERGY SUPPLY SHORTAGE

Proc. No. 4667, July 10, 1979, 44 F.R. 40629, provided:

The Secretary of Energy has advised me that the continued reduction in world crude oil production has resulted in a national energy supply shortage constituting a severe energy supply interruption as defined in Section 3(8) of the Energy Policy and Conservation Act (42 U.S.C. 6202(8)). The Secretary based his conclusion on the fact that current and projected imports of crude oil and petroleum products, plus available stocks, are not adequate to meet normal demand and that shortages of essential fuels have begun to have a major adverse impact on the economy with the possibility of more severe impacts occurring in the future. Recent shortages of gasoline in some areas of the Nation and the current inadequate levels of heating oil stocks have underscored the seriousness of the situation and demonstrate that action must be taken now to conserve available supplies of petroleum.

On the basis of the Secretary's report, and other information available to me, I hereby find and determine, in accordance with Sections 201(b) and 3(8) of the Energy Policy and Conservation Act (42 U.S.C. 6261(b), 6202(8)), the existence of a national energy supply shortage constituting a severe energy supply interruption, which:

(A) is of significant scope and duration and of an emergency nature;

(B) may cause major adverse impact on national safety or the national economy; and

(C) has resulted from an interruption in the supply of imported petroleum products.

I further find that implementation of the Emergency Building Temperature Restrictions, Energy Conservation Contingency Plan No. 2, is required by the severe energy supply interruption. This Plan was transmitted by me to the Congress on March 1, 1979, and approved by a resolution of each House (S. Res. 122, 125 Cong. Rec. S 5135 (May 2, 1979); H. Res. 209, 125 Cong. Rec. H 3018 (May 10, 1979)), which resolutions have been transmitted to me by the Secretary of the Senate and the Clerk of the House. Those resolutions were received by me on May 4 and May 15, 1979, respectively.

NOW, THEREFORE, I, JIMMY CARTER, President of the United States of America, by the authority vested in me by the Constitution and laws of the United States, including Section 201(b) of the Energy Policy and Conservation Act (42 U.S.C. 6261(b)) do hereby proclaim that:

Section 1. A severe energy supply interruption, as defined in Section 3(8) of the Energy Policy and Conservation Act (42 U.S.C. 6202(8)) currently exists with respect to the supply of imported crude oil and petroleum products.

Sec. 2. This finding shall be immediately transmitted to the Congress.

Sec. 3. The provisions of the Emergency Building Temperature Restrictions, Energy Conservation Contingency Plan No. 2 (44 FR 12911 of March 8, 1979), shall become effective as of July 16, 1979.

Sec. 4. In accordance with the provisions of the Plan, the Secretary of Energy is hereby authorized to issue regulations for the purpose of implementing the Energy Conservation Contingency Plan No. 2 and to administer the program in all respects.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of July, in the year of our Lord nineteen hundred seventy-nine, and of the Independence of the United States of America the two hundred and fourth.

JIMMY CARTER.

§ 6262. Energy conservation and contingency plans

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Building temperature restrictions

(1) In the case of an energy conservation contingency plan that regulates building temperatures, any State or political subdivision thereof may submit to the President a comparable plan, as described in subsection (b)(1) of this section, and include in such plan procedures permitting any person affected by such contingency plan to use alternative means of conserving at least as much energy in affected buildings as would be conserved by the energy conservation contingency plan that regulates building temperatures. Such plan shall include effective procedures for the approval and enforcement of such alternative plans by such State or such political subdivision thereof.

(2) The alternative plan under paragraph (1) need not conserve energy in the same fashion as the energy conservation contingency plan that regulates building temperatures.

(3) Nothing in this subsection shall preclude any political subdivision of a State from applying directly to the President for approval of a comparable plan under paragraph (1).

(As amended Pub. L. 96-102, title II, § 231, Nov. 5, 1979, 93 Stat. 767.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-102 added subsec. (d).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-102 effective Nov. 5, 1979, see section 302 of Pub. L. 96-102, set out as an Effective Date of 1979 Amendment note under section 6261 of this title.

§ 6263. Rationing contingency plan

(a) Prescription by President; plan deemed part of regulation under Emergency Petroleum Allocation Act; required provisions; consideration of mobility needs of handicapped persons; handicapped persons defined; requirements of plan

(1) As soon as practicable after November 5, 1979, the President shall prescribe, by rule, a rationing contingency plan which shall, for purposes of enforcement under section 5 of the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 754], be deemed a part of the regula-

tion under section 4(a) of the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 753(a)] and which shall provide, consistent with the attainment, to the maximum extent practicable, of the objectives specified in section 4(b)(1) of such Act [15 U.S.C. 753(b)(1)]—

[*See main edition for text of (A) and (B)*]

The President, to the maximum extent practicable, shall consult with the Governors of the various States (or the representatives of such Governors) during the development of any rationing contingency plan under this section.

[*See main edition for text of (2)*]

(3) Any rationing contingency plan prescribed under this section shall provide that—

(A) the end-user rights specified in paragraph (1) shall be distributed on a State-to-State basis that results in the degree of shortfall from the base period use being equally shared among the various States, considering the most recent base period use data available;

(B) to the maximum extent practicable, such rights shall be made available to classes of end-users on a basis which takes into account fairly the relative needs of such end-users; and

(C) adequate end-user rights are available to carry out paragraph (1)(A) and (B) as required under paragraph (1).

[*See main edition for text of (b) and (c)*]

(d) Local boards

(1) The President shall, to the extent practicable, provide for the use of local boards described in paragraph (2) with authority to—

(A) receive petitions from any end-user of gasoline and diesel fuel used in motor vehicles with respect to the priority and entitlement of such user under a rationing contingency plan, and

(B) order a reclassification or modification of any determination made under a rationing contingency plan with respect to such end-user's rationing priority or rights specified in subsection (a)(1) of this section.

Such boards shall operate under the procedures prescribed by the President by rule.

(2) Any rationing contingency plan under this section shall set forth—

(A) criteria for delegation of the President's functions, in whole or part, under this chapter with respect to such rationing contingency plan to officers or local boards (of balanced composition reflecting the community as a whole) of States or political subdivisions thereof; and

(B) procedures for petitioning for the receipt of such delegation.

(3)(A) Officers or local boards of States or political subdivisions thereof, beginning 30 days (or such earlier date as the President considers appropriate) after a rationing contingency plan is considered approved under this section may petition the President to receive delegation under such paragraph.

(B) The President shall, within 30 days after the date of the receipt of any such petition which is properly submitted, grant or deny such petition.

(e) Prohibited provisions

No rationing contingency plan under this section may—

(1) impose any tax,

(2) provide for a credit or deduction in computing any tax, or

(3) impose any user fee, except to the extent necessary to defray the cost of administering the rationing contingency plan or to provide for initial distribution of end-user rights specified in subsection (a)(1) of this section.

[*See main edition for text of (f)*]

(g) Delegation of presidential authority to Secretary

Any authority of the President with respect to a rationing contingency plan under this chapter which is delegated to the Secretary shall be exercised by the Secretary without regard to section 7174 of this title.

(h) Prescription of plan, amendment thereto, or regulation thereunder in accordance with section 6393(a) of this title

Any rationing contingency plan, or any amendment thereto, as well as any regulation thereunder, shall be prescribed in accordance with section 6393(a) of this title, except that the period for any oral or written comments on any such proposed plan, amendment, or regulation may not extend beyond the 45th day after the date of the publication of the notice of the proposed plan, amendment, or regulation.

(i) Ration coupons or other evidence of rights prepared by or on behalf of United States considered obligation or other security of United States

Any ration coupon or any other evidence of right prepared by or on behalf of the United States for use in connection with a rationing contingency plan shall be considered to be an obligation or other security of the United States for purposes of title 18.

(As amended Pub. L. 96-102, title I, §§ 103(a), (c)(2), 104, 105(b)(1)-(5), Nov. 5, 1979, 93 Stat. 751, 755, 756.)

AMENDMENTS

1979—Subsec. (a)(1). Pub. L. 96-102, §§ 103(a), 105(b)(4)(A), substituted "As soon as practicable after Nov. 5, 1979, the President shall prescribe" for "The President shall prescribe", struck out "in accordance with section 6393(a) of this title" preceding ", a rationing contingency plan", and added provisions requiring that the President, to the maximum extent practicable, consult with the Governors of the various States (or the representatives of such governors) during the development of any rationing contingency plan under this section.

Subsec. (a)(3). Pub. L. 96-102, § 104, added par. (3)

Subsec. (d)(1)(B). Pub. L. 96-102, § 105(b)(3), substituted "subsection (a)(1) of this section" for "paragraph (1)".

Subsec. (d)(2). Pub. L. 96-102, § 105(b)(1), substituted "Any rationing contingency plan under this section shall set forth" for "Not later than 30 days after the date of approval of a rationing contingency plan pursuant to section 6261(b)(2) of this title, the President shall, by rule, prescribe" in the provisions preceding subpar. (A), and substituted "the President's functions" for "his functions" in subpar. (A).

Subsec. (d)(3)(A). Pub. L. 96-102, § 105(b)(2), substituted "beginning 30 days (or such earlier date as the President considers appropriate) after a rationing contingency plan is considered approved under this section" for "following the establishment of criteria and procedures under paragraph (2)".

Subsec. (e)(3). Pub. L. 96-102, § 105(b)(3), substituted "subsection (a)(1) of this section" for "paragraph (1)".

Subsec. (g). Pub. L. 96-102, § 103(c)(2), added subsec. (g).

Subsec. (h). Pub. L. 96-102, § 105(b)(4)(B), added subsec. (h).

Subsec. (i). Pub. L. 96-102, § 105(b)(5), added subsec. (i).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-102 effective Nov. 5, 1979, see section 302 of Pub. L. 96-102, set out as an Effective Date of 1979 Amendment note under section 6261 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6261, 6262, 8513 of this title.

PART B—AUTHORITIES WITH RESPECT TO INTERNATIONAL ENERGY PROGRAM

§ 6272. International voluntary agreements

[*See main edition for text of (a)*]

(b) Prescription by Secretary of standards and procedures for developing and carrying out voluntary agreements and plans of action

The Secretary, with the approval of the Attorney General, after each of them has consulted with the Federal Trade Commission and the Secretary of State, shall prescribe, by rule, standards and procedures by which persons engaged in the business of producing, transporting, refining, distributing, or storing petroleum products may develop and carry out voluntary agreements, and plans of action, which are required to implement the allocation and information provisions of the international energy program.

(c) Requirements for standards and procedures

The standards and procedures prescribed under subsection (b) of this section shall include the following requirements:

(1)(A) [*See main edition for text of (i) and (ii)*]

(iii) The President, in consultation with the Secretary, the Secretary of State, and the Attorney General, may determine that a meeting held to carry out a voluntary agreement or to develop or carry out a plan of action shall not be open to interested persons or that attendance by interested persons may be limited, if the President finds that a wider disclosure would be detrimental to the foreign policy interests of the United States.

[*See main edition for text of (B)*]

(2) Interested persons permitted to attend such a meeting shall be afforded an opportunity to present, in writing and orally, data, views, and arguments at such meetings, subject to any reasonable limitations with respect to the manner of presentation of data, views, and arguments as the Secretary may impose.

(3) A full and complete record, and where practicable a verbatim transcript, shall be kept of any meeting held, and a full and complete record shall be kept of any communication (other than in a meeting) made, between or among participants or potential participants, to develop, or carry out a voluntary agreement or a plan of action under this section. Such record or transcript shall be deposited, together with any agreement resulting therefrom, with the Secretary, and shall be available to the Attorney General and the Federal Trade Commission. Such records or transcripts shall be available for public inspection and copying in accordance with section 552 of title 5; except that (A) matter may not be withheld from disclosure under section 552(b) of such title on grounds other than the grounds specified in section 552(b)(1), (b)(3), or so much of (b)(4) as relates to trade secrets; and (B) in the exercise of authority under section 552(b)(1), the President shall consult with the Secretary of State, the Secretary, and the Attorney General with respect to questions relating to the foreign policy interests of the United States.

(4) No provision of this section may be exercised so as to prevent representatives of committees of Congress from attending meetings to which this section applies, or from having access to any transcripts, records, and agreements kept or made under this section. Such access to any transcript that is required to be kept for any meeting shall be provided as soon as practicable (but not later than 14 days) after that meeting.

(d) Participation of Attorney General and Federal Trade Commission in development and carrying out of voluntary agreements and plans of action

(1) The Attorney General and the Federal Trade Commission shall participate from the beginning in the development, and when practicable, in the carrying out of voluntary agreements and plans of action authorized under this section. Each may propose any alternative which would avoid or overcome, to the greatest extent practicable, possible anticompetitive effects while achieving substantially the purposes of this part. A voluntary agreement or plan of action under this section may not be carried out unless approved by the Attorney General, after consultation with the Federal Trade Commission. Prior to the expiration of the period determined under paragraph (2), the Federal Trade Commission shall transmit to the Attorney General its views as to whether such an agreement or plan of action should be approved, and shall publish such views in the Federal Register. The Attorney General, in consultation with the Federal Trade Commission, the Secretary of State, and the Secretary, shall have the right to review, amend, modify, disapprove, or revoke, on his own motion or upon the request of the Federal Trade Commission or any interested person, any voluntary agreement or plan of action at any time, and, if revoked, thereby withdraw prospectively any immunity which may be conferred by subsection (f) or (k) of this section.

(2) Any voluntary agreement or plan of action entered into pursuant to this section

shall be submitted in writing to the Attorney General and the Federal Trade Commission 20 days before being implemented; except that during an international energy supply emergency, the Secretary, subject to approval of the Attorney General, may reduce such 20-day period. Any such agreement or plan of action shall be available for public inspection and copying, except that a plan of action shall be so available only to the extent to which records or transcripts are so available as provided in the last sentence of subsection (c)(3) of this section. Any action taken pursuant to such voluntary agreement or plan of action shall be reported to the Attorney General and the Federal Trade Commission pursuant to such regulations as shall be prescribed under paragraphs (3) and (4) of subsection (e) of this section.

[*See main edition for text of* (*3*)]

(e) Monitoring of development and carrying out of voluntary agreements and plans of action by Attorney General and Federal Trade Commission

[*See main edition for text of* (*1*)]

(2) In addition to any requirement specified under subsections (b) and (c) of this section and in order to carry out the purposes of this section, the Attorney General, in consultation with the Federal Trade Commission and the Secretary, shall promulgate rules concerning the maintenance of necessary and appropriate records related to the development and carrying out of voluntary agreements and plans of action authorized pursuant to this section.

[*See main edition for text of* (*3*) *and* (*4*); (*f*) *to* (*i*)]

(j) Expiration of authority

The authority granted by this section shall terminate March 15, 1981.

[*See main edition for text of* (*k*) *and* (*l*)]

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 96-30, June 30, 1979, 93 Stat. 80; Pub. L. 96-94, Oct. 31, 1979, 93 Stat. 720; Pub. L. 96-133, §§ 1, 2, Nov. 30, 1979, 93 Stat. 1053.)

AMENDMENTS

1979—Subsec. (c)(4). Pub. L. 96-133, § 2, added provisions respecting access to transcripts.

Subsec. (j). Pub. L. 96-133, § 1, substituted "March 15, 1981" for "November 30, 1979".

Pub. L. 96-94 substituted "November 30" for "October 31".

Pub. L. 96-30 substituted "October 31, 1979" for "June 30, 1979".

1978—Subsecs. (b), (c)(1)(A)(iii), (2), (3), (d)(1), (2), (e)(2). Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

REPORT OF IMPLEMENTATION ACTIVITIES UNDER INTERNATIONAL VOLUNTARY AGREEMENTS

Section 3 of Pub. L. 96-133 provided that:

"The Secretary of Energy, in consultation with the Secretary of State, the Attorney General, and the Chairman of the Federal Trade Commission, shall prepare and submit to the appropriate committees of Congress, a report concerning the actions taken by them to carry out the provisions of section 252 of the Energy Policy and Conservation Act [this section]. Such report shall examine and discuss—

"(1) the extent to which all, or part, of any meeting held in accordance with section 252(c) of such Act [subsec. (c) of this section] to carry out a voluntary agreement or to develop or carry out a plan of action should be open to interested persons in furtherance of the provisions of section 252(c)(1)(A) of such Act [subsec. (c)(1)(A) of this section];

"(2) the policies and procedures followed by the appropriate Federal agencies in reviewing and making public or withholding from the public all, or part, of any transcript of any meeting held to develop or carry out a voluntary agreement or plan of action under section 252 [this section] and in permitting persons, other than citizens of the United States, to review such transcripts prior to any public disclosure thereof;

"(3) the extent to which the classification of all, or part, of such transcripts should be carried out by one agency;

"(4) the adequacy of actions by the responsible Federal agencies in insuring that the standards and procedures required by section 252 are fully implemented and enforced, including the monitoring of the program concerning any anticompetitive effects, and the number of personnel, and the amount of funds, assigned by each such agency to carry out such standards and procedures;

"(5) the actions taken, or to be taken, to improve the reporting of energy supply data under the international energy program and to reconcile such reporting with similar reporting that is conducted by the Department of Energy;

"(6) the actions taken, or planned, to improve the reporting required by section 252(i) [subsec. (i) of this section]; and

"(7) other actions under such section.

"The Secretary of Energy shall transmit such report to such committees within 120 days after the date of the enactment of this Act [Nov. 30, 1979] and shall make such report available to the public."

§ 6273. Advisory committees

(a) Authority of Secretary to establish; applicability of section 17 of Federal Energy Administration Act of 1974; chairman; inclusion of representatives of public; public meetings; notice of meeting to Attorney General and Federal Trade Commission; attendance and participation of their representatives

To achieve the purposes of the international energy program with respect to international allocation of petroleum products and the information system provided in such program, the Secretary may provide for the establishment of such advisory committees as he determines are necessary. In addition to the requirements specified in this section, such advisory committees shall be subject to the provisions of section 17 of the Federal Energy Administration Act of 1974 [15 U.S.C. 776] (whether or not such Act [15 U.S.C. 761 et seq.] or any of its provisions expire or terminate before June 30, 1985); shall be chaired by a regular full-time Federal employee; and shall include representatives of the public. The meetings of such committees shall be open to the public. The Attorney General and the Federal Trade Commission shall have adequate advance notice of any meeting and may have an official representative attend and participate in any such meeting.

[*See main edition for text of* (*b*)]

(c) Suspension of application of certain requirements by President

The President, after consultation with the Secretary of State, the Federal Trade Commission, the Attorney General, and the Secretary, may suspend the application of—

[*See main edition for text of (1) to (4)*]

if the President determines with respect to a particular meeting, (A) that such suspension is essential to the developing or carrying out of the international energy program, (B) that such suspension related solely to the purpose of international allocation of petroleum products and the information system provided in such program, and (C) that the meeting deals with matters described in section 552(b)(1) of title 5. Such determination by the President shall be in writing, shall set forth a detailed explanation of reasons justifying the granting of such suspension, and shall be published in the Federal Register at a reasonable time prior to the effective date of any such suspension.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsecs. (a), (c). Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration.

§ 6274. Exchange of information with International Energy Agency

(a) Submission of information by Secretary to Secretary of State; transmittal to Agency; aggregation and reporting of geological or geophysical information, trade secrets, or commercial or financial information; availability of such information during international energy supply emergency; certification by President that Agency has adopted security measures; review of compliance of other nations with program; petition to President for changes in procedure

(1) Except as provided in subsections (b) and (c) of this section, the Secretary, after consultation with the Attorney General, may provide to the Secretary of State, and the Secretary of State may transmit to the International Energy Agency established by the international energy program, the information and data related to the energy industry certified by the Secretary of State as required to be submitted under the international energy program.

[*See main edition for text of (2) and (3); (b)*]

(c) Information protected by statute

Information and data the confidentiality of which is protected by statute shall not be provided by the Secretary to the Secretary of State under subsection (a) of this section for transmittal to the International Energy Agency, unless the Secretary has obtained the specific concurrence of the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data. In making a determination to concur in providing such information and data, the head of any department or agency which has the primary statutory authority for the collection, gathering, or obtaining of such information and data shall consider the purposes for which such information and data were collected, gathered, and obtained the confidentiality provisions of such statutory authority, and the international obligations of the United States under the international energy program with respect to the transmittal of such information and data to an international organization or foreign country.

[*See main edition for text of (d)*]

(e) Limitation on disclosure contained in other laws

The authority under this section to transmit information shall be subject to any limitations on disclosure contained in other laws, except that such authority may be exercised without regard to—

(1) section 11(d) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 796(d)];

(2) section 14(b) of the Federal Energy Administration Act of 1974 [15 U.S.C. 773(b)];

(3) section 12 of the Export Administration Act of 1979 [50 App. U.S.C. 2411];

(4) section 9 of title 13;

(5) section 176a of title 15; and

(6) section 1905 of title 18.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288; Pub. L. 96-72, § 22(b)(2), Sept. 29, 1979, 93 Stat. 535.)

AMENDMENTS

1979—Subsec. (e)(3). Pub. L. 96-72 substituted "12" for "7" and "1979" for "1969".

1978—Subsecs. (a)(1), (c). Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-72 effective upon the expiration of the Export Administration Act of 1969, which terminated on Sept. 30, 1979, or upon any prior date which the Congress by concurrent resolution or the President by proclamation designated, see section 2418 of Appendix to Title 50, War and National Defense.

SUBCHAPTER III—IMPROVING ENERGY EFFICIENCY

PART A—ENERGY CONSERVATION PROGRAM FOR CONSUMER PRODUCTS OTHER THAN AUTOMOBILES

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 6316 of this title.

§ 6291. Definitions

(a) [1] For purposes of this part:

[*See main edition for text of (1) and (2)*]

(3) The term "energy" means electricity, or fossil fuels. The Secretary may, by rule, include other fuels within the meaning of the term "energy" if he determines that such inclusion is necessary or appropriate to carry out the purposes of this chapter.

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[1] Section enacted without a subsec. (b).

[*See main edition for text of* (*4*) *and* (*5*)]

(6) The term "energy efficiency standard" means a performance standard—

[*See main edition for text of* (*A*)]

(B) which includes any other requirements which the Secretary may prescribe under section 6295(c) of this title.

[*See main edition for text of* (*7*) *and* (*8*)]

(9) The term "class of covered products" means a group of covered products, the functions or intended uses of which are similar (as determined by the Secretary).

[*See main edition for text of* (*10*) *to* (*18*)]

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pars. (3), (6)(B), (9). Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6311 of this title.

§ 6292. Covered products

(a) A consumer product is a covered product if it is one of the following types (or is designed to perform a function which is the principal function of any of the following types):

[*See main edition for text of* (*1*) *to* (*13*)]

(14) Any other type of consumer product which the Secretary classifies as a covered product under subsection (b) of this section.

(b)(1) The Secretary may classify a type of consumer product as a covered product if he determines that—

[*See main edition for text of* (*A*) *and* (*B*)]

(2) For purposes of this subsection:

[*See main edition for text of* (*A*) *and* (*B*)]

(C) The term "household" shall be defined under rules of the Secretary.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsecs. (a)(14), (b)(1), (2)(C). Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6291, 6293, 6294, 6295, 6297 of this title.

§ 6293. Test procedures

(a) Presentment of written data, views, and arguments by interested persons; development of test procedures by National Bureau of Standards; publication of proposed test procedures; comment period; time of publication; prescription of test procedures by Secretary; delay in prescription of test procedures; reevaluation

(1) The Secretary shall, during the 30-day period which begins on December 22, 1975, afford interested persons an opportunity to present written data, views, and arguments with respect to test procedures to be developed for covered products of each of the types specified in paragraphs (1) through (13) of section 6292(a) of this title.

(2) The Secretary shall direct the National Bureau of Standards to develop test procedures for the determination of (A) estimated annual operating costs of covered products of the types specified in paragraphs (1) through (13) of section 6292(a) of this title, and (B) at least one other useful measure of energy consumption of such products which the Secretary determines is likely to assist consumers in making purchasing decisions.

(3) The Secretary shall publish proposed test procedures with respect to all covered products of each of the types specified in paragraphs (1) through (13) of section 6292(a) of this title, and shall afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such proposed test procedures. Such comment period shall not be less than 45 days.

(4) The Secretary shall prescribe test procedures for the determination of (i) estimated annual operating costs of all covered products of each of the types specified in paragraphs (1) through (13) of section 6292(a) of this title, and (ii) at least one other measure of energy consumption of such products which the Secretary determines is likely to assist consumers in making purchasing decisions. Except as provided in paragraph (6), such test procedures shall be prescribed not later than January 31, 1978.

(5) If the Secretary has classified a type of product as a covered product under section 6292(b) of this title, the Secretary may, after affording interested persons an opportunity to comment, direct the National Bureau of Standards to develop, and may publish proposed test procedures for such type of covered product (or class thereof). The Secretary shall afford interested persons an opportunity to present oral and written data, views, and arguments with respect to such proposed test procedures. Such comment period shall not be less than 45 days. The Secretary may thereafter prescribe test procedures in accordance with subsection (b) of this section with respect to such type or class of product, if the Secretary or the Commission determines that—

[*See main edition for text of* (*A*) *and* (*B*)]

(6)(A) The Secretary may delay the prescription of test procedures under paragraph (4) for a type of covered product (or class thereof) if he determines that he cannot, within the applicable time period, prescribe test procedures applicable to such type (or class) which meet the requirements of subsection (b) of this section, and he submits to the Congress a report of such determination together with the reasons therefor, and also publishes such determination (and reasons) in the Federal Register. In any such case, he shall prescribe such test procedures as soon as practicable, but in no event later than 90 days after the date specified in paragraph (4).

(B) The Secretary is not required to publish and prescribe test procedures under paragraphs (3) and (4) for a type of covered product (or class thereof) if he determines, by rule, that test procedures cannot be developed which meet the requirements of subsection (b) of this section and publishes such determination in the Federal Register, together with the reasons therefor. For purposes of section 6297 of this title, a determination under this subparagraph with respect to any type (or class) of covered product, while effective, shall have the same effect as would a standard prescribed for such type (or class) under section 6295 of this title.

(7)(A) In the case of—

(i) any test procedure prescribed under this subsection; or

(ii) any determination under paragraph (6) that a test procedure cannot be developed which meets the requirements of subsection (b) of this section;

the Secretary shall, not later than 3 years after November 9, 1978 (and from time to time thereafter), conduct a reevaluation and, on the basis of such reevaluation, shall determine if such test procedure should be amended or such determination should be rescinded. In conducting such reevaluation, the Secretary shall take into account such information as he deems relevant, including technological developments relating to the energy efficiency of the type (or class) of covered products involved.

(B) If the Secretary determines under subparagraph (A) that—

(i) a test procedure should be amended, he shall promptly publish in the Federal Register proposed test procedures incorporating such amendments, or

(ii) a determination under paragraph (6) should be rescinded, he shall promptly publish notice thereof in the Federal Register,

and afford interested persons an opportunity to present oral and written data, views, and arguments. Such comment period shall not be less than 45 days.

(b) Requirements for test procedures

(1) Any test procedures prescribed under this section shall be reasonably designed to produce test results which reflect energy efficiency, energy use, or estimated annual operating cost of a covered product during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct.

(2) If the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use in a representative average-use cycle (as determined by the Secretary), and from representative average unit costs of the energy needed to operate such product during such cycle. The Secretary shall provide information to manufacturers respecting representative average unit costs of energy.

(c) Prohibited representations

(1) Effective 180 days after a test procedure rule applicable to a covered product is prescribed under this section, no manufacturer, distributor, retailer, or private labeler may make any representation—

(A) in writing (including a representation on a label), or

(B) in any broadcast advertisement,

respecting the energy consumption of such product or cost of energy consumed by such product, unless such product has been tested in accordance with such test procedure and such representation fairly discloses the results of such testing.

(2) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (1) may be extended by the Commission with respect to the petitioner (but in no event for more than an additional 180 days) if he finds that the requirements of paragraph (1) would impose on such petitioner an undue hardship (as determined by the Commission).

(As amended Pub. L. 95-619, title IV, §§ 421, 425(a), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3257, 3265, 3288.)

AMENDMENTS

1978—Subsec. (a)(1), (2). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator" meaning the Administrator of the Federal Energy Administration, wherever appearing.

Subsec. (a)(3). Pub. L. 95-619, §§ 425(a), 691(b)(2), struck out "Except as provided in paragraph (6)," preceding "The Secretary", deleted provision requiring proposed test procedures to be published not later than June 30, 1976, with certain excepted cases not required to be published before Sept. 30, 1976 and June 30, 1977, and substituted "Secretary" for "Administrator".

Subsec. (a)(4). Pub. L. 95-619, §§ 421(a), 691(b)(2), redesignated provisions formerly classified to subpar. (A), as subsec. (a)(4) and in subsec. (a)(4), as so redesignated, struck out "Except as provided in paragraph (6)," preceding "The Secretary shall", substituted "Secretary" for "Administrator" in two places, added provision requiring the prescription of test procedures not later than Jan. 31, 1978, and struck out former subpar. (B), requiring the prescription of test procedures not later than Sept. 30, 1976, with certain excepted cases required to be prescribed not later than Dec. 31, 1976 and Sept. 30 1977.

Subsec. (a)(5). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (a)(6). Pub. L. 95-619, § 421(b), redesignated existing provisions as subpar. (A) and, in subpar. (A) as so redesignated, substituted "Secretary" for "Administrator", struck out provisions relating to the authority to delay publication of proposed test procedures, added requirement that a determination of a necessary prescription delay be submitted in a report to Congress, added specific ninety day time limitation for delayed prescriptions, and added subpar. (B).

Subsec. (a)(7). Pub. L. 95-619, § 421(c), added par. (7).

Subsec. (b). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator" wherever appearing.

Subsec. (c). Pub. L. 95-619, § 421(d), redesignated existing provisions as par. (1) and, in par. (1) as so redesignated, substituted "180 days" for "90 days" and redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, and added par. (2).

Section Referred to in Other Sections

This section is referred to in sections 6291, 6294, 6295, 6296, 6297, 6303, 6306, 6316, of this title.

§ 6294. Labeling

(a) Requirement; exceptions

(1) The Commission shall prescribe labeling rules under this section applicable to all covered products of each of the types specified in paragraphs (1) through (9) of section 6292(a) of this title, except to the extent that, with respect to any such type (or class thereof), the Commission determines under the second sentence of subsection (b)(5) of this section that labeling in accordance with this section is not technologically or economically feasible.

(2) The Commission shall prescribe labeling rules under this section applicable to all covered products of each of the types specified in paragraphs (10) through (13) of section 6292(a) of this title, except to the extent that with respect to any such type (or class thereof), the Commission determines under the second sentence of subsection (b)(5) of this section that labeling in accordance with this section is not technologically or economically feasible or is not likely to assist consumers in making purchasing decisions.

(3) The Commission may prescribe a labeling rule under this section applicable to covered products of a type specified in paragraph (14) of section 6292(a) of this title (or a class thereof) if—

(A) the Commission or the Secretary has made a determination with respect to such type (or class thereof) under section 6293(a)(5)(B) of this title,

(B) the Secretary has prescribed test procedures under section 6293(a)(5) of this title for such type (or class thereof), and

[*See main edition for text of* (*C*), (*4*); (*b*)]

(c) Form and content of rules and labels

(1) Subject to paragraph (6), a rule prescribed under this section shall require that each covered product in the type of class of covered products to which the rule applies bear a label which discloses—

(A) the estimated annual operating cost of such product (determined in accordance with test procedures prescribed under section 6293 of this title), except that if—

(i) the Secretary determines that disclosure of estimated annual operating cost is not technologically feasible, or

(ii) the Commission determines that such disclosure is not likely to assist consumers in making purchasing decisions or is not economically feasible,

the Commission shall require disclosure of a different useful measure of energy consumption (determined in accordance with test procedures prescribed under section 6293 of this title); and

[*See main edition for text of* (*B*); (*2*) *to* (*4*)]

(5) The Commission may require that a manufacturer of a covered product to which a rule under this section applies—

(A) include on the label,

(B) separately attach to the product, or

(C) ship with the product,

additional information relating to energy consumption, including instructions for the maintenance, use, or repair of the covered product, if the Commission determines that such additional information would assist consumers in making purchasing decisions or in using such product, and that such requirement would not be unduly burdensome to manufacturers.

[*See main edition for text of* (*6*); (*d*)]

(e) Study to determine coverage for additional consumer products

The Secretary, in consultation with the Commission, shall study consumer products for which labeling rules under this section have not been proposed, in order to determine (1) the aggregate energy consumption of such products, and (2) whether the imposition of labeling requirements under this section would be feasible and useful to consumers in making purchasing decisions. The Secretary shall include the results of such study in the annual report under section 6308 of this title.

(f) Consultation between Secretary and Commission

The Secretary and the Commission shall consult with each other on a continuing basis as may be necessary or appropriate to carry out their respective responsibilities under this part. Before the Commission makes any determination under subsection (a)(1) or (2) of this section, it shall obtain the views of the Secretary and shall take such views into account in making such determination.

[*See main edition for text of* (*g*)]

(As amended Pub. L. 95-619, title IV, § 425(b), (c), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3265, 3288.)

Amendments

1978—Subsec. (a)(1). Pub. L. 95-619, § 425(b)(1), struck out labeling rule exception where Administrator had determined under section 6293(a)(6) of this title that test procedures could not be developed pursuant to section 6293(b) of this title.

Subsec. (a)(2). Pub. L. 95-619, § 425(b)(2), struck out labeling rule exception where Administrator had determined under section 6293(a)(6) of this title that test procedures could not be developed pursuant to section 6293(b) of this title.

Subsec. (a)(3). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, in cls. (A) and (B).

Subsec. (c)(1)(A)(i). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator".

Subsec. (c)(5). Pub. L. 95-619, § 425(c), inserted "including instructions for the maintenance, use, or repair of the covered product," following "energy consumption".

Subsecs. (e), (f). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator" wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6293, 6295, 6296, 6297, 6302, 6304, 6306, 6316 of this title.

§ 6295. Energy efficiency standards

(a) Duty of Secretary to prescribe

(1) The Secretary shall, by rule, prescribe an energy efficiency standard for each type (or class) of covered products specified in paragraphs (1) through (13) of section 6292(a) of this title.

(2) The Secretary may, by rule, prescribe an energy efficiency standard for any type (or class) of covered products of a type specified in paragraph (14) of section 6292(a) of this title, if he determines, for the purposes of this section, that—

(A) the average per household energy use within the United States by products of such type (or class) exceeded 150 kilowatt hours (or its Btu equivalent) for any 12-calendar-month period ending before such determination;

(B) the aggregate household energy use within the United States by products of such type (or class) exceeded 4,200,000,000 kilowatt-hours (or its Btu equivalent) for any such 12-calendar-month period;

(C) substantial improvement in the energy efficiency of products of such type (or class) is technologically feasible; and

(D) the application of a labeling rule under section 6294 of this title to such type (or class) is not likely to be sufficient to induce manufacturers to produce, and consumers and other persons to purchase, covered products of such type (or class) which achieve the maximum energy efficiency which is technologically feasible to attain and is economically justified.

Not later than 2 years after November 9, 1978, the Secretary shall publish in the Federal Register a list of those types (and classes) of covered products which he considers may be subject to standards authorized to be prescribed under this paragraph. The Secretary may revise such list from time to time thereafter.

(b) Restriction on prescription of standards for covered products

No standard for a type (or class) of covered products shall be prescribed pursuant to subsection (a) of this section if—

(1) a test procedure has not been prescribed pursuant to section 6293 of this title with respect to that type (or class) of products, or

(2) the Secretary determines, by rule, that the establishment of such standard will not result in significant conservation of energy or that the establishment of such standard is not technologically feasible or economically justified.

For purposes of section 6297 of this title, a determination under paragraph (2) with respect to any type (or class) of covered products shall have the same effect as would a standard prescribed for such type (or class) under this section.

(c) Achievement of maximum improvement in energy efficiency

Energy efficiency standards for each type (or class) of covered products prescribed under this section shall be designed to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified. Such standards may be phased in, over a period not in excess of 5 years, through the establishment of intermediate standards, as determined by the Secretary.

(d) Beneficialness of standards

Before determining whether a standard is economically justified under subsection (c) of this section, the Secretary, after receiving any views and comments furnished with respect to the proposed standard under section 6306 of this title, shall determine that the benefits of the standard exceed its burdens based, to the greatest extent practicable, on a weighing of the following factors:

(1) the economic impact of the standard on the manufacturers and on the consumers of the products subject to such standard,

(2) the savings in operating costs throughout the estimated average life of the covered products in the type (or class), compared to any increase in the price of, or in the initial charges for, or maintenance expenses of, the covered products which are likely to result from the imposition of the standard,

(3) the total projected amount of energy savings likely to result directly from the imposition of the standard,

(4) any lessening of the utility or the performance of the covered products likely to result from the imposition of the standard,

(5) the impact of any lessening of competition determined in writing by the Attorney General that is likely to result from the imposition of the standard,

(6) the need of the Nation to conserve energy, and

(7) any other factors the Secretary considers relevant.

For purposes of paragraph (5), the Attorney General shall, not later than 60 days after the publication of a proposed rule prescribing an energy efficiency standard, make a determination of the impact, if any, from any lessening of competition likely to result from such standard and transmit such determination in writing to the Secretary, together with an analysis of the nature and extent of such impact. Any such determination and analysis shall be published by the Secretary in the Federal Register.

(e) Exemptions

(1) Subject to paragraph (2), the Secretary may, on application of any manufacturer, exempt such manufacturer from all or part of the requirements of any rule prescribing an energy efficiency standard under this section for any period which does not extend beyond the date which is 24 months after the date such rule is prescribed, if the Secretary finds that the annual gross revenues to such manufactur-

er for the preceding 12-month period from all its operations (including the manufacture and sale of covered products) does not exceed $8,000,000. In making such finding in the case of any manufacturer, the Secretary shall take into account the annual gross revenues of any other person who controls, is controlled by, or is under common control with, such manufacturer.

(2) The Secretary may not exercise the authority granted under paragraph (1) with respect to any type (or class) of covered product subject to an energy efficiency standard established under this section unless he makes a finding, after obtaining the written views of the Attorney General, that a failure to allow an exemption under paragraph (1) would likely result in a lessening of competition.

(f) Rules specifying levels of energy efficiency

(1) A rule prescribing an energy efficiency standard for a type (or class) of covered products shall specify a level of energy efficiency higher or lower than that which applies (or would apply) for such type (or class) for any group of covered products which have the same function or intended use, if the Secretary, in his discretion, determines that covered products within such group—

(A) consume a different kind of energy from that consumed by other covered products within such type (or class), or

(B) have a capacity or other performance-related feature which other products within such type (or class) do not have,

justifying a higher or lower standard from that which applies (or will apply) to other products within such type (or class). In determining under this paragraph whether a performance-related feature justifies the establishment of a higher or lower standard, the Secretary shall consider such factors as the utility to the consumer of such a feature, and such other factors as he deems appropriate.

(2) Any rule prescribing a higher or lower level of energy efficiency under paragraph (1) shall include an explanation of the basis on which such higher or lower level was established.

(g) Priorities respecting establishment of energy efficiency standards

In prescribing energy efficiency standards under this section, the Secretary shall give priority to the establishment of energy efficiency standards for types of products (or classes thereof) specified in paragraphs (1), (2), (4), (5), (6), (7), (9), (12), and (13) of section 6292(a) of this title.

(h) Reevaluation; publication in Federal Register

(1) Not later than 5 years after prescribing an energy efficiency standard under this section (and from time to time thereafter), the Secretary shall—

(A) conduct a reevaluation in order to determine whether such standard should be amended in any manner, and

(B) make, and publish in the Federal Register, such determination.

In conducting such reevaluation, the Secretary shall take into account such information as he deems relevant, including technological developments with respect to the type (or class) of covered products involved, and the economic impact of the standard.

(2) If the Secretary determines under paragraph (1) that a standard should be amended, he shall promptly publish a proposed rule incorporating such amendments and afford interested persons an opportunity to present oral and written data, views, and arguments. Such comment period shall not be less than 45 days.

(i) Procedures for prescription of energy efficiency standards

Any energy efficiency standard shall be prescribed in accordance with the following procedure:

(1) The Secretary shall (A) publish an advance notice of proposed rulemaking which specifies the type (or class) of covered products to which the rule is likely to apply, and (B) invite interested persons to submit, within 45 days after the date of publication of such advance notice, written presentations of data, views, and arguments relevant to establishing such an energy efficiency standard.

(2) An advance notice of proposed rulemaking under paragraph (1) shall be published by the Secretary—

(A) in the case of types of covered products (or classes thereof) of the types specified in paragraphs (1), (2), (4), (5), (6), (7), (9), (12), and (13) of section 6292(a) of this title; not later than 30 days after a test procedure with respect to that type of covered products (or class thereof) has been prescribed, or 45 days after November 9, 1978, whichever is later; and

(B) in the case of types of covered products (or classes thereof) specified in paragraphs (3), (8), (10), and (11), of section 6292(a) of this title, not later than 30 days after a test procedure with respect to that type (or class) of covered products has been prescribed, or one year after November 9, 1978, whichever is later.

(3) A proposed rule which prescribes an energy efficiency standard for a type (or class) of covered products may not be published earlier than 60 days after the date of publication of advance notice of proposed rulemaking for such type (or class). The Secretary shall determine the maximum improvement in energy efficiency that is technologically feasible for each type (or class) of covered products in prescribing such standard and if such standard is not designed to achieve such efficiency, the Secretary shall state in the proposed rule the reasons therefor. After the publication of such proposed rulemaking, the Secretary shall afford interested persons, in accordance with section 6306 of this title, an opportunity to present oral and written comments (including an opportunity to question those who make such presentations, as provided in such section) on matters relating to such proposed rule, including—

(A) whether the standard to be prescribed is economically justified (taking into account those factors which the Secretary must consider under subsection (d) of this section),

(B) whether the standard will achieve the maximum improvement in energy efficiency which is technologically feasible,

(C) if the standard will not achieve such improvement, whether the reasons for not achieving such improvement are adequate, and

(D) whether such rule should prescribe a level of energy efficiency which is higher or lower than that which would otherwise apply in the case of any group of products within the type (or class) to be subject to such standard.

(4) A rule prescribing an energy efficiency standard for a type (or class) of covered products may not be published earlier than 60 days after the date of publication of the proposed rule under this section for such type (or class). Such rule shall be published as soon as practicable after such 60-day period, but in no event later than 2 years after publication of the advance notice. Such rule shall take effect not earlier than 180 days after the date of its publication in the Federal Register. Such rule (or any amendment thereto) shall not apply to any covered products the manufacturer of which was completed before the effective date of the rule or amendment as the case may be.

(j) Inclusion of test procedures and requirements

An energy efficiency standard prescribed under this section shall include test procedures prescribed in accordance with section 6293 of this title, and may include any requirement which the Secretary determines is necessary to assure that each covered product to which such standard applies meets the required minimum level of energy efficiency specified in such standard.

(As amended Pub. L. 95-619, title IV, § 422, Nov. 9, 1978, 92 Stat. 3259.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-619 substituted provisions authorizing the Secretary to prescribe an energy efficiency standard for each type of covered product specified in section 6292(a)(1) to (13) of this title, authorizing such prescription for any type of covered product specified in section 6292(a)(14) of this title where certain conditions are found to exist, and requiring publication of a list of those types of covered products considered subject to prescribed standards in the Federal Register not later than two years after Nov. 9, 1978, for provisions requiring the Administrator, meaning the Administrator of the Federal Energy Administration, to direct the National Bureau of standards to develop an energy efficiency improvement target for each type of covered product listed in section 6292(a)(1) to (10) of this title, requiring prescription of such a target by the Administrator not later than ninety days after Aug. 14, 1976, requiring such targets be designed to exceed by 1980 by at least twenty percent the aggregate energy efficiency of the covered products as manufactured in 1972, requiring similar energy efficiency targets be prescribed for covered products specified in section 6292(a)(11) to (13) of this title not later than one year after Aug. 14, 1976, authorizing the Administrator to modify periodically any established targets, requiring the manufacturers of any covered products to submit reports as requested by the Administrator to help in establishing and reaching such targets, authorizing the Administrator to commence proceedings in certain situations to prescribe initial or revised targets, specifying when improvements of energy efficiency are economically justified, and authorizing the Attorney General to determine any negative effects on competition so as to make certain improvements economically unjustified.

Subsec. (b). Pub. L. 95-619 substituted provisions specifying the preconditions for prescription of a standard for a type or class of covered products for provisions specifying the procedure to be followed in prescribing energy efficiency standards.

Subsec. (c). Pub. L. 95-619 substituted provisions requiring energy efficiency standards for each type of covered products be designed to achieve the maximum improvement in energy efficiency which the Secretary determines feasible and justified and requiring such standards be phased in over a period not to exceed five years for provisions relating to the prescription of test procedures and the requirements necessary to meet minimum energy efficiency levels.

Subsec. (d). Pub. L. 95-619 substituted provisions relating to a determiniation by the Secretary of the economic justification of any particular energy efficiency standard and a determination by the Attorney General of the impact on competition of any proposed standard for provisions relating to labeling rules.

Subsecs. (e) to (j). Pub. L. 95-619 added subsecs. (e) to (j).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6291, 6293, 6296, 6297, 6304, 6306 of this title.

§ 6296. Requirements of manufacturers

[*See main edition for text of* (*a*)]

(b) Notification of products covered; label data; test models; energy consumption data; observation of test procedures

(1) Each manufacturer of a covered product to which a rule under section 6294 of this title applies shall notify the Secretary or the Commission—

(A) not later than 60 days after the date such rule takes effect, of the models in current production (and starting serial numbers of those models) to which such rule applies; and

(B) prior to commencement of production, of all models subsequently produced (and starting serial numbers of those models) to which such rule applies.

(2) If requested by the Secretary or Commission, the manufacturer of a covered product to which a rule under section 6294 of this title applies shall provide, within 30 days of the date of the request, the data from which the information included on the label and required by the rule was derived. Data shall be kept on file by the manufacturer for a period specified in the rule.

(3) When requested—

(A) by the Secretary for purposes of ascertaining whether a product subject to a standard prescribed under section 6295 of this title is in compliance with that standard, or

(B) by the Commisssion for purposes of ascertaining whether the information set out on a label of a product, as required under section 6294 of this title, is accurate,

each manufacturer of such a product shall supply at his expense a reasonable number of such covered products to any laboratory designated by the Secretary or the Commission, as the case may be. Any reasonable charge levied by the laboratory for such testing shall be borne by the United States, if and to the extent provided in appropriation Acts.

[*See main edition for text of (4)*]

(5) A rule under section 6293, 6294, or 6295 of this title may require the manufacturer or his agent to permit a representative designated by the Commission or the Secretary to observe any testing required by this part and inspect the results of such testing.

[*See main edition for text of (c)*]

(d) Authority of Secretary to require manufacturers of covered products to submit reports respecting energy efficiency and economic impact of any energy efficiency standard

For purposes of carrying out this part, the Secretary may require, under authority otherwise available to him under this part or other provisions of law administered by him, each manufacturer of covered products to submit such information or reports of any kind or nature directly to the Secretary with respect to energy efficiency of such covered products, and with respect to the economic impact of any proposed energy efficiency standard, as the Secretary determines may be necessary to establish and revise test procedures, labeling rules, and energy efficiency standards for such products and to insure compliance with the requirements of this part. The provisions of section 796(d) of title 15 shall apply with respect to information obtained under this subsection to the same extent and in the same manner as it applies with respect to energy information obtained under section 796 of title 15.

(As amended Pub. L. 95-619, title IV, § 425(d), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3265, 3288.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-619, § 425(d)(2), added requirement that manufacturers of covered products give notice to the Secretary of models affected by rules promulgated under section 6294 of this title and expanded the notice requirement itself to include models manufactured more than sixty days after the date a particular rule takes effect.

Subsec. (b)(2). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration.

Subsec. (b)(3). Pub. L. 95-619, § 425(d)(3), authorized the Secretary to request submission of covered products for purposes of ascertaining whether a particular product complies with standards under section 6295 of this title and also authorized the Secretary to designate testing laboratories for the submitted products.

Subsec. (b)(5). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator".

Subsec. (d). Pub. L. 95-619, § 425(d)(1), added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6302 to 6304, 6316 of this title.

§ 6297. State regulation

(a) State regulations superseded

This part supersedes any State regulation insofar as such State regulation may now or hereafter provide for—

[*See main edition for text of (1)*]

(2) any energy efficiency standard or other requirement with respect to energy efficiency or energy use of a covered product—

[*See main edition for text of (A) and (B)*]

(b) Petition to Secretary for prescription of State regulation; State petition requesting regulation not be superseded; written comments; denial of petition or prescription of regulation; exclusions after July 1, 1980

(1) If a State regulation is prescribed which establishes an energy efficiency standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered products and which is not superseded by subsection (a)(2) or (b)(2) of this section, then any person subject to such regulation may file a petition with the Secretary requesting that the Secretary prescribe a rule under this subsection which supersedes such State regulation in whole or in part. The Secretary, after consideration of the petition, the views of the affected State, and the comments of any interested person, shall issue such requested rule only if the Secretary finds (and publishes such finding) that—

(A) there is no significant State or local interest sufficient to justify such State regulation; and

(B) such State regulation unduly burdens interstate commerce.

(2) If a State regulation is prescribed after January 1, 1978, which establishes an energy efficiency standard or other requirement respecting energy use or energy efficiency of a type (or class) of covered products and which is not superseded by subsection (a)(2) of this section, then such State regulation is superseded. Notwithstanding the requirement of the preceding sentence, such State may file a petition with the Secretary requesting a rule that such State regulation is not superseded pursuant to this paragraph. The Secretary, after consideration of the petition and the comments of interested persons, shall prescribe such rule only if he finds there is a significant State or local interest to justify such State regulations; except that the Secretary may not prescribe such rule if he finds that such State regulation would unduly burden interstate commerce.

(3) Notwithstanding subsection (a)(2) of this section, any State prescribing a State regulation which provides an energy efficiency standard or other requirement respecting energy use or energy efficiency for any type (or class) of covered products for which a Federal energy efficiency standard is applicable may file a petition with the Secretary requesting a rule that such regulation not be superseded. The Secretary, after consideration of the petition and the comments of interested persons, shall prescribe such rule only if he finds (and publishes such finding) that—

(A) there is a significant State or local interest to justify such State regulation; and

(B) such State regulation contains a more stringent energy efficiency standard than such Federal standard;

except that the Secretary may not prescribe such rule if he finds that such State regulation would unduly burden interstate commerce.

(4) The Secretary shall give notice of any petition filed under this subsection and afford interested persons a reasonable opportunity to make written comments thereon. The Secretary, within 6 months after the date any petition is filed, shall deny such petition or prescribe the requested rule, except that the Secretary may publish a notice in the Federal Register extending such period to a date certain. Such notice shall include the reasons for delay. In the case of any denial of a petition under this subsection, the Secretary shall publish in the Federal Register notice of such denial and the reasons for such denial.

(5) The requirement of paragraph (2) shall not continue in effect after July 1, 1980, in the case of any type (or class) of covered products specified in paragraphs (1) through (13) of section 6292(a) of this title.

[*See main edition for text of* (c) *to* (e)]

(As amended Pub. L. 95-619, title IV, § 424, Nov. 9, 1978, 92 Stat. 3263.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-619, § 424(b), substituted "other requirement" for "similar requirement".

Subsec. (b). Pub. L. 95-619, § 424(a), in par. (1) substituted provisions vesting power to prescribe rules superseding State energy efficiency regulations in the Secretary for provisions vesting such power in the Administrator of the Federal Energy Administration and provided that persons subject to such State regulations were to petition the Secretary for relief therefrom rather than the Administrator, in par. (2) added provisions authorizing the supersedure of any State regulation prescribed after Jan. 1, 1978 respecting energy use of any type of covered product and authorizing the filing of a petition by the State for exemption from any such supersedure, and deleted provision that a State regulation containing a more stringent energy efficiency standard than the corresponding Federal standard would not be superseded, and added pars. (3) to (5).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6293, 6295, 6306 of this title.

§ 6298. Rules

The Commission and the Secretary may each issue such rules as each deems necessary to carry out the provisions of this part.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6306, 6316 of this title.

§ 6299. Authority to obtain information

(a) For purposes of carrying out this part, the Commission and the Secretary may each sign and issue subpenas for the attendance and testimony of witnesses and the production of relevant books, records, papers, and other documents, and may each administer oaths. Witnesses summoned under the provisions of this section shall be paid the same fees and mileage as are paid to witnesses in the courts of the United States. In case of contumacy by, or refusal to obey a subpena served, upon any persons subject to this part, the Commission and the Secretary may each seek an order from the district court of the United States for any district in which such person is found or resides or transacts business requiring such person to appear and give testimony, or to appear and produce documents. Failure to obey any such order is punishable by such court as a contempt thereof.

(b) Any information submitted by any person to the Secretary or the Commission under this part shall not be considered energy information as defined by section 796(e)(1) of title 15 for purposes of any verification examination authorized to be conducted by the Comptroller General under section 6381 of this title.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6302. Prohibited acts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6301, 6303, 6304 of this title.

§ 6303. Enforcement

(a) Civil penalties

Except as provided in subsection (c) of this section, any person who knowingly violates any provision of section 6302 of this title shall be subject to a civil penalty of not more than $100 for each violation. Such penalties shall be assessed by the Commission, except that penalties for violations of section 6302(a)(3) of this title which relate to requirements prescribed by the Secretary, violations of section 6302(a)(4) of this title which relate to requests of the Secretary under section 6296(b)(2) of this title, or violations of section 6302(a)(5) of this title shall be assessed by the Secretary. Civil penalties assessed under this part may be compromised by the agency or officer authorized to assess the penalty, taking into account the nature and degree of the violation and the impact of the penalty upon a particular respondent. Each violation of paragraph (1), (2), or (5) of section 6302(a) of this title shall constitute a separate violation with respect to each covered product, and each day of violation of section 6302(a)(3) or (4) of this title shall constitute a separate violation.

[*See main edition for text of* (b)]

(c) Unfair or deceptive acts or practices

It shall be an unfair or deceptive act or practice in or affecting commerce (within the meaning of section 45(a)(1) of title 15) for any person to violate section 6293(c) of this title, except to the extent that such violation is prohibited under the provisions of section 6302(a)(1) of this title, in which case such provisions shall apply.

(d) Assessment of civil penalty

(d)(1) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28 or section 7192(c) of this title, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 7192(c) of this title, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this subsection.

(6) For purposes of applying the preceding provisions of this subsection in the case of the assessment of a penalty by the Commission for a violation of paragraphs (1) and (2) of section 6302 of this title, references in such provisions to "Secretary" and "Department of Energy" shall be considered to be references to the "Commission".

(As amended Pub. L. 95-619, title IV, §§ 423, 425(e), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3262, 3266, 3288.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-619, §§ 425(e)(1), 691(b)(2), substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing, and "subsection (c) of this section" for "subsection (b) of this section".

Subsec. (c). Pub. L. 95-619, § 425(e)(2), substituted "section 6293(c) of this title" for "section 6293(d)(2) of this title" and added provision making an exception from the unfair or deceptive act or practice rule.

Subsec. (d). Pub. L. 95-619, § 423, added subsec. (d).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6316 of this title.

§ 6304. Injunctive enforcement

The United States district courts shall have jurisdiction to restrain (1) any violation of section 6302 of this title and (2) any person from distributing in commerce any covered product which does not comply with an applicable rule under section 6294 or 6295 of this title. Any such action shall be brought by the Commission, except that any such action to restrain any violation of section 6302(a)(3) of this title which relates to requirements prescribed by the Secretary. Any violation of section 6302(a)(4) of this title which relates to requests of the Secretary under section 6296(b)(2) of this title, or any violation of section 6302(a)(5) of this title shall be brought by the Secretary. Any such action may be brought in any United States district court for a district wherein any act, omission, or transaction constituting the violation occurred, or in such court for the district wherein the defendant is found or transacts business. In any action under this section, process may be served on a defendant in any other district in which the defendant resides or may be found.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6305. Citizen suits

(a) Civil actions; jurisdiction

Except as otherwise provided in subsection (b) of this section, any person may commence a civil action against—

(1) any manufacturer or private labeler who is alleged to be in violation of any provision of this part or any rule under this part; or

(2) any Federal agency which has a responsibility under this part where there is an alleged failure of such agency to perform any act or duty under this part which is not discretionary.

The United States district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such provision or rule, or order such Federal agency to perform such act or duty, as the case may be.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the date on which the plaintiff has given notice of the violation (i) to the Secretary, (ii) to the Commission, and (iii) to any alleged violator of such provision or rule, or

(B) if the Commission has commenced and is diligently prosecuting a civil action to require compliance with such provision or rule, but, in any such action, any person may intervene as a matter of right.

(2) under subsection (a)(2) of this section prior to 60 days after the date on which the plaintiff has given notice of such action to the Secretary and Commission.

Notice under this subsection shall be given in such manner as the Commission shall prescribe by rule.

(c) Intervention

In such action under this section, the Secretary or the Commission (or both), if not a party, may intervene as a matter of right.

[*See main edition for text of (d)*]

(e) Other remedies unaffected

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of this part or any rule thereunder, or to seek any other relief (including relief against the Secretary or the Commission).

[*See main edition for text of (f)*]

(As amended Pub. L. 95-619, title IV, § 425(f), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3288.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-619, § 425(f), struck out provision in par. (1) which excluded sections 6295 and 6302(a)(5) of this title and rules thereunder, struck out provision in par. (2) which excluded any act or duty under section 6295 or 6302(a)(5) of this title, and added provision giving district courts jurisdiction to order Federal agencies to perform particular acts or duties under this part.

Subsec. (b), (c), (e). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6306. Administrative procedure and judicial review

(a) Procedure for prescription of rules

Rules under sections 6293, 6294, 6295(a), 6297(b), or 6298 of this title shall be prescribed in accordance with section 553 of title 5, except that—

(1) interested persons shall be afforded an opportunity to present written and oral data, views, and arguments with respect to any proposed rule, and

(2) in the case of a rule under section 6295(a) of this title, the Secretary shall, by means of conferences or other informal procedures, afford any interested person an opportunity to question—

(A) other interested persons who have made oral presentations under paragraph (1), and

(B) employees of the United States who have made written or oral presentations,

with respect to disputed issues of material fact. Such opportunity shall be afforded to the extent the Secretary determines that questioning pursuant to such procedures is likely to result in a more timely and effective resolution of such issues.

A transcript shall be kept of any oral presentations made under this subsection.

(b) Petition by persons adversely affected by rules

(1) Any person who will be adversely affected by a rule prescribed under section 6293, 6294, or 6295 of this title when it is effective may, at any time prior to the sixtieth day after the date such rule is prescribed, file a petition with the United States court of appeals for the circuit wherein such person resides or has his principal place of business, for a judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the agency which prescribed the rule. Such agency thereupon shall file in the court the written submissions to, and transcript of, the proceedings on which the rule was based as provided in section 2112 of title 28.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule in accordance with chap-

ter 7 of title 5 and to grant appropriate relief as provided in such chapter. No rule under section 6293, 6294, or 6295 of this title may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(4) The remedies provided for in this subsection shall be in addition to, and not in substitution for, any other remedies provided by law.

(5) Repealed. Pub. L. 95-619, title IV, § 425(g)(5), Nov. 9, 1978, 92 Stat. 3266

(c) Effect on other laws

(1) Titles IV and V of the Department of Energy Organization Act [42 U.S.C. 7171 et seq., 7191 et seq.] shall not apply with respect to the procedures under this part.

(2) The procedures applicable under this part shall not—

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this part (or provisions of law cited herein), or

(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this part, and declaring that such provision supersedes, in whole or in part, the procedures of this part.

(As amended Pub. L. 95-619, title IV, §§ 425(g), 427, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3267, 3288.)

REFERENCES IN TEXT

The Department of Energy Organization Act, referred to in subsec. (c), is Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended. Titles IV and V of the Department of Energy Organization Act are classified generally to subchapter IV (§ 7171 et seq.) and subchapter V (§ 7191 et seq.) of chapter 84 of this title, respectively. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

CODIFICATION

Paragraph (2) of subsec. (a) of this section, which made section 57a(c) and (d) of Title 15, Commerce and Trade, applicable to rules under section 6295 of this title, other than subsections (a)(1), (2), and (3) thereof, was struck out as the probable intent of Congress in view of the amendment by Pub. L. 95-619 § 425(g)(1) which struck out the designation "(1)" immediately following the subsec. (a) designation of this section and in view of the amendment by Pub. L. 95-619 § 422 to section 6295(a) of this title omitting pars. (3) to (5) therefrom.

The amendment by section 425(g)(3)(B) of Pub. L. 95-619 to subsec. (a)(2)(B) of this section, as so redesignated by section 425(g)(3)(A) of Pub. L. 95-619, which substituted "paragraph (1)" for "subparagraph (A)", has been executed to subsec. (a)(2)(A) of this section, as so redesignated by section 425(g)(3)(A) of Pub. L. 95-619, as the probable intent of Congress.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-619, §§ 425(g)(1) to (3), 691(b)(2), deleted former par. (1) designation preceding "Rules under", redesignated former subpars. (A) and (B) of former par. (1) as pars. (1) and (2), respectively, and former cls. (i) and (ii) of former subpar. (B) of former par. (1) as subpars. (A) and (B), respectively, of par. (2), as so redesignated, struck out "(1), (2), or (3)" following "6295(a)" in text preceding par. (1), as so redesignated, struck out "paragraph (1), (2), or (3) of" preceding "section 6295(a)" in par. (2), as so redesignated, substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing, "paragraph (1)" for "subparagraph (A)" in par. (2), as so redesignated, and "this subsection" for "this paragraph" following "presentation made under".

Subsec. (b). Pub. L. 95-619, § 425(g)(4), (5), substituted "section 6293, 6294, or 6295" for "section 6293 or 6294" in pars. (1) and (2) and struck out former par. (5) which related to the application of section 57a(e) of Title 15 to rules under section 6295 of this title.

Subsec. (c). Pub. L. 95-619, § 427, added subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6295, 6316 of this title.

§ 6307. Consumer education

The Secretary shall, in close cooperation and coordination with the Commission and appropriate industry trade associations and industry members, including retailers, and interested consumer and environmental organizations, carry out a program to educate consumers and other persons with respect to—

[*See main edition for text of (1) and (2)*]

(3) such other matters as the Secretary determines may encourage the conservation of energy in the use of consumer products.

[*See main edition for text of concluding par.*]

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6308. Annual report

The Secretary shall report to the Congress and the President either (1) as part of his annual report, or (2) in a separate report submitted annually, on the progress of the program undertaken pursuant to this part and on the energy savings impact of this part. Each such report shall specify the actions undertaken by the Secretary in carrying out this part during the period covered by such report, and those actions which the Secretary was required to take under this part during such period but which were not taken, together with the reasons therefor.

(As amended Pub. L. 95-619, title IV, § 425(h), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3266, 3288.)

AMENDMENTS

1978—Pub. L. 95-619 added requirement that each report under this section should account for actions taken by the Secretary, as well as actions not taken, during the covered period in carrying out this part and substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration.

§ 6309. Authorization of appropriations

(a) Appropriations to Secretary

There are authorized to be appropriated to the Secretary not more than the following amounts to carry out his responsibilities under this part—

(1) $1,700,000 for fiscal year 1976;
(2) $1,500,000 for fiscal year 1977;
(3) $3,300,000 for fiscal year 1978; and
(4) $10,000,000 for fiscal year 1979.

Amounts authorized for such purposes under paragraph (3) shall be in addition to amounts otherwise authorized and appropriated for such purposes.

(b) Appropriations to Commission

There are authorized to be appropriated to the Commission not more than the following amounts to carry out its responsibilities under this part—

(1) $650,000 for fiscal year 1976;
(2) $700,000 for fiscal year 1977;
(3) $700,000 for fiscal year 1978; and
(4) $2,000,000 for fiscal year 1979.

(c) Appropriations to Secretary for allocation

There are authorized to be appropriated to the Secretary to be allocated not more than the following amounts—

(1) $1,100,000 for fiscal year 1976;
(2) $2,500,000 for fiscal year 1977; and
(3) $1,800,000 for fiscal year 1978.

Such amounts shall, and any amounts authorized to be appropriated under subsection (a) of this section, may be allocated by the Secretary to the National Bureau of Standards.

(As amended Pub. L. 95-70, § 3, July 21, 1977, 91 Stat. 276; Pub. L. 95-619, title IV, § 426, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3267, 3288.)

CODIFICATION

In the original, par. (4) of subsec. (b) was designated by section 426(b) of Pub. L. 95-619 as a second par. (3) but has been editorially redesignated as par. (4) to reflect the probable intent of Congress.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-619, §§ 426(a), 691(b)(2), substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, in text preceding par. (1), "$3,300,000" for "$1,500,000" in par. (3), added par. (4), and provided that amounts authorized under par. (3) would be in addition to amounts otherwise authorized and appropriated.

Subsec. (b). Pub. L. 95-619, § 426(b), added par. (4). See Codification note above.

Subsec. (c). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator".

1977—Subsec. (c)(2). Pub. L. 95-70, § 3(a), substituted "$2,500,000" for "$700,000".

Subsec. (c)(3). Pub. L. 95-70, § 3(b), substituted "$1,800,000" for "$700,000".

PART A-1—CERTAIN INDUSTRIAL EQUIPMENT
[NEW]

CODIFICATION

This part was, in the original, designated Part C and has been changed to Part A-1 for purposes of codification.

§ 6311. Definitions

For purposes of this part—

(1) The term "covered equipment" means one of the following types of industrial equipment:

(A) Electric motors and pumps.

(B) Any other type of industrial equipment which the Secretary classifies as covered equipment under section 6312(b) of this title.

(2)(A) The term "industrial equipment" means any article of equipment referred to in subparagraph (B) of a type—

(i) which in operation consumes, or is designed to consume, energy;

(ii) which, to any significant extent, is distributed in commerce for industrial or commercial use; and

(iii) which is not a "covered product" as defined in section 6291(a)(2) of this title, other than a component of a covered product with respect to which there is in effect a determination under section 6312(c) of this title;

without regard to whether such article is in fact distributed in commerce for industrial or commercial use.

(B) The types of equipment referred to in this subparagraph (in addition to electric motors and pumps) are as follows:

(i) compressors;
(ii) fans;
(iii) blowers;
(iv) refrigeration equipment;
(v) air conditioning equipment;
(vi) electric lights;
(vii) electrolytic equipment;
(viii) electric arc equipment;
(ix) steam boilers;
(x) ovens;
(xi) furnaces;
(xii) kilns;
(xiii) evaporators; and
(xiv) dryers.

(3) the term "energy efficiency" means the ratio of the useful output of services from an article of industrial equipment to the energy use by such article, determined in accordance with test procedures under section 6314 of this title.

(4) The term "energy use" means the quantity of energy directly consumed by an article of industrial equipment at the point of use, determined in accordance with test procedures established under section 6314 of this title.

(5) The term "manufacturer" means any person who manufactures industrial equipment.

(6) The term "label" may include any printed matter determined appropriate by the Secretary.

(7) The terms "energy", "manufacture", "import", "importation", "consumer product", "distribute in commerce", "distribution in commerce", and "commerce" have the same meaning as is given such terms in section 6291 of this title.

(Pub. L. 94-163, title III, § 340, as added Pub. L. 95-619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3267.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6312 of this title.

§ 6312. Purposes and coverage

(a) Congressional statement of purpose

It is the purpose of this part to improve the efficiency of electric motors and pumps and certain other industrial equipment in order to conserve the energy resources of the Nation.

(b) Inclusion of industrial equipment as covered equipment

The Secretary may, by rule, include a type of industrial equipment as covered equipment if he determines that to do so is necessary to carry out the purposes of this part.

(c) Inclusion of component parts of consumer products as industrial equipment

The Secretary may, by rule, include as industrial equipment articles which are component parts of consumer products, if he determines that—

(1) such articles are, to a significant extent, distributed in commerce other than as component parts for consumer products; and

(2) such articles meet the requirements of section 6311(2)(A) of this title (other than clauses (ii) and (iii)).

(Pub. L. 94-163, title III, § 341, as added Pub. L. 95-619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3268.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6311 of this title.

§ 6313. Evaluations

(a) Electric motors and pumps; report to Congress

Not later than 18 months after November 9, 1978, the Secretary shall—

(1) evaluate electric motors and pumps to—

(A) determine standard classifications with respect to size, function, type of energy used, method of manufacture, or other factors which may be appropriate for purpose of this part; and

(B) determine the practicability and effects of requiring all or part of the classes of electric motors and pumps determined under subparagraph (A) to meet performance standards establishing minimum levels of energy efficiency; and

(2) submit a report to the Congress on the results of such evaluation, together with such recommendations for legislation as he considers appropriate.

(b) Other industrial equipment; report to Congress

(1) The Secretary may conduct an evaluation of any type of industrial equipment (other than electric motors or pumps) to—

(A) determine standard classifications with respect to size, function, type of energy used, method of manufacture, or other factors which may be appropriate for purposes of this part; and

(B) determine the practicability and effects of requiring all or part of the classes determined under subparagraph (A) to meet performance standards establishing minimum levels of energy efficiency.

(2) After the completion of an evaluation under paragraph (1), the Secretary shall submit to the Congress a report on such evaluation, together with such recommendations for legislation as he considers appropriate.

(c) Duties of Secretary

(1) In conducting an evaluation under subsection (a) or (b) of this section, the Secretary shall, with respect to equipment covered by the evaluation—

(A) identify significant factors that determine energy efficiency, including hours of operation per year and average power consumption at normal use and at full capacity;

(B) estimate current and future equipment population profiles;

(C) estimate the potential for improvements in energy efficiency that in the Secretary's judgment are both technologically feasible and economically justified;

(D) estimate likely increases or decreases in energy efficiency and total energy savings likely to result from implementation of—

(i) labeling rules, and

(ii) energy efficiency standards; and

(E) examine such other factors as the Secretary determines appropriate.

(2) Before submitting a report to the Congress under subsection (a) or (b) of this section, the Secretary shall—

(A) make available to interested persons copies of the proposed report, publish in the Federal Register notice of availability of such report, and afford interested persons an opportunity (of not less than 60 days' duration) to present written comments; and

(B) make such modifications of such report as he may consider appropriate on the basis of such comments.

(3) Any standard classification of industrial equipment established under subsection (a) or (b) of this section shall—

(A) define the equipment contained therein; and

(B) characterize the equipment and its general use.

(Pub. L. 94-163, title III, § 342, as added Pub. L. 95-619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3269.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6314 of this title.

§ 6314. Test procedures

(a) Prescription by Secretary; requirements

(1) If the Secretary has conducted an evaluation of a class of covered equipment under section 6313 of this title, he may prescribe test procedures for such class in accordance with the following provisions of this section.

(2) Test procedures prescribed in accordance with this section shall be reasonably designed to produce test results which reflect energy efficiency, energy use, and estimated operating

costs of a type of industrial equipment (or class thereof) during a representative average use cycle (as determined by the Secretary), and shall not be unduly burdensome to conduct.

(3) If the test procedure is a procedure for determining estimated annual operating costs, such procedure shall provide that such costs shall be calculated from measurements of energy use in a representative average-use cycle (as determined by the Secretary), and from representative average unit costs of the energy needed to operate such equipment during such cycle. The Secretary shall provide information to manufacturers of covered equipment respecting representative average unit costs of energy.

(b) Publication in Federal Register; presentment of oral and written data, views, and arguments by interested persons

Before prescribing any final test procedures under this section, the Secretary shall—

(1) publish proposed test procedures in the Federal Register; and

(2) afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed test procedures.

(c) Reevaluations

(1) The Secretary shall, not later than 3 years after the date of prescribing a test procedure under this section (and from time to time thereafter), conduct a reevaluation of such procedure and, on the basis of such reevaluation, shall determine if such test procedure should be amended. In conducting such reevaluation, the Secretary shall take into account such information as he deems relevant, including technological developments relating to the energy efficiency of the type (or class) of covered equipment involved.

(2) If the Secretary determines under paragraph (1) that a test procedure should be amended, he shall promptly publish in the Federal Register proposed test procedures incorporating such amendments and afford interested persons an opportunity to present oral and written data, views, and arguments. Such comment period shall not be less than 45 days' duration.

(d) Prohibited representations

(1) Effective 180 days after a test procedure rule applicable to any covered equipment is prescribed under this section, no manufacturer, distributor, retailer, or private labeler may make any representation—

(A) in writing (including any representation on a label), or

(B) in any broadcast advertisement,

respecting the energy consumption of such equipment or cost of energy consumed by such equipment, unless such equipment has been tested in accordance with such text procedure and such representation fairly discloses the results of such testing.

(2) On the petition of any manufacturer, distributor, retailer, or private labeler, filed not later than the 60th day before the expiration of the period involved, the 180-day period referred to in paragraph (1) may be extended by the Secretary with respect to the petitioner (but in no event for more than an additional 180 days) if he finds that the requirements of paragraph (1) would impose on such petitioner an undue hardship (as determined by the Secretary).

(e) Assistance by National Bureau of Standards

The Secretary may direct the National Bureau of Standards to provide such assistance as the Secretary deems necessary to carry out his responsibilities under this part, including the development of test procedures.

(Pub. L. 94-163, title III, § 343, as added Pub. L. 95-619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3270.)

CODIFICATION

In the original, this section was enacted with two provisions designated as subsec. (d) and none designated as subsec. (c). Therefore, the first provision designated as subsec. (d), relating to reevaluations, was redesignated subsec. (c) as the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6311, 6315, 6316 of this title.

§ 6315. Labeling

(a) Prescription by Secretary

If the Secretary has prescribed test procedures under section 6314 of this title for any class of covered equipment, he may prescribe a labeling rule applicable to such class of covered equipment in accordance with the following provisions of this section.

(b) Disclosure of energy efficiency of articles of covered equipment

A labeling rule prescribed in accordance with this section shall require that each article of covered equipment which is in the type (or class) of industrial equipment to which such rule applies, discloses by label, the energy efficiency of such article, determined in accordance with test procedures under section 6314 of this title. Such rule may also require that such disclosure include the estimated operating costs and energy use, determined in accordance with test procedures under section 6314 of this title.

(c) Inclusion of requirements

A rule prescribed in accordance with this section may include such requirements as the Secretary determines are likely to assist purchasers in making purchasing decisions, including—

(1) requirements and directions for display of any label,

(2) requirements for including on any label, or separately attaching to, or shipping with, the covered equipment, such additional information relating to energy efficiency, energy use, and other measures of energy consumption, including instructions for the maintenance, use, or repair of the covered equipment, as the Secretary determines necessary to provide adequate information to purchasers, and

(3) requirements that printed matter which is displayed or distributed at the point of sale of such equipment shall disclose such information as may be required under this section to be disclosed on the label of such equipment.

(d) Consultation with Federal Trade Commission

Before prescribing any labeling rules for a type (or class) of covered equipment, the Secretary shall consult with, and obtain the written views of, the Federal Trade Commission with respect to such rules. The Federal Trade Commission shall promptly provide such written views upon the request of the Secretary.

(e) Publication in Federal Register; presentment of oral and written data, views, and arguments of interested persons

(1) Before prescribing any labeling rules under this section, the Secretary shall—

(A) publish proposed labeling rules in the Federal Register, and

(B) afford interested persons an opportunity (of not less than 45 days' duration) to present oral and written data, views, and arguments on the proposed rules.

(2) A labeling rule prescribed under this section shall take effect not later than 3 months after the date of prescription of such rule, except that such rules may take effect not later than 6 months after such date of prescription if the Secretary determines that such extension is necessary to allow persons subject to such rules adequate time to come into compliance with such rules.

(f) Restrictions on Secretary's authority to promulgate rules

The Secretary shall not promulgate labeling rules for any class of industrial equipment unless he has determined that—

(1) labeling in accordance with this section is technologically and economically feasible with respect to such class;

(2) significant energy savings will likely result from such labeling; and

(3) labeling in accordance with this section is likely to assist consumers in making purchasing decisions.

(g) Tests for accuracy of information contained on labels

When requested by the Secretary, any manufacturer of industrial equipment to which a rule under this section applies shall supply at the manufacturer's expense a reasonable number of articles of such covered equipment to any laboratory or testing facility designated by the Secretary, or permit representatives of such laboratory or facility to test such equipment at the site where it is located, for purposes of ascertaining whether the information set out on the label, or otherwise required to be disclosed, as required under this section, is accurate. Any reasonable charge levied by the laboratory or facility for such testing shall be borne by the United States, if and to the extent provided in appropriations Acts.

(h) Products completed prior to effective date of rules

A labeling rule under this section shall not apply to any article of covered equipment the manufacture of which was completed before the effective date of such rule.

(i) Labeling authority under Federal Trade Commission Act

Until such time as labeling rules under this section take effect with respect to a type (or class) of covered equipment, this section shall not affect any authority of the Commission under the Federal Trade Commission Act [15 U.S.C. 41 et seq.] to require labeling with respect to energy consumption of such type (or class) of covered equipment.

(Pub. L. 94-163, title III, § 344, as added Pub. L. 95-619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3271.)

References in Text

The Federal Trade Commission Act, referred to in subsec. (i), is act Sept. 26, 1914, ch. 311, 38 Stat. 717, as amended, which is classified generally to subchapter I (§ 41 et seq.) of chapter 2 of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 58 of Title 15 and Tables.

Section Referred to in Other Sections

This section is referred to in section 6316 of this title.

§ 6316. Administration, penalties, and enforcement

(a) [1] The provisions of section 6296(a), (b), and (d) of this title and sections 6298 through 6306 of this title shall apply with respect to this part to the same extent and in the same manner as they apply in part A. In applying such provisions for the purposes of this part—

(1) references to sections 6293 and 6294 of this title shall be considered as references to sections 6314 and 6315 of this title, respectively;

(2) references to "this part" shall be treated as referring to part A-1;

(3) the term "equipment" shall be substituted for the term "product"; and

(4) the term "Secretary" shall be substituted for "Commission" each place it appears (other than in section 6303(c) of title).

(Pub. L. 94-163, title III, § 345, as added Pub. L. 95-619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3272.)

§ 6317. Authorization of appropriations

(a) [1] There are hereby authorized to be appropriated to carry out the purposes of this subpart [2]—

(1) $2,000,000 for fiscal year 1978; and

(2) $3,000,000 for fiscal year 1979.

(Pub. L. 94-163, title III, § 346, as added Pub. L. 95-619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3272.)

PART B—STATE ENERGY CONSERVATION PLANS

Codification

This part, originally designated Part C and subsequently redesignated Part D by Pub. L. 95-619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3267, was changed to Part B for purposes of codification.

Part Referred to in Other Sections

This part is referred to in sections 6851, 7005 of this title; title 12 section 1701z-8.

§ 6321. Congressional findings and declaration of purpose

[*See main edition for text of* (a)]

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[1] So in orginal. No subsec. (b) has been enacted.

[2] So in original. Probably should be "part".

(b) It is the purpose of this part to promote the conservation of energy and reduce the rate of growth of energy demand by authorizing the Secretary to establish procedures and guidelines for the development and implementation of specific State energy conservation programs and to provide Federal financial and technical assistance to States in support of such programs.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration.

REPORT ON COORDINATION OF ENERGY CONSERVATION PROGRAMS

Section 623 of Pub. L. 95-619, which provided that not later than 6 months after Nov. 9, 1978, the Secretary of Energy submit a report on the coordination of Federal energy conservation programs involving State and local government, was omitted from the Code as executed.

CROSS REFERENCES

Emergency energy conservation program, see section 8511 et seq. of this title.

§ 6322. State energy conservation plans

(a) Feasibility reports

The Secretary shall, by rule, within 60 days after December 22, 1975, prescribe guidelines for the preparation of a State energy conservation feasibility report. The Secretary shall invite the Governor of each State to submit, within 3 months after the effective date of such guidelines, such a report. Such report shall include—

[*See main edition for text of* (*1*) *and* (*2*)]

(b) Guidelines

The Secretary shall, by rule, within 6 months after December 22, 1975, prescribe guidelines with respect to measures required to be included in, and guidelines for the development, modification, and funding of, State energy conservation plans. The Secretary shall invite the Governor of each State to submit, within 5 months after the effective date of such guidelines, a report. Such report shall include—

[*See main edition for text of* (*1*) *and* (*2*); (*c*) *and* (*d*)]

(e) Standby plans

The Governor of any State may submit to the Secretary a State energy conservation plan which is a standby energy conservation plan to significantly reduce energy demand by regulating the public and private consumption of energy during a severe energy supply interruption, which plan may be separately eligible for Federal assistance under this part without regard to subsections (c) and (d) of this section.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsecs. (a), (b), (e). Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

CROSS REFERENCES

State emergency energy conservation plan, see section 8512 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6323, 6324, 6325, 6327, 6371, 7005 of this title.

§ 6323. Federal assistance to States

(a) Information, technical assistance, and assistance in preparation of reports and development, implementation, or modification of energy conservation plan

Upon request of the Governor of any State, the Secretary shall provide, subject to the availability of personnel and funds, information and technical assistance, including model State laws and proposed regulations relating to energy conservation, and other assistance in—

[*See main edition for text of* (*1*) *and* (*2*)]

(b) Financial assistance to assist State in development, implementation, or modification of energy conservation plan; submission of plan to and approval of Secretary; considerations governing approval; amount of assistance

(1) The Secretary may grant Federal financial assistance pursuant to this section for the purpose of assisting such State in the development of any such energy conservation plan or in the implementation or modification of a State energy conservation plan or part thereof which has been submitted to and approved by the Secretary pursuant to this part.

(2) In determining whether to approve a State energy conservation plan submitted under section 6322(b) or (e) of this title, the Secretary—

[*See main edition for text of* (*A*)]

(B) may extend the period of time during which a State energy conservation feasibility report or State energy conservation plan may be submitted if the Secretary determines that participation by the State submitting such report or plan is likely to result in significant progress toward achieving the purposes of this chapter.

No such plan shall be disapproved without notice and an opportunity to present views.

(3) In determining the amount of Federal financial assistance to be provided to any State under this subsection, the Secretary shall consider—

(A) the contribution to energy conservation which can reasonably be expected,

(B) the number of people affected by such plan, and

(C) the consistency of such plan with the purposes of this chapter, and such other factors as the Secretary deems appropriate.

(c) Records

Each recipient of Federal financial assistance under subsection (b) of this section shall keep such records as the Secretary shall require, including records which fully disclose the amount and disposition by each recipient of the proceeds of such assistance, the total cost of the plan, program, projects, measures, or systems for which such assistance was given or used, the source and amount of funds for such plan, program, projects, measures, or systems not supplied by the Secretary, and such other records as the Secretary determines necessary to facilitate an effective audit and performance evaluation. The Secretary and Comptroller General of the United States, or any of their duly authorized representatives, shall have access for the purpose of audit and examination, at reasonable times and under reasonable conditions, to any pertinent books, documents, papers, and records of any recipient of Federal assistance under this part.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

§ 6324. Energy conservation goals

Upon the basis of the reports submitted pursuant to this part and such other information as is available, the Secretary shall, at the earliest practicable date, set an energy conservation goal for each State for 1980 and may set interim goals. Such goal or goals shall consist of the maximum reduction in the consumption of energy during any year as a result of the implementation of the State energy conservation plan described in section 6322(b) of this title which is consistent with technological feasibility, financial resources, and economic objectives, by comparison with the projected energy consumption for such State in such year. The Secretary shall specify the assumptions used in the determination of the projected energy consumption in each State, taking into account population trends, economic growth, and the effects of national energy conservation programs.

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

CROSS REFERENCES

Emergency energy conservation targets, see section 8511 of this title.

§ 6325. General provisions

(a) Rules

The Secretary may prescribe such rules as may be necessary or appropriate to carry out his authority under this part.

(b) Departmental consultation

In carrying out the provisions of sections 6322 and 6324 of this title and subsection (a) of section 6323 of this title, the Secretary shall consult with appropriate departments and Federal agencies.

(c) Annual report

The Secretary shall report annually to the President and the Congress, and shall furnish copies of such report to the Governor of each State, on the operation of the program under this part. Such report shall include an estimate of the energy conservation achieved, the degree of State participation and achievement, a description of innovative conservation programs undertaken by individual States, and the recommendations of the Secretary, if any, for additional legislation.

[*See main edition for text of (d)*]

(e) List of energy measures eligible for financial assistance; designation of types and requirements of energy audits

Within 90 days after August 14, 1976, the Secretary shall—

[*See main edition for text of (1) and (2)*]

(f) Authorization of appropriations

There are authorized to be appropriated for carrying out the provisions of this part (other than section 6327 of this title) $50,000,000 for fiscal year 1976, $50,000,000 for fiscal year 1977, $50,000,000 for fiscal year 1978, and $50,000,000 for fiscal year 1979.

(As amended Pub. L. 95-619, title VI, §§ 621, 691(b)(2), Nov. 9, 1978, 92 Stat. 3283, 3288.)

AMENDMENTS

1978—Subsecs. (a) to (c), (e). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

Subsec. (f). Pub. L. 95-619, § 621, authorized to be appropriated $50,000,000 for fiscal year 1979.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6326, 6371, 6881 of this title; title 12 section 1701z-8.

§ 6326. Definitions

As used in this part—

(1) The term "appliance" means any article, such as a room air-conditioner, refrigerator-freezer, or dishwasher, which the Secretary classifies as an appliance for purposes of this part.

(2) The term "building" means any structure which includes provision for a heating or cooling system, or both, or for a hot water system.

(3) The term "energy audit" means any process which identifies and specifies the energy and cost savings which are likely to be realized through the purchase and installation of particular energy conservation measures or renewable-resource energy measures and which—

(A) is carried out in accordance with rules of the Secretary; and

(B) imposes—

(i) no direct costs, with respect to individuals who are occupants of dwelling units in any State having a supplemental State energy conservation plan approved under section 6327 of this title, and

(ii) only reasonable costs, as determined by the Secretary, with respect to any person not described in clause (i).

Rules referred to in subparagraph (A) may include minimum qualifications for, and provisions with respect to conflicts of interest of, persons carrying out such energy audits.

(4) The term "energy conservation measure" means a measure which modifies any building or industrial plant, the construction of which has been completed prior to August 14, 1976, if such measure has been determined by means of an energy audit or by the Secretary, by rule under section 6325(e)(1) of this title, to be likely to improve the efficiency of energy use and to reduce energy costs (as calculated on the basis of energy costs reasonably projected over time, as determined by the Secretary) in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure (without regard to any tax benefit or Federal financial assistance applicable thereto) within the period of—

(A) the useful life of the modification involved, as determined by the Secretary, or

(B) 15 years after the purchase and installation of such measure,

whichever is less. Such term does not include (i) the purchase or installation of any appliance, (ii) any conversion from one fuel or source of energy to another which is of a type which the Secretary, by rule, determines is ineligible on the basis that such type of conversion is inconsistent with national policy with respect to energy conservation or reduction of imports of fuels, or (iii) any measure, or type of measure, which the Secretary determines does not have as its primary purpose an improvement in efficiency of energy use.

[*See main edition for text of* (5)]

(6) The term "renewable-resource energy measure" means a measure which modifies any building or industrial plant, the construction of which has been completed prior to August 14, 1976, if such measure has been determined by means of an energy audit or by the Secretary, by rule under section 6325(e)(1) of this title, to—

[*See main edition for text of* (*A*)]

(B) be likely to reduce energy costs (as calculated on the basis of energy costs reasonably projected over time, as determined by the Secretary) in an amount sufficient to enable a person to recover the total cost of purchasing and installing such measure (without regard to any tax benefit or Federal financial assistance applicable thereto) within the period of—

(i) the useful life of the modification involved, as determined by the Secretary, or

(ii) 25 years after the purchase and installation of such measure,

whichever is less.

Such term does not include the purchase or installation of any appliance.

[*See main edition for text of* (*7*) *and* (*8*)]

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pars. (1), (3)(A), (B)(ii), (4), (A), (6), (B), (B)(i). Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6881 of this title; title 12 section 1701z-8.

§ 6327. Supplemental State energy conservation plans

(a) Development and promulgation of guidelines and rules; consultation with State Governors; publication in Federal Register; financial assistance to States

(1) The Secretary shall, within 6 months after August 14, 1976, prescribe guidelines with respect to measures required to be included in, and guidelines for the development, modification, and funding of, supplemental State energy conservation plans. Such guidelines shall include the provisions of one or more model supplemental State energy conservation plans with respect to the requirements of this section.

(2) In prescribing such guidelines, the Secretary shall solicit and consider the recommendations of, and be available to consult with, the Governors of the States as to such guidelines. At least 60 days prior to the date of final publication of such guidelines, the Secretary shall publish proposed guidelines in the Federal Register and invite public comments thereon.

(3) The Secretary shall invite the Governor of each State to submit to the Secretary a proposed supplemental State energy conservation plan which meets the requirements of subsection (b) of this section and any guidelines applicable thereto.

(4) The Secretary may prescribe rules applicable to supplemental State energy conservation plans under this section pursuant to which—

(A) a State may apply for and receive assistance for a supplemental State energy conservation plan under this section; and

(B) such plan under this section may be administered;

as if such plan was a part of the State energy conservation plan program under section 6322 of this title. Such rules shall not have the effect of delaying funding of the program under section 6322 of this title.

[*See main edition for text of* (5)]

(6) The Secretary may grant Federal financial assistance pursuant to this section for the purpose of assisting any State in the development of any supplemental State energy conservation plan or in the implementation or modification of such a plan or part thereof which has been submitted to and approved by the Secretary pursuant to this section.

(b) Required provisions

(1) Each proposed supplemental State energy conservation plan to be eligible for Federal financial assistance under this section shall include—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) any procedures, programs, or other actions required by the Secretary pursuant to paragraph (2).

(2) The Secretary may promulgate guidelines under this section to provide that, in order to be eligible for Federal assistance under this section, a supplemental State energy conservation plan shall include, in addition to the requirements of paragraph (1) of this subsection, one or more of the following:

[*See main edition for text of* (*A*) *to* (*D*)]

(c) Authorization of appropriation

There are authorized to be appropriated for supplemental State energy conservation plans which are approved under this section $25,000,000 for fiscal year 1977, $40,000,000 for fiscal year 1978, and $50,000,000 for fiscal year 1979.

(As amended Pub. L. 95–619, title VI, §§ 622, 691(b)(2), Nov. 9, 1978, 92 Stat. 3283, 3288.)

AMENDMENTS

1978—Subsecs. (a), (b). Pub. L. 95–619, § 691(b)(2), substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

Subsec. (c). Pub. L. 95–619, § 622, increased the appropriations authorization for fiscal year 1979 from $40,000,000 to $50,000,000.

PART C—INDUSTRIAL ENERGY CONSERVATION

CODIFICATION

This part, originally designated Part D and subsequently redesignated Part E by Pub. L. 95–619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3267, was changed to Part C for purposes of codification.

§ 6341. Definitions

As used in this part—

(1) The term "chief executive officer" means, within a corporation, the individual whom the Secretary determines, for purposes of this part, is in charge of operations.

[*See main edition for text of* (*2*)]

(3) The term "energy efficiency" means the amount of industrial output or activity per unit of energy consumed therein, as determined by the Secretary.

(4) The term "major energy-consuming industry" means a two-digit classification, within the manufacturing division of economic activity set forth in the Standard Industrial Classification (SIC) Manual by a code number, which the Secretary determines is suited to the purposes of this part.

(5) The term "plant" means an economic unit at a single physical location where industrial processes are performed, as determined by the Secretary, and may be referred to as a factory, a mill, or an establishment.

(6) The term "United States" means each of the several States, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States.

(As amended Pub. L. 95–619, title VI, §§ 601(c), 691(b)(2), Nov. 9, 1978, 92 Stat. 3283, 3288.)

AMENDMENTS

1978—Pars. (1), (3), (4). Pub. L. 95–619, § 691(b)(2), substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration.

Pars. (5), (6). Pub. L. 95–619, § 601(c), added pars. (5) and (6).

CROSS REFERENCES

Powerplant and industrial fuel use, see section 8301 et seq. of this title.

§ 6342. Energy efficiency program

The Secretary shall establish and maintain, in consultation with the Secretary of Commerce and the Secretary of the Energy Research and Development Administration, a program—

(1) to promote increased energy efficiency by American industry, and

(2) to establish voluntary energy efficiency improvement targets for at least the 10 most energy-consumptive major energy-consuming industries.

(As amended Pub. L. 95–619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95–619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration.

§ 6343. Identification of major energy consumers

(a) Within 90 days after December 22, 1975, the Secretary shall identify each major energy-consuming industry in the United States, and shall establish a priority ranking of such industries on the basis of their respective total annual energy consumption.

(b) Within 90 days after November 9, 1978, the Secretary shall identify each corporation which consumes at least one trillion British thermal units of energy per year and which is within a major energy-consuming industry identified under subsection (a) of this section.

(As amended Pub. L. 95–619, title VI, §§ 601(a), 691(b)(2), Nov. 9, 1978, 92 Stat. 3282, 3288.)

AMENDMENTS

1978—Pub. L. 95–619 designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, and struck out provision relating to the identification of corporations by the Administrator which consumed at least one trillion Btu's of energy per year and were ranked among the fifty most energy-consumptive corporations in its industry, and added subsec. (b).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6344, 6344a, 6345, 6346 of this title.

§ 6344. Individual energy efficiency improvement targets

(a) Establishment for ten most energy-consumptive industries

Within one year after December 22, 1975, the Secretary shall set an industrial energy efficiency improvement target for each of the 10 most energy-consumtive[1] industries identified under section 6343 of this title. Each such target—

[*See main edition for text of* (*1*) *to* (*3*)]

(b) Determination of maximum feasible improvement

In determining maximum feasible improvement under subsection (a) of this section and under subsection (c) of this section, the Secretary shall consider—

[*See main edition for text of* (*1*) *to* (*4*)]

(c) Targets for other industries

The Secretary may, in order to carry out section 6342(1) of this title, set an industrial energy efficiency improvement target for any major energy-consuming industry to which subsection (a) of this section does not apply. Each such target—

[*See main edition for text of* (*1*) *to* (*3*)]

(d) Modification of targets

Any target established under subsection (a) or (c) of this section may be modified at any time if the Secretary—

[*See main edition for text of* (*1*) *and* (*2*)]

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6346 of this title.

§ 6344a. Targets for use of recovered materials

(a) "Energy saving recovered materials" defined

For purposes of this section, the term "energy-saving recovered materials" means aluminum, copper, lead, zinc, iron, steel, paper and allied paper products, textiles, and rubber, recovered from solid waste, as defined in the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.].

(b) Establishment of targets

Within one year after November 9, 1978, the Secretary shall set targets for increased utilization of energy-saving recovered materials for each of the following industries: the metals and metal products industries, the paper and allied products industries, the textile mill products industry, and the rubber industry. Such targets—

(1) shall be based on the best available information,

(2) shall be established at levels which represent the maximum feasible increase in utilization of energy-saving recovered materials each such industry can achieve progressively by January 1, 1987, and

(3) shall be published in the Federal Register, together with a statement of the basis and justification for such targets.

(c) Consultation with Administrator of the Environmental Protection Agency

In establishing targets under subsection (b) of this section, the Secretary shall consult with the Administrator of the Environmental Protection Agency and with each of the major industries subject to this section, and shall consider—

(1) the technological and economic ability of each such industry progressively to increase its utilization of energy-saving recovered materials by January 1, 1987, and

(2) all actions taken or which before such date could be taken by each such industry, or by Federal, State, or local governments to increase that industry's utilization of energy-saving recovered materials.

(d) Modification of targets

Any target established under subsection (b) of this section may be modified if the Secretary—

(1) determines that such target cannot reasonably be attained, or that it should require greater use of energy-saving recovered materials, and

(2) publishes such determination in the Federal Register, together with a basis and justification for such modification.

(e) Notification to major energy consumers; report to Secretary

Within each of the industries subject to this section, the Secretary shall notify each corporation which is a major energy consumer (within the meaning of section 6343 of this title) of the requirements of this section. Not later than January 1, 1979, the chief executive officer of each such corporation (or individual designated by such officer) shall include in his report to the Secretary under section 6345 of this title, or if section 6346(g) of this title applies, prepare and transmit a report which includes, a statement of the volume of energy-saving recovered materials that such corporation is using in each of its manufacturing operations located in the United States and what plans, if any, the corporation has to increase the utilization of such materials in those operations in each of the next ten years. Not later than January 1, 1980, and annually thereafter, each such corporation shall include in such report a statement of the progress it has made to increase its utilization of energy-saving recovered materials to reach targets established under this section by the Secretary for its industry. Such reports shall contain such information as the Secretary determines is necessary to measure progress toward meeting the industry targets established under this section.

(f) Annual report

The Secretary shall include in his annual report under section 6345(e) of this title a report on the industrial energy and natural resource conservation and recovery program established under this section. Each such report shall include—

(1) a summary of the progress made toward the achievement of targets set by the Secretary under this section; and

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[1] So in original. Probably should be "energy-consumptive".

(2) a summary of the progress made toward meeting such targets since the date of publication of the previous report, if any.

(Pub. L. 94–163, title III, § 374A, as added Pub. L. 95–619, title IV, § 461(c), Nov. 9, 1978, 92 Stat. 3273.)

REFERENCES IN TEXT

The Solid Waste Disposal Act, referred to in subsec. (a), is title II of Pub. L. 89–272, as amended generally by Pub. L. 94–580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSES

Section 461(a) and (b) of Pub. L. 95–619 provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) significant amounts of industrial energy and other scarce natural resources are conserved in certain major energy-consuming industries where recovered materials are utilized in their manufacturing operations;

"(2) substantial additional volumes of industrial energy and other scarce natural resources will be conserved in future years if such major energy-consuming industries increase to the maximum feasible extent utilization of recovered materials in their manufacturing operations;

"(3) millions of tons of recoverable materials which could be used by such industries are needlessly wasted and buried each year at great cost to State and local governments, while technology and methods exist whereby those materials could readily be made available for utilization; and

"(4) the recovery and utilization of such recovered materials can substantially reduce the dependence of the United States on foreign natural resources and reduce the growing deficit in its balance of payments.

"(b) PURPOSES.—The purposes of this subtitle [probably means this part, which enacted this section and amended section 6346 of this title] are to conserve valuable energy and scarce natural resources, promote the national security, and protect the environment by—

"(1) directing that targets for increased industrial utilization of recovered materials be established for certain major energy-consuming industries;

"(2) creating procedures whereby such industries may cooperate with the Federal Government in the establishment and achievement of such targets; and

"(3) providing incentives for increased industrial utilization of energy-saving recovered materials in such major energy-consuming industries."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6346 of this title.

§ 6345. Reports

(a) Report by chief executive officer of corporation to Secretary on progress corporation has made in improving its energy efficiency

The chief executive officer (or individual designated by such officer) of each corporation which is identified by the Secretary pursuant to section 6343 of this title shall report to the Secretary on an annual basis (as determined by the Secretary) on the progress such corporation has made in improving its energy efficiency. Such report shall contain such information as the Secretary determines is necessary to measure progress toward meeting the energy efficiency improvement target set for the industry of which such corporation is a part, except that the Secretary shall not require such report if such corporation is in an industry which has an adequate voluntary reporting program (as defined by section 6346(g) of this title).

(b) Inclusion of data aggregated to SIC codes

Each report to the Secretary under subsection (a) of this section shall include data aggregated to SIC codes from plant reporting forms in a manner to be determined by the Secretary.

(c) Filing of plant reporting forms

Each plant shall periodically file a plant reporting form with its corporation at the corporation's headquarters within the United States. Each plant reporting form will be retained by the plant's corporation at its headquarters for at least 5 years. Such forms will be made available to the Secretary for verification purposes upon request, but information from forms made so available shall not be released to the public.

(d) Preparation, publication, and availability of forms required by subsections (a) and (c)

The Secretary shall prepare, publish, and make available for use in complying with the reporting requirements under subsections (a) and (c) of this section, forms which shall be designed in such a way as to avoid imposing on any corporation which is required to submit reports under subsection (a) of this section an undue burden with respect to the corporation or any plant of such corporation.

(e) Annual report

The Secretary shall prepare and submit to the Congress and to the President, and shall cause to be published, an annual report on the industrial energy efficiency program established under section 6342 of this title. Each such report shall include—

(1) a summary of the progress made toward the achievement of the industrial energy efficiency improvement targets set by the Secretary,

(2) a summary of the progress made toward meeting such industrial energy efficiency improvement targets since the date of publication of the previous such report, if any, and

(3) recommendations to the Congress as to how additional improvements might be achieved.

(As amended Pub. L. 95–619, title VI, § 601(b), Nov. 9, 1978, 92 Stat. 3282.)

AMENDMENTS

1978—Subsec. (a). Pub. L. 95–619 authorized the Secretary to receive reports required by this subsection rather than the Administrator of the Federal Energy Administration and struck out qualification that corporations subject to the reporting requirement were only those in industries for which industrial energy efficiency improvement targets were established under section 6344(a) of this title.

Subsec. (b). Pub. L. 95–619 substituted provisions requiring each report to the Secretary under subsec. (a) of this section to include data aggregated to SIC codes for provisions requiring the Administrator to prepare, publish, and make available for use a form designed to aid corporations required to submit reports under subsec. (a) of this section.

Subsec. (c). Pub. L. 95-619 substituted provisions requiring each plant to file periodically at its corporate headquarters a plant reporting form, to be retained at such headquarters for at least five years, and to be made available to the Secretary upon request, for provisions requiring the Administrator to report to Congress and the President on the industrial energy efficiency program established under section 6342 of this title.

Subsecs. (d), (e). Pub. L. 95-619 added subsecs. (d) and (e).

SECOND LAW EFFICIENCY STUDY

Section 683 of Pub. L. 95-619, which provided that the Secretary of Energy, in consultation with the Director of the National Bureau of Standards and such other agencies as he deems necessary, conduct a study of the relevance to energy conservation programs of the use of the concept of energy efficiency as being the ratio of the minimum available work necessary for accomplishing a given task to the available work in the actual fuel used to accomplish that task and that a report on the study be submitted to the Congress within 12 months after Nov. 9, 1978, was omitted from the Code as executed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6344a, 6346 of this title.

§ 6346. General provisions

[*See main edition for text of* (*a*)]

(b) Authority to obtain information for energy efficiency program

In addition to the exercise of authority under this part, the Secretary may exercise any authority he has under any provision of law (other than this part) to obtain such information with respect to industrial energy efficiency and industrial energy conservation as is necessary or appropriate to the attainment of the objectives of the program established under section 6342 or 6344a of this title.

(c) Opportunity for interested persons to submit data, views, and arguments

The Secretary shall afford interested persons an opportunity to submit written and oral data, views, and arguments prior to the establishment of any industrial energy efficiency improvement target under section 6344 or any target under section 6344a of this title and prior to publication of any reporting requirements under section 6345 of this title.

(d) Information submitted by corporations

Any information submitted by a corporation to the Secretary under this part shall not be considered energy information, as defined by section 796(e)(1) of title 15, for purposes of any verification examination authorized to be conducted by the Comptroller General under section 6381 of this title.

(e) Disclosure of trade secrets and commercial or financial information

The Secretary may not disclose any information obtained under this part which is a trade secret or other matter described in section 552(b)(4) of title 5 disclosure of which may cause significant competitive damage; except to committees of Congress upon request of such committees. Prior to disclosing any information described in such section 552(b)(4), the Secretary shall afford the person who provided such information an opportunity to comment on the proposed disclosure.

(f) Failure to meet industrial energy efficiency improvement targets

No liability shall attach, and no civil or criminal penalties may be imposed, for any failure to meet any industrial energy efficiency improvement target established under section 6344 or any target under section 6344a of this title.

(g) Voluntary reporting programs

(1) The Secretary shall exempt a corporation from the requirements of section 6345(a) of this title if such corporation is in an industry which has an adequate voluntary reporting program, as determined by the Secretary annually after notice and opportunity for interested persons to comment. An industry's voluntary reporting program shall be determined to be adequate only if—

(A) each corporation within such industry which is identified under section 6343 of this title fully participates in such program;

(B) all information deemed necessary by the Secretary for purposes of evaluating the progress made by such industry in achieving the industry energy efficiency improvement target set forth under section 6344 of this title is provided to the Secretary; and

(C) reports made to a trade association or other person, in connection with such program, are retained for a reasonable period of time and are available to the Secretary.

(2) If the Secretary determines that an industry's voluntary reporting program is not adequate solely on the basis that any corporation within such industry is not fully participating in such program, he shall exempt from the requirements of section 6345(a) of this title only those corporations which fully participate in such program.

(h) Reporting requirements under other authority

Nothing in this part shall limit the authority of the Secretary to require reports of energy information under any other law.

(As amended Pub. L. 95-619, title IV, § 461(d)(1), title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3275, 3288.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-619, §§ 461(d)(1)(A), 691(b)(2), inserted "or 6344a" following "section 6342" and substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration.

Subsec. (c). Pub. L. 95-619, §§ 461(d)(1)(B), 691(b)(2), inserted "or any target under section 6344a" following "section 6344" and substituted "Secretary" for "Administrator".

Subsecs. (d), (e). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator", wherever appearing.

Subsec. (f). Pub. L. 95-619, § 461(d)(1)(B), inserted "or any target under section 6344a" following "section 6344".

Subsecs. (g), (h). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator" wherever appearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6344a, 6345 of this title.

PART D—OTHER FEDERAL ENERGY CONSERVATION MEASURES

CODIFICATION

This part, originally designated Part E and subsequently redesignated Part F by Pub. L. 95-619, title IV, § 441(a), Nov. 9, 1978, 92 Stat. 3267, was changed to Part D for purposes of codification.

§ 6361. Federal energy conservation programs

[*See main edition for text of* (*a*)]

(b) Public education programs

(1) The Secretary shall establish and carry out a responsible public education program—

[*See main edition for text of* (*A*) *and* (*B*)]

(2) For purposes of this subsection:

(A) The term "van" means any automobile which the Secretary determines is manufactured primarily for use in the transportation of not less than 8 individuals and not more than 15 individuals.

[*See main edition for text of* (*B*); (*c*)]

(d) Applicability of plan to Executive agencies

The plan developed by the President pursuant to subsection (a)(2) of this section shall be applicable to Executive agencies as defined in section 105 of title 5 and to the United States Postal Service.

(e) Authorization of appropriations

In addition to funds authorized in any other law, there is authorized to be appropriated to the President for fiscal year 1978 not to exceed $25,000,000, and for fiscal year 1979 not to exceed $50,000,000, to carry out the purposes of subsection (a)(2) of this section.

(As amended Pub. L. 95-619, title V, § 501, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3275, 3288.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-619, § 691(b)(2), substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration, wherever appearing.

Subsecs. (d), (e). Pub. L. 95-619, § 501, added subsecs. (d) and (e).

TRANSFER OF FUNCTIONS

The functions vested in the former Administrator of the Federal Energy Administration under subsec. (b)(1)(B) of this section were transferred to the Secretary of Transportation by section 7159 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7159 of this title.

§ 6362. Energy conservation policies and practices

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

TERMINATION OF CIVIL AERONAUTICS BOARD AND TRANSFER OF CERTAIN FUNCTIONS

All functions, powers, and duties of the Civil Aeronautics Board were terminated or transferred by section 1551 of Title 49, Transportation, effective in part on Dec. 31, 1981, in part on Jan. 1, 1983, and in part on Jan. 1, 1985.

PART E—ENERGY CONSERVATION PROGRAM FOR SCHOOLS AND HOSPITALS [NEW]

CODIFICATION

This part was, in the original, designated Part G and has been changed to Part E for purposes of codification.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 6371j of this title.

§ 6371. Definitions

For the purposes of this part—

(1) The term "building" means any structure the construction of which was completed on or before April 20, 1977, which includes a heating or cooling system, or both.

(2) The term "energy conservation measure" means an installation or modification of an installation in a building which is primarily intended to reduce energy consumption or allow the use of an alternative energy source, including, but not limited to—

(A) insulation of the building structure and systems within the building;

(B) storm windows and doors, multiglazed windows and doors, heat absorbing or heat reflective glazed and coated windows and door systems, additional glazing, reductions in glass area, and other window and door system modifications.[1]

(C) automatic energy control systems;

(D) equipment required to operate variable steam, hydraulic, and ventilating systems adjusted by automatic energy control systems;

(E) solar space heating or cooling systems, solar electric generating systems, or any combination thereof;

(F) solar water heating systems;

(G) furnace or utility plant and distribution system modifications including—

(i) replacement burners, furnaces, boilers, or any combination thereof, which substantially increases the energy efficiency of the heating system,

(ii) devices for modifying flue openings which will increase the energy efficiency of the heating system,

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights, and

(iv) utility plant system conversion measures including conversion of existing oil- and gas-fired boiler installations to alternative energy sources, including coal;

(H) caulking and weatherstripping;

(I) replacement or modification of lighting fixtures which replacement or modification increases the energy efficiency of the lighting system without increasing the overall illumination of a facility (unless such increase in illumination is necessary to conform to any applicable State or local building code or, if no such code applies, the increase is considered appropriate by the Secretary);

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[1] So in original. The period probably should be a semicolon.

(J) energy recovery systems;

(K) cogeneration systems which produce steam or forms of energy such as heat, as well as electricity for use primarily within a building or a complex of buildings owned by a school or hospital and which meet such fuel efficiency requirements as the Secretary may by rule prescribe;

(L) such other measures as the Secretary identifies by rule for purposes of this part; and

(M) such other measures as a grant applicant shows will save a substantial amount of energy and as are identified in an energy audit prescribed pursuant to section 6325(e)(2) of this title.

(3) The term "hospital" means a public or nonprofit institution which is—

(A) a general hospital, tuberculosis hospital, or any other type of hospital, other than a hospital furnishing primarily domiciliary care; and

(B) duly authorized to provide hospital services under the laws of the State in which it is situated.

(4) The term "hospital facilities" means buildings housing a hospital and related facilities, including laboratories, outpatient departments, nurses' home and training facilities and central service facilities operated in connection with a hospital, and also includes buildings housing education or training facilities for health professions personnel operated as an integral part of a hospital.

(5) The term "public or nonprofit institution" means an institution owned and operated by—

(A) a State, a political subdivision of a State or an agency or instrumentality of either, or

(B) an organization exempt from income tax under section 501(c)(3) of title 26.

(6) The term "school" means a public or nonprofit institution which—

(A) provides, and is legally authorized to provide, elementary education or secondary education, or both, on a day or residential basis;

(B)(i) provides, and is legally authorized to provide a program of education beyond secondary education, on a day or residential basis;

(ii) admits as students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such certificate;

(iii) is accredited by a nationally recognized accrediting agency or association; and

(iv) provides an educational program for which it awards a bachelor's degree or higher degree or provides not less than a two-year program which is acceptable for full credit toward such a degree at any institution which meets the requirements of clauses (i), (ii), and (iii) and which provides such a program;

(C) provides not less than a one-year program of training to prepare students for gainful employment in a recognized occupation and which meets the provisions of clauses (i), (ii), and (iii) of subparagraph (B); or

(D) is a local educational agency.

(7) The term "local education agency" means a public board of education or other public authority or a nonprofit institution legally constituted within, or otherwise recognized by, a State for either administrative control or direction of, or to perform administrative services for, a group of schools within a State.

(8) The term "school facilities" means buildings housing classrooms, laboratories, dormitories, athletic facilities, or related facilities operated in connection with a school.

(9) The term "State" means, in addition to the several States of the Union, the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(10) The term "State energy agency" means the State agency responsible for developing State energy conservation plans pursuant to section 6322 of this title, or, if no such agency exists, a State agency designated by the Governor of such State to prepare and submit a State plan under section 6371c of this title.

(11) The term "State school facilities agency" means an existing agency which is broadly representative of public institutions of higher education, nonprofit institutions of higher education, public elementary and secondary schools, nonprofit elementary and secondary schools, public vocational education institutions, nonprofit vocational education institutions, and the interests of handicapped persons, in a State or, if no such agency exists, an agency which is designated by the Governor of such State which conforms to the requirements of this paragraph.

(12) The term "State hospital facilities agency" means an existing agency which is broadly representative of the public hospitals and the nonprofit hospitals, or, if no such agency exists, an agency designated by the Governor of such State which conforms to the requirements of this paragraph.

(13) The term "energy audit" means a determination of the energy consumption characteristics of a building which—

(A) identifies the type, size, and rate of energy consumption of such building and the major energy using systems of such building;

(B) determines appropriate energy conservation maintenance and operating procedures; and

(C) indicates the need, if any, for the acquisition and installation of energy conservation measures.

(14) The term "preliminary energy audit" means a determination of the energy consumption characteristics of a building, including the size, type, rate of energy consumption and major energy-using systems of such building.

(15) The term "energy conservation project" means—

(A) an undertaking to acquire and to install one or more energy conservation measures in school or hospital facilities and

(B) technical assistance in connection with any such undertaking and technical assistance as described in paragraph (17)(A).

(16) The term "energy conservation project costs" includes only costs incurred in the design, acquisition, construction, and installation of energy conservation measures and technical assistance costs.

(17) The term "technical assistance" means assistance, under rules promulgated by the Secretary, to States, schools, and hospitals—

(A) to conduct specialized studies identifying and specifying energy savings and related cost savings that are likely to be realized as a result of (i) modification of maintenance and operating procedures in a building, or (ii) the acquisition and installation of one or more specified energy conservation measures in such building, or (iii) both, and

(B) the planning or administration of specific remodeling, renovation, repair, replacement, or insulation projects related to the installation of energy conservation measures in such building.

(18) The term "technical assistance costs" means costs incurred for the use of existing personnel or the temporary employment of other qualified personnel (or both such types of personnel) necessary for providing technical assistance.

(19) The term "energy conservation maintenance and operating procedure" means modification or modifications in the maintenance and operations of a building, and any installations therein, which are designed to reduce energy consumption in such building and which require no significant expenditure of funds.

(20) The term "Secretary" means the Secretary of Energy or his designee.

(21) The term "Governor" means the chief executive officer of a State or his designee.

(Pub. L. 94-163, title III, § 391, as added Pub. L. 95-619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3239.)

SEPARABILITY OF PROVISIONS

Section 302(c) of Pub. L. 95-619 provided that: "If any provision of this title [enacting sections 6371 to 6371j and section 6372 to 6372i of this title, amending sections 300k-2 and 300n-1 of this title, and enacting provisions set out as notes under this section and section 6372 of this title] or the application thereof to any person or circumstances be held invalid, the provisions of other sections of this title and their application to other persons or circumstances shall not be affected thereby."

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSES

Section 301 of Pub. L. 95-619 provided:

"(a) FINDINGS.—The Congress finds that—

"(1) the Nation's nonrenewable energy resources are being rapidly depleted;

"(2) schools and hospitals are major consumers of energy, and have been especially burdened by rising energy prices and fuel shortages;

"(3) substantial energy conservation can be achieved in schools and hospitals through the implementation of energy conservation maintenance and operating procedures and the installation of energy conservation measures; and

"(4) public and nonprofit schools and hospitals in many instances need financial assistance in order to make the necessary improvements to achieve energy conservation.

"(b) PURPOSE.—It is the purpose of this part [enacting sections 6371 to 6371i of this title, amending sections 300k-2 and 300n-1 of this title, and enacting provisions set out as notes under this section] to authorize grants to States and to public and nonprofit schools and hospitals to assist them in identifying and implementing energy conservation maintenance and operating procedures and in evaluating, acquiring, and installing energy conservation measures to reduce the energy use and anticipated energy costs of schools and hospitals."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6372 of this title.

§ 6371a. Guidelines

(a) Energy audits

The Secretary shall, by rule, not later than 60 days after November 9, 1978—

(1) prescribe guidelines for the conduct of preliminary energy audits, including a description of the type, number, and distribution of preliminary energy audits of school and hospital facilities that will provide a reasonably accurate evaluation of the energy conservation needs of all such facilities in each State, and

(2) prescribe guidelines for the conduct of energy audits.

(b) State plans for implementation of energy conservation projects in schools and hospitals

The Secretary shall, by rule, not later than 90 days after November 9, 1978, prescribe guidelines for State plans for the implementation of energy conservation projects in schools and hospitals. The guidelines shall include—

(1) a description of the factors which the State energy agency may consider in determining which energy conservation projects will be given priority in making grants pursuant to this part, including such factors as cost, energy consumption, energy savings, and energy conservation goals,

(2) a description of the suggested criteria to be used in establishing a State program to identify persons qualified to implement energy conservation projects, and

(3) a description of the types of energy conservation measures deemed appropriate for each region of the Nation.

(c) Revisions

Guidelines prescribed under this section may be revised from time to time after notice and opportunity for comment.

(d) Determination of severe hardship class for schools and hospitals

The Secretary shall, by rule prescribe criteria for determining schools and hospitals which are in a class of severe hardship. Such criteria shall take into account climate, fuel costs, fuel availability, ability to provide the non-Federal share of the costs, and such other factors that he deems appropriate.

(Pub. L. 94-163, title III, § 392, as added Pub. L. 95-619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3242.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371b, 6371c, 6371e, of this title.

§ 6371b. Preliminary energy audits and energy audits

(a) Application by Governor

The Governor of any State may apply to the Secretary at such time as the Secretary may specify after promulgation of guidelines under section 6371a(a) of this title for grants to conduct preliminary energy audits and energy audits of school facilities and hospital facilities in such State under this part.

(b) Grants for conduct of preliminary energy audits

Upon application under subsection (a) of this section the Secretary may make grants to States for purposes of conducting preliminary energy audits of school facilities and hospital facilities under this part in accordance with the guidelines prescribed under section 6371a(a)(1) of this title. If a State does not conduct preliminary energy audits within two years after November 9, 1978, the Secretary may conduct such audits within such State.

(c) Grants for conduct of energy audits

Upon application under subsection (a) of this section the Secretary may make grants to States for purposes of conducting energy audits of school facilities and hospital facilities under this part in accordance with the guidelines prescribed under section 6371a(a)(2) of this title.

(d) Audits conducted prior to grant of financial assistance

If a State without the use of financial assistance under this section, conducts preliminary energy audits or energy audits which comply with the guidelines prescribed by the Secretary or which are approved by the Secretary the funds allocated for purposes of this section shall be added to the funds available for energy conservation projects for such State and shall be in addition to amounts otherwise available for such purposes.

(e) Restriction on use of funds; grant covering total cost of energy audits

(1) Except as provided in paragraph (2), amounts made available under this section (together with any other amounts made available from other Federal sources) may not be used to pay more than 50 percent of the costs of any preliminary energy audit or any energy audit.

(2) Upon the request of the Governor, the Secretary may make grants to a State for up to 100 percent of the costs of any preliminary energy audits and energy audits, subject to the requirements of section 6371g(a)(3) of this title.

(Pub. L. 94-163, title III, § 393, as added Pub. L. 95-619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3242.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371c, 6371f, 6371g of this title.

§ 6371c. State plans

(a) Invitation to State energy agency to submit plan; contents

The Secretary shall invite the State energy agency of each State to submit, within 90 days after the effective date of the guidelines prescribed pursuant to section 6371a of this title, or such longer period as the Secretary may, for good cause, allow, a State plan under this section for such State. Such plan shall include—

(1) the results of preliminary energy audits conducted in accordance with the guidelines prescribed under section 6371a(a)(1) of this title, and an estimate of the energy savings that may result from the modification of maintenance and operating procedures and installation of energy conservation measures in the schools and hospitals in such State,

(2) a recommendation as to the types of energy conservation projects considered appropriate for schools and hospitals in such State, together with an estimate of the costs of carrying out such projects in each year for which funds are appropriated,

(3) a program for identifying persons qualified to carry out energy conservation projects,

(4) procedures to insure that funds will be allocated among eligible applicants for energy conservation projects within such State, including procedures—

(A) to insure that funds will be allocated on the basis of relative need taking into account such factors as cost, energy consumption and energy savings, and

(B) to insure that equitable consideration is given to all eligible public or nonprofit institutions regardless of size and type of ownership;

(5) a statement of the extent to which, and by which methods, such State will encourage utilization of solar space heating, cooling, and electric systems and solar water heating systems where appropriate,

(6) procedures to assure that all assistance under this part in such State will be expended in compliance with the requirements of an approved State plan for such State, and in compliance with the requirements of this part;

(7) procedures to insure implementation of energy conserving maintenance and operating procedures in those facilities for which projects are proposed; and

(8) policies and procedures designed to assure that financial assistance provided under this part in such State will be used to supplement, and not to supplant, State, local, or other funds.

(b) Approval of plans

The Secretary shall review and approve or disapprove each State plan not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a) of this section, the Secretary shall approve the plan. If a State plan submitted within the 90-day period specified in subsection (a) of this section has not been disapproved within the 60-day period following its receipt by the Secretary, such plan shall be treated as approved by the Secretary. A State energy agency may submit a new or amended plan at any time after the submission of the original plan if the agency obtains the consent of the Secretary.

(c) Development and implementation of approved plans; submission of proposed State plan

(1) If a State plan has not been approved under this section within 2 years and 90 days after November 9, 1978, or within 90 days after the completion of the preliminary audits under section 6371b(a) of this title, whichever is later, the Secretary may take such action as necessary to develop and implement such a State plan and to carry out the functions which would otherwise be carried out under this part by the State energy agency, State school facilities agency, and State hospital facilities agency, in order that the energy conservation program for schools and hospitals may be implemented in such State.

(2) Notwithstanding any other provision contained in this section, a State may, at any time, submit a proposed State plan for such State under this section. The Secretary shall approve or disapprove such plan not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a) of this section and is not inconsistent with any plan developed and implemented by the Secretary under paragraph (1), the Secretary shall approve the plan and withdraw any such plan developed and implemented by the Secretary.

(Pub. L. 94-163, title III, § 394, as added Pub. L. 95-619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3243.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371, 6371d of this title.

§ 6371d. Applications for financial assistance

(a) Limitation on number of applications by States, schools, and hospitals; submittal to State energy agency

Applications of States, schools, and hospitals for financial assistance under this part for energy conservation projects shall be made not more than once for any fiscal year. Schools and hospitals applying for such financial assistance shall submit their applications to the State energy agency and the State energy agency shall make a single submittal to the Secretary, containing all applications which comply with the State plan.

(b) Required information

Applications for financial assistance under this part for energy conservation projects shall contain, or shall be accompanied by, such information as the Secretary may reasonably require, including the results of energy audits which comply with guidelines under this part. The annual submittal to the Secretary by the State energy agency under subsection (a) of this section shall include a listing and description of energy conservation projects proposed to be funded within the State during the fiscal year for which such application is made, and such information concerning expected expenditures as the Secretary may, by rule, require.

(c) Conditions for financial assistance; applications consistent with related State programs and health plans

(1) The Secretary may not provide financial assistance to States, schools, or hospitals for energy conservation projects unless the application for a grant for such project is submitted through, or approved by the appropriate State hospital facilities agency or State school facilities agency, respectively, and determined by the State energy agency to comply with the State plan.

(2) Applications of States, schools, and hospitals and State plans pursuant to this part shall be consistent with—

(A) related State programs for educational facilities in such State, and

(B) State health plans under section 300m-3(c)(2) and 300o-2 of this title, and shall be coordinated through the review mechanisms required under section 300m-2 of this title and section 1320a-1 of this title.

(d) Compliance required for approval; reasons for disapproval; resubmittal; amendment

The Secretary shall approve such applications submitted by a State energy agency as he determines to be in compliance with this section and with the requirements of the applicable State plan approved under section 6371c of this title. The Secretary shall state the reasons for his disapproval in the case of any application which he disapproves. Any application not approved by the Secretary may be resubmitted by the applicant at any time in the same manner as the original application and the Secretary shall approve such resubmitted application as he determines to be in compliance with this section and the requirements of the State plan. Amendments of an application shall, except as the Secretary may otherwise provide, be subject to approval in the same manner as the original application. All or any portion of an application under this section may be disapproved to the extent that funds are not available under this part to carry out such application or portion.

(e) Suspension of further assistance for failure to comply

Whenever the Secretary, after reasonable notice and opportunity for hearing to any State, school, or hospital receiving assistance under this part, finds that there has been a failure to comply substantially with the provisions set forth in the application approved under this section, the Secretary shall notify the State, school, or hospital that further assistance will not be made available to such State, school or hospital under this part until he is satisfied that there is no longer any such failure to comply. Until he is so satisfied no further assistance shall be made to such State, school, or hospital under this part.

(Pub. L. 94-163, title III, § 395, as added Pub. L. 95-619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3244.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6371e of this title.

§ 6371e. Grants for project costs and technical assistance

(a) Authorization of Secretary; project costs

The Secretary may make grants to schools and hospitals for carrying out energy conservation projects the applications for which have been approved under section 6371d of this title.

(b) Restrictions on use of funds

(1) Except as provided in paragraph (2), amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may not be used to pay more than 50 percent of the costs of any energy conservation project.

(2) Amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may be used to pay not to exceed 90 percent of the costs of an energy conservation project if the Secretary determines that a project meets the hardship criteria of section 6371a(d) of this title. Grants made under this paragraph shall be from the funds provided under section 6371g(a)(2) of this title.

(c) Allocation requirements

Grants made under this section in any State in any year shall be made in accordance with the requirements contained in section 6371g of this title.

(d) Technical assistance costs

The Secretary may make grants to States for paying technical assistance costs. Schools in any State shall not be allocated less than 30 percent of the funds for energy conservation projects within such State and hospitals in any State shall not be allocated less than 30 percent of such funds.

(e) Buildings used principally for administration

No grant made under this part to a school which is a local educational agency may be used for acquisition or installation of any energy conservation measure in any building of such agency which is used principally for administration, or technical assistance in connection with any such undertaking for such a building.

(Pub. L. 94-163, title III, § 396, as added Pub. L. 95-619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3245.)

Section Referred to in Other Sections

This section is referred to in sections 6371f, 6371g of this title.

§ 6371f. Authorization of appropriations

(a) For the purpose of making grants to States to conduct preliminary energy audits and energy audits pursuant to section 6371b of this title, there is authorized to be appropriated not to exceed $20,000,000 for the fiscal year ending September 30, 1978, and $5,000,000 for the fiscal year ending September 30, 1979, such funds to remain available until expended.

(b) For the purpose of making energy conservation project grants pursuant to section 6371e of this title, there is authorized to be appropriated not to exceed $180,000,000 for the fiscal year ending September 30, 1978, $295,000,000 for fiscal year ending September 30, 1979, and $400,000,000 for the fiscal year ending September 30, 1980, such funds to remain available until expended. Of the amounts appropriated under this subsection for each of the following fiscal years not more than the following percentage may be used for purposes of technical assistance:

Fiscal year ending:	*Percentage*
September 30, 1978	30
September 30, 1979	15
September 30, 1980	5

(c) For the expenses of the Secretary in administering the provisions of this part, there are hereby authorized to be appropriated such sums as may be necessary for each fiscal year in the three consecutive fiscal year periods ending September 30, 1980, such funds to remain available until expended.

(Pub. L. 94-163, title III, § 397, as added Pub. L. 95-619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3246.)

Section Referred to in Other Sections

This section is referred to in section 6371g of this title.

§ 6371g. Allocation of grants

(a) Section 6371e grants

(1) Except as otherwise provided in subsection (b) of this section, the Secretary shall allocate 90 percent of the amounts made available under section 6371f(b) of this title in any year for purposes of making energy conservation project grants pursuant to section 6371e of this title as follows:

(A) Eighty percent of amounts made available under section 6371f(b) of this title shall be allocated among the States in accordance with a formula to be prescribed, by rule, by the Secretary, taking into account population and climate of each State, and such other factors as the Secretary may deem appropriate.

(B) Ten percent of amounts made available under section 6371f(b) of this title shall be allocated among the States in such manner as the Secretary determines by rule after taking into account the availability and cost of fuel or other energy used in, and the amount of fuel or other energy consumed by, schools and hospitals in the States, and such other factors as he deems appropriate.

(2) The Secretary shall allocate 10 percent of the amounts made available under section 6371f(b) of this title in any year for purposes of making grants as provided under section 6371e(b)(2) of this title in excess of the 50 percent limitation contained in section 6371e(b)(1) of this title.

(3) In the case of any State which received for any fiscal year an amount which exceeded 50 percent of the cost of any energy audit as provided in section 6371b(e)(2) of this title, the aggregate amount allocated to such State under this subsection for such fiscal year (determined after applying paragraphs (1) and (2) shall be reduced by an amount equal to such excess. The amount of such reduction shall be reallocated to the States for such fiscal year as pro-

vided in this subsection except that for purposes of such reallocation, the State which received such excess shall not be eligible for any portion of such reallocation.

(b) Restrictions on allocations to States

The total amount allocated to any State under subsection (a) of this section in any year shall not exceed 10 percent of the total amount allocated to all the States in such year under such subsection (a) of this section. Except for the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands, not less than 0.5 percent of such total allocation to all States for that year shall be allocated in such year for the total of grants to States and to schools and hospitals in each State which has an approved State plan under this part.

(c) Prescription of rules governing allocations among States with regard to energy audits

Not later than 60 days after November 9, 1978, the Secretary shall prescribe rules governing the allocation among the States of funds for grants for preliminary energy audits and energy audits. Such rules shall take into account the population and climate of such States and such other factors as he may deem appropriate.

(d) Prescription of rules limiting allocations to States for administrative expenses

The Secretary shall prescribe rules limiting the amount of funds allocated to a State which may be expended for administrative expenses by such State.

(e) Reallocations

Funds allocated for projects in any States for a fiscal year under this section but not obligated in such fiscal year shall be available for reallocation under subsection (a) of this section in the subsequent fiscal year.

(Pub. L. 94-163, title III, § 398, as added Pub. L. 95-619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3246.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6371c, 6371e of this title.

§ 6371h. Administration; annual reports

(a) The Secretary may prescribe such rules as may be necessary in order to carry out the provisions of this part.

(b) The Secretary shall, within one year after November 9, 1978, and annually thereafter while funds are available under this part, submit to the Congress a detailed report of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such report shall show the allocations made (including the allocations made to each State) and include information on the types of conservation measures implemented, with funds allocated, and an estimate of the energy savings achieved.

(Pub. L. 94-163, title III, § 399, as added Pub. L. 95-619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3247.)

§ 6371i. Records

(a)[1] Each recipient of assistance under this part shall keep such records, provide such reports, and furnish such access to books and records as the Secretary may by rule prescribe.

(Pub. L. 94-163, title III, § 400, as added Pub. L. 95-619, title III, § 302(a), Nov. 9, 1978, 92 Stat. 3247.)

§ 6371j. Application of Davis-Bacon Act

No grant for a project (other than so much of a grant as is used for a preliminary energy audit, energy audit, or technical assistance or a grant the total project cost of which is $5,000 or less, excluding costs for a preliminary energy audit, energy audit, or technical assistance) shall be made under this part or part 1 unless the Secretary finds that all laborers and mechanics employed by contractors or subcontractors in the performance of work on any construction utilizing such grants will be paid at rates not less than those prevailing on similar construction in the locality, as determined by the Secretary of Labor in accordance with the Act of March 31, 1931 (40 U.S.C. 276a—276a-5, known as the Davis-Bacon Act); and the Secretary of Labor shall have with respect to the labor standards specified in this section the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 5 U.S.C. Appendix) and section 276c of title 40.

(Pub. L. 95-619, title III, § 312, Nov. 9, 1978, 92 Stat. 3254.)

REFERENCE IN TEXT

This part, referred to in text, means part 2 of title III of Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3248, which enacted this section and sections 6372 to 6372i of this title and enacted provisions set out as a note under section 6372 of this title. For complete classification of this Part to the Code, see Tables.

Part 1, referred to in text, means part 1 of title III of Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3238, which enacted section 6371 to 6371i of this title, amended sections 300k-2 and 300n-1 of this title, and enacted provisions set out as notes under sections 6371 of this title. For complete classification of this Part to the Code, see Tables.

Act of March 31, 1931 (40 U.S.C. 276a—276a-5, known as the Davis-Bacon Act), referred to in text, is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was enacted as a part of the National Energy Conservation Policy Act, and not as a part of the Energy Policy and Conservation Act which comprises this chapter, and consequently is not a part of Part E.

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[1] So in original. No subsec. (b) has been enacted.

PART F—ENERGY CONSERVATION PROGRAM FOR BUILDINGS OWNED BY UNITS OF LOCAL GOVERNMENT AND PUBLIC CARE INSTITUTIONS [NEW]

CODIFICATION

This part was, in the original, designated Part H and has been changed to Part F for purposes of codification.

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 6371j of this title.

§ 6372. Definitions

For purposes of this part—

(1) The terms "hospital", "State", "school", "Governor", "State energy agency", "energy conservation measure", "energy conservation maintenance and operating procedure", "preliminary energy audit", "technical assistance costs", "energy audit" and "Secretary" have the meanings provided in section 6371 of this title.

(2) The term "unit of local government" means the government of a county, municipality, or township, which is a unit of general purpose government below the State (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes) and the District of Columbia. Such term also means the recognized governing body of an Indian tribe (as defined in section 6862 of this title) which governing body performs substantial governmental functions.

(3) The term "building" has the meaning provided in section 6371 of this title except that for purposes of this part such term includes only buildings which are owned and primarily occupied by offices or agencies of a unit of local government or by a public care institution and does not include any building intended for seasonal use or any building utilized primarily by a school or hospital.

(4) The term "public care institution" means a public or nonprofit institution which owns—

(A) a facility for long term care, a rehabilitation facility, or a public health center, as described in section 300s-3 of this title, or

(B) a residential child care center.

(5) The term "public or nonprofit institution" means an institution owned and operated by—

(A) a State, a political subdivision of a State or an agency or instrumentality of either, or

(B) an organization exempt from income tax under section 501(c)(3) or 501(c)(4) of title 26.

(6) The term "technical assistance program costs" means the costs of carrying out a technical assistance program.

(7) The term "technical assistance" means assistance under rules, promulgated by the Secretary, to States, units of local government and public care institutions—

(A) to conduct specialized studies identifying and specifying energy savings and related cost savings that are likely to be realized as a result of (i) modification or maintenance and operating procedures in a building, (ii) the acquisition and installation of one or more specified energy conservation measures in such building or (iii) both, or

(B) the planning or administration of such specialized studies.

(Pub. L. 94-163, title III, § 400A, as added Pub. L. 95-619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3248.)

SEPARABILITY OF PROVISIONS

For separability of provisions of title III of Pub. L. 95-619, see section 302(c) of Pub. L. 95-619, set out as a Separability of Provisions note under section 6371 of this title.

CONGRESSIONAL STATEMENT OF FINDINGS AND PURPOSES

Section 310 of Pub. L. 95-619 provided that:

"(a) FINDINGS.—The Congress finds that—

"(1) the Nation's nonrenewable energy resources are being rapidly depleted;

"(2) buildings owned by units of local government and public care institutions are major consumers of energy, and such units and institutions have been especially burdened by rising energy prices and fuel shortages;

"(3) substantial energy conservation can be achieved in buildings owned by units of local government and public care institutions through the implementation of energy conservation maintenance and operating procedures; and

"(4) units of local government and public care institutions in many instances need financial assistance in order to conduct energy audits and to identify energy conservation maintenance and operating procedures and to evaluate the potential benefits of acquiring and installing energy conservation measures.

"(b) PURPOSE.—It is the purpose of this part [enacting sections 6371j and 6372 to 6372i of this title] to authorize grants to States and units of local government and public care institutions to assist them in conducting preliminary energy audits and energy audits in identifying and implementing energy conservation maintenance and operating procedures and in evaluating energy conservation measures to reduce the energy use and anticipated energy costs of buildings owned by units of local government and public care institutions."

APPLICATION OF DAVIS-BACON ACT

For application of the Davis-Bacon Act to grants made by the Secretary under this part, see section 6371j of this title.

§ 6372a. Guidelines

(a) Energy audits

The Secretary shall, by rule, not later than sixty days after November 9, 1978—

(1) prescribe guidelines for the conduct of the preliminary energy audits for buildings owned by units of local government and public care institutions, including a description of the type, number and distribution of preliminary energy audits of such buildings that will provide a reasonably accurate evaluation of the energy conservation needs of all such buildings in each State, and

(2) prescribe guidelines for the conduct of energy audits.

(b) Implementation of technical assistance programs

The Secretary shall, by rule, not later than 90 days after November 9, 1978, prescribe guidelines for State plans for the implementation of technical assistance programs for buildings owned by units of local government and public care institutions. The guidelines shall include—

(1) a description of the factors to be considered in determining which technical assistance programs will be given priority in making grants pursuant to this part, including such factors as cost, energy consumption, energy savings, and energy conservation goals;

(2) a description of the suggested criteria to be used in establishing a State program to identify persons qualified to undertake technical assistance work; and

(3) a description of the types of energy conservation measures deemed appropriate for each region of the Nation.

(c) Revisions

Guidelines prescribed under this part may be revised from time to time after notice and opportunity for comment.

(Pub. L. 94-163, title III, § 400B, as added Pub. L. 95-619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3249.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6372b, 6372c of this title.

§ 6372b. Preliminary energy audits and energy audits

(a) Application by Governor

The Governor of any State may apply to the Secretary at such time as the Secretary may specify after promulgation of the guidelines under section 6372a(a) of this title for grants to conduct preliminary energy audits of buildings owned by units of local government and public care institutions in such State under this part.

(b) Grants for conduct of preliminary energy audits

Upon application under subsection (a) of this section, the Secretary may make grants to States to assist in conducting preliminary energy audits under this part for buildings owned by units of local government and public care institutions. Such audits shall be conducted in accordance with the guidelines prescribed under section 6372a(a)(1) of this title.

(c) Application by Governor, unit of local government or public care institution

The Governor of any State, unit of local government or public care institution may apply to the Secretary at such time as the Secretary may specify after promulgation of the guidelines under section 6372a(a) of this title for grants to conduct energy audits of buildings owned by units of local government and public care institutions in such State under this part.

(d) Grants for conduct of energy audits

Upon application under subsection (c) of this section the Secretary may make grants to States, units of local government, and public care institutions for purposes of conducting energy audits of facilities under this part in accordance with the guidelines prescribed under section 6372a(a)(2) of this title.

(e) Audits conducted prior to grant of financial assistance

If a State, unit of local government, or public care institution, without the use of financial assistance under this section, conducts preliminary energy audits or energy audits which comply with the guidelines prescribed by the Secretary or which are approved by the Secretary, the funds allocated for purposes of this section shall be added to the funds available for technical assistance programs for such State, and shall be in addition to amounts otherwise available for such purpose.

(f) Restriction on use of funds

Amounts made available under this section (together with any other amounts made available from other Federal sources) may not be used to pay more than 50 percent of the costs of any preliminary energy audit or energy audit.

(Pub. L. 94-163, title III, § 400C, as added Pub. L. 95-619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3250.)

§ 6372c. State plans

(a) The Secretary shall invite the State energy agency of each State to submit, within 90 days after the effective date of the guidelines prescribed pursuant to section 6372a of this title, or such longer period as the Secretary may, for good cause, allow, a proposed State plan under this section for such State. Such plan shall include—

(1) the results of preliminary energy audits conducted in accordance with the guidelines prescribed pursuant to section 6372a(a)(1) of this title, and an estimate of the energy savings that may result from the modification of maintenance and operating procedures in buildings owned by units of local government and public care institutions,

(2) a recommendation as to the types of technical assistance programs considered appropriate for buildings owned by units of local government and public care institutions in such State, together with an estimate of the costs of carrying out such programs;

(3) a program for identifying persons qualified to carry out technical assistance programs,

(4) procedures for the coordination among technical assistance programs within any State and for coordination of programs authorized under this part with other State energy conservation programs,

(5) a description of the policies and procedures to be followed in the allocation of funds among eligible applicants for technical assistance within such State, including procedures to insure that funds will be allocated among eligible applicants on the basis of relative need and including recommendations as to how priorities should be established between buildings owned by units of local government and public care institutions, and among competing proposals taking into account such factors as cost, energy consumption, and energy savings;

(6) procedures to assure that all grants for technical assistance provided under this part

are expended in compliance with the requirements of an approved State plan for such State and in compliance with the requirements of this part (including requirements contained in rules promulgated under this part); and

(7) policies and procedures designed to assure that financial assistance provided under this part in such State will be used to supplement, and not to supplant State, local, or other funds.

(b) Each State plan submitted under this section shall be reviewed and approved or disapproved by the Secretary not later than 60 days after receipt by the Secretary. If such plan meets the requirements of subsection (a) of this section, the Secretary shall approve the plan. If a State plan submitted within the 90 day period specified in subsection (a) of this section has not been disapproved within the 60-day period following its receipt by the Secretary, such plan shall be treated as approved by the Secretary. A State energy agency may submit a new or amended plan at any time after the submission of the original plan if the agency obtains the consent of the Secretary.

(Pub. L. 94-163, title III, § 400D, as added Pub. L. 95-619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3251.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6372d of this title.

§ 6372d. Applications for grants for technical assistance

(a) Limitation on number of applications by units of local government and public care institutions; submittal to State energy agency

Applications of units of local government and public care institutions for grants for technical assistance under this part shall be made not more than once for any fiscal year. Such applications shall be submitted to the State energy agency and the State energy agency shall make a single submittal to the Secretary containing all applications which comply with the State plan.

(b) Required information

Applications for grants for technical assistance under this part shall contain or be accompanied by, such information as the Secretary may reasonably require, including the results of energy audits which comply with guidelines under this part. The annual submittal to the Secretary by the State energy agency under subsection (a) of this section shall include a listing and description of technical assistance proposed to be funded under this part within the State during the fiscal year for which such application is made, and such information concerning expenditures as the Secretary may, by rule, require.

(c) Compliance required for approval; reasons for disapproval; resubmittal; amendment

The Secretary shall approve such applications submitted by a State energy agency as he determines to be in compliance with this section and the requirements of the applicable State plan approved under section 6372c of this title. The Secretary shall state the reasons for his disapproval in the case of any application which he disapproves. Any application not approved by the Secretary may be resubmitted by the applicant at any time in the same manner as the original application and the Secretary shall approve such resubmitted application as he determines to be in compliance with this section and the requirements of the State plan. Amendments of an application shall, except as the Secretary may otherwise provide be subject to approval in the same manner as the original application. All or any portions of an application under this section may be disapproved to the extent that funds are not available under this part.

(d) Suspension of further assistance for failure to comply

Whenever the Secretary after reasonable notice and opportunity for hearing to any unit of local government or public care institution receiving assistance under this part, finds that there has been a failure to comply substantially with the provisions set forth in the application approved under this section, the Secretary shall notify the unit of local government or public care institution that further assistance will not be made available to such unit of local government or public care institution under this part until he is satisfied that there is no longer any failure to comply. Until he is so satisfied, no further assistance shall be made to such unit of local government or public care institution under this part.

(Pub. L. 94-163, title III, § 400E, as added Pub. L. 95-619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3252.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6372e of this title.

§ 6372e. Grants for technical assistance

(a) Authorization of Secretary

The Secretary may make grants to States and to units of local government and public care institutions in payment of technical assistance program costs for buildings owned by units of local government and public care institutions the applications for which have been approved under section 6372d of this title.

(b) Restriction on use of funds

Amounts made available for purposes of this section (together with any amounts available for such purposes from other Federal sources) may not be used to pay more than 50 percent of technical assistance program costs.

(c) Allocation requirements

Grants made under this section in any State in any year shall be made in accordance with the requirements contained in section 6372g of this title.

(d) Prescription of rules limiting allocations to States for administrative expenses

The Secretary shall prescribe rules limiting the amount of funds allocated to a State which may be expended for administrative expenses by such State.

(Pub. L. 94-163, title III, § 400F, as added Pub. L. 95-619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3252.)

§ 6372f. Authorization of appropriations

(a) For the purpose of making grants to States to conduct preliminary energy audits and energy audits under this part there is authorized to be appropriated not to exceed $7,500,000 for the fiscal year ending September 30, 1978, and $7,500,000 for the fiscal year ending September 30, 1979, such funds to remain available until expended.

(b) For the purpose of making technical assistance grants under this part to States and to units of local government and public care institutions, there is hereby authorized to be appropriated not to exceed $17,500,000 for the fiscal year ending September 30, 1978, and $32,500,000 for the fiscal year ending September 30, 1979, such funds to remain available until expended.

(c) For the expenses of the Secretary in administering the provisions of this part, there are hereby authorized to be appropriated such sums as may be necessary for each fiscal year in the two consecutive fiscal year periods ending September 30, 1979, such funds to remain available until expended.

(Pub. L. 94-163, title III, § 400G, as added Pub. L. 95-619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3253.)

§ 6372g. Allocation of grants

(a) Grants made under this part shall be allocated among the States in accordance with a formula to be prescribed, by rule, by the Secretary, taking into account population and climate of each State, and such other factors as the Secretary may deem appropriate.

(b) The total amount allocated to any State under subsection (a) of this section in any year shall not exceed 10 percent of the total amount allocated to all the States in such year under such subsection (a) of this section. Except for the District of Columbia, Puerto Rico, Guam, American Samoa, and the Virgin Islands, not less than 0.5 percent of such total allocation to all States for that year shall be allocated in such year for the total of grants in each State which has an approved State plan under this part.

(Pub. L. 94-163, title III, § 400H, as added Pub. L. 95-619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3253.)

Section Referred to in Other Sections

This section is referred to in section 6372e of this title.

§ 6372h. Administration; annual reports

(a) The Secretary may prescribe such rules as may be necessary in order to carry out the provisions of this part.

(b) The Secretary shall, within one year after November 9, 1978, and annually thereafter while funds are available under this part, submit to the Congress a detailed report of the actions taken under this part in the preceding fiscal year and the actions planned to be taken in the subsequent fiscal year. Such report shall show the allocations made (including the allocations made to each State) and include information on the technical assistance carried out, with funds allocated, and an estimate of the energy savings, if any, achieved.

(Pub. L. 94-163, title III, § 400I, as added Pub. L. 95-619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3253.)

§ 6372i. Records

Each recipient of assistance under this part shall keep such records, provide such reports, and furnish such access to books and records as the Secretary may by rule prescribe.

(Pub. L. 94-163, title III, § 400J, as added Pub. L. 95-619, title III, § 311(a), Nov. 9, 1978, 92 Stat. 3253.)

Part G—Off-Highway Motor Vehicles [New]

Codification

This part was, in the original, designated Part I and has been changed to Part G for purposes of codification.

§ 6373. Omitted

Codification

Section, Pub. L. 94-163, title III, § 385, as added Pub. L. 95-619, title VI, § 681(a), Nov. 9, 1978, 92 Stat. 3286, which required the Secretary of Transportation to complete a study not later than 1 year after Nov. 9, 1978, of the energy conservation potential of recreational motor vehicles, including, but not limited to aircraft and motor boats which are designed for recreational use and to submit a report to the President and the Congress containing the results of such study, was omitted from the Code as executed.

SUBCHAPTER IV—GENERAL PROVISIONS

Part A—Energy Data Base and Energy Information

§ 6381. Verification examinations

[*See main edition for text of* (*a*)]

(b) Request for examination

The Comptroller General shall conduct verification examinations of any person or company described in subsection (a) of this section, if requested to do so by any duly established committee of the Congress having legislative or oversight responsibilities under the rules of the House of Representatives or of the Senate, with respect to energy matters or any of the laws administered by the Department of the Interior (or the Secretary thereof), the Federal Power Commission, or the Federal Energy Administration (or the Secretary).

[*See main edition for text of* (*c*)]

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

Amendments

1978—Subsec. (b). Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration.

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

§ 6383. Accounting practices

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

PART B—GENERAL PROVISIONS

§ 6392. Conflict of interest

(a) Filing of written statements covering known financial interests

Each officer or employee of the Federal Energy Administration or of the Department of the Interior who—

[See main edition for text of (1) and (2)]

(b) Enforcement and monitoring of filing requirements; report to Congress

The Secretary and the Secretary of the Interior shall each—

(1) act, within 90 days after December 22, 1975, in accordance with section 553 of title 5—

(A) to define the term "known financial interest" for purposes of subsection (a) of this section; and

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements and the review by the Secretary or the Secretary of the Interior, as the case may be, of such statements; and

[See main edition for text of (2)]

(c) Exemption

In the rules prescribed in subsection (b) of this section, the Secretary and the Secretary of the Interior each may identify specific positions, or classes thereof within the Federal Energy Administration or Department of the Interior, as the case may be, which are of a nonregulatory and non-policymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section.

[See main edition for text of (d)]

(As amended Pub. L. 95-619, title VI, § 691(b)(2), Nov. 9, 1978, 92 Stat. 3288.)

AMENDMENTS

1978—Subsecs. (a) to (c). Pub. L. 95-619 substituted "Secretary" for "Administrator", meaning the Administrator of the Federal Energy Administration, wherever appearing.

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 6393. Administrative procedure and judicial review

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6261, 6262, 6263 of this title; title 15 section 2841.

§ 6397. Repealed. Pub. L. 95-619, title VI, § 691(b)(1), Nov. 9, 1978, 92 Stat. 3288

Section, Pub. L. 94-163, title V, § 527, Dec. 22, 1975, 89 Stat. 964, related to the transfer of authority upon termination of the Federal Energy Administration.

§ 6399. Intrastate natural gas

TRANSFER OF FUNCTIONS

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

PART C—CONGRESSIONAL REVIEW

§ 6421. Procedure for Congressional review of Presidential requests to implement certain authorities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6234, 6239, 6261, 7172, 8374 of this title; title 15 sections 757, 760a, 760b, 2002.

§ 6422. Expedited procedure for Congressional consideration of certain authorities

[See main edition for text of (a)]

(b) Necessity of Congressional resolution within certain period for plan to be considered approved

(1) No such energy conservation contingency plan may be considered approved for purposes of section 6261(b) of this title unless between the date of transmittal and the end of the first period of 60 calendar days of continuous session of Congress after the date on which such action is transmitted to such House, each House of Congress passes a resolution described in subsection (d)(2)(A) of this section.

(2)(A) Subject to subparagraph (B), any such rationing contingency plan shall be considered approved for purposes of section 6261(d) of this title only if such plan is not disapproved by a resolution described in subsection (d)(2)(B)(i) of this section which passes each House of the Congress during the 30-calendar-day period of continuous session after the plan is transmitted to such Houses and which thereafter becomes law.

(B) A rationing contingency plan may be considered approved prior to the expiration of the

30-calendar-day period after such plan is transmitted if a resolution described in subsection (d)(2)(B)(ii) of this section is passed by each House of the Congress and thereafter becomes law.

(c) Computation of period

For the purpose of subsection (b) of this section—

(1) continuity of session is broken only by an adjournment of Congress sine die; and

(2) the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the calendar-day period involved.

(d) Resolution with respect to contingency plan

[*See main edition for text of (1)*]

(2)(A) For purposes of applying this section with respect to any energy conservation contingency plan, the term "resolution" means only a resolution of either House of Congress the matter after the resolving clauses of which is as follows: "That the ——— approves the energy conservation contingency plan numbered ——— submitted to the Congress on ————, 19——.", the first blank space therein being filled with the name of the resolving House and the other blank spaces being appropriately filled; but does not include a resolution which specifies more than one energy conservation contingency plan.

(B) For purposes of applying this subsection with respect to any rationing contingency plan (other than pursuant to section 6261(d)(2)(B) of this title), the term "resolution" means only a joint resolution described in clause (i) or (ii) of this subparagraph with respect to such plan.

(i) A joint resolution of either House of the Congress (I) which is entitled: "Joint resolution relating to a rationing contingency plan.", (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: "That the Congress of the United States disapproves the rationing contingency plan transmitted to the Congress on , 19 .", the blank spaces therein appropriately filled.

(ii) A joint resolution of either House of the Congress (I) which is entitled: "Joint resolution relating to a rationing contingency plan.", (II) which does not contain a preamble, and (III) the matter after the resolving clause of which is: "That the Congress of the United States does not object to the rationing contingency plan transmitted to the Congress on , 19 .", the blank spaces therein appropriately filled.

[*See main edition for text of (3)*]

(4)(A) If the committee to which a resolution with respect to a contingency plan has been referred has not reported it at the end of 20 calendar days after its referral in the case of any energy conservation contingency plan or at the end of 10 calendar days after its referral in the case of any rationing contingency plan, it shall be in order to move either to discharge the committee from further consideration of such resolution or to discharge the committee from further consideration of any other resolution with respect to such contingency plan which has been referred to the committee.

(B) A motion to discharge may be made only by an individual favoring the resolution, shall be highly privileged (except that it may not be made after the committee has reported a resolution with respect to the same contingency plan), and debate thereon shall be limited to not more than 1 hour, to be divided equally between those favoring and those opposing the resolution. Except to the extent provided in paragraph (7)(A), an amendment to the motion shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

[*See main edition for text of (C)*]

(5)(A) When the committee has reported, or has been discharged from further consideration of, a resolution, it shall be at any time thereafter in order (even though a previous motion to the same effect has been disagreed to) to move to proceed to the consideration of the resolution. The motion shall be highly privileged and shall not be debatable. An amendment to the notion[1] shall not be in order, and it shall not be in order to move to reconsider the vote by which the motion was agreed to or disagreed to.

(B) Debate on the resolution referred to in subparagraph (A) of this paragraph shall be limited to not more than 10 hours, which shall be divided equally between those favoring and those opposing such resolution. A motion further to limit debate shall not be debatable. Except to the extent provided in paragraph (7)(B), an amendment to, or motion to recommit the resolution shall not be in order, and it shall not be in order to move to reconsider the vote by which such resolution was agreed to or disagreed to.

[*See main edition for text of (6)*]

(7) With respect to any rationing contingency plan—

(A) In the consideration of any motion to discharge any committee from further consideration of any resolution on any such plan, it shall be in order after debate allowed for under paragraph (4)(B) to offer an amendment in the nature of a substitute for such motion—

(i) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

(ii) consisting of a motion to discharge such committee from further consideration of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the discharge motion sought to be amended relates to a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

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[1] So in original. Should be "motion".

An amendment described in this subparagraph shall not be amendable. Debate on such an amendment shall be limited to not more than 1 hour, which shall be divided equally between those favoring and those opposing the amendment.

(B) In the consideration of any resolution on any such plan which has been reported by a committee, it shall be in order at any time during the debate allowed for under paragraph (5)(B) to offer an amendment in the nature of a substitute for such resolution—

(i) consisting of the text of a resolution described in paragraph (2)(B)(i) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(ii) with respect to the same such plan, or

(ii) consisting of the text of a resolution described in paragraph (2)(B)(ii) with respect to any rationing contingency plan, if the resolution sought to be amended is a resolution described in paragraph (2)(B)(i) with respect to the same such plan.

An amendment described in this subparagraph shall not be amendable.

(C) If one House receives from the other House a resolution with respect to a rationing contingency plan, then the following procedure applies:

(i) the resolution of the other House with respect to such plan shall not be referred to a committee;

(ii) in the case of a resolution of the first House with respect to such plan—

(I) the procedure with respect to that or other resolutions of such House with respect to such plan shall be the same as if no resolution from the other House with respect to such plan had been received; but

(II) on any vote on final passage of a resolution of the first House with respect to such plan a resolution from the other House with respect to such plan which has the same effect shall be automatically substituted for the resolution of the first House.

(D) Notwithstanding any of the preceding provisions of this subsection, if a House has approved a resolution with respect to a rationing contingency plan, then it shall not be in order to consider in that House any other resolution under this section with respect to the approval of such plan.

(As amended Pub. L. 96-102, title I, §§ 103(b)(2), 105(a)(4), (b)(6), Nov. 5, 1979, 93 Stat. 753, 756.)

AMENDMENTS

1979—Subsec. (b). Pub. L. 96-102, §§ 103(b)(2)(A), 105(b)(6), designated existing provisions as par. (1) and, in par. (1) as so designated, substituted "No such energy conservation contingency plan" for "No such contingency plan", "section 6261(b)" for "section 6261(a)(2)", and "subsection (d)(2)(A)" for "subsection (d)(2)", and added par. (2).

Subsec. (c)(2). Pub. L. 96-102, § 103(b)(2)(B), substituted "calendar-day period involved" for "60-calendar-day period".

Subsec. (d)(2). Pub. L. 96-102, §§ 103(b)(2)(C), 105(a)(4), designated existing provisions as subpar. (A) and, in subpar. (A) as so designated, substituted "For purposes of applying this section with respect to any energy conservation contingency plan" for "For purposes of this subsection" and "energy conservation contingency plan" for "contingency plan" in two places, and added subpar. (B).

Subsec. (d)(4)(A). Pub. L. 96-102, § 103(b)(2)(D), inserted "in the case of any energy conservation contingency plan or at the end of 10 calendar days after its referral in the case of any rationing contingency plan" following "after its referral".

Subsec. (d)(4)(B). Pub. L. 96-102, § 103(b)(2)(E), substituted "Except to the extent provided in paragraph (7)(A), an amendment" for "An amendment".

Subsec. (d)(5)(B). Pub. L. 96-102, § 103(b)(2)(F), substituted "Except to the extent provided in paragraph (7)(B), an amendment" for "An amendment".

Subsec. (d)(7). Pub. L. 96-102, § 103(b)(2)(G), added par. (7).

EFFECTIVE DATE OF 1979 AMENDMENT

Amendment by Pub. L. 96-102 effective Nov. 5, 1979, see section 302 of Pub. L. 96-102, set out as an Effective Date of 1979 Amendment note under section 6261 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6261, 6834 of this title; title 15 section 2841.

CHAPTER 79—SCIENCE AND TECHNOLOGY POLICY, ORGANIZATION AND PRIORITIES

SUBCHAPTER I—NATIONAL SCIENCE, ENGINEERING, AND TECHNOLOGY POLICY AND PRIORITIES

§ 6601. Congressional findings; priority goals

EX. ORD. NO. 12039. TRANSFER OF CERTAIN SCIENCE AND TECHNOLOGY POLICY FUNCTIONS

Ex. Ord. No. 12039, Feb. 24, 1978, 43 F.R. 8095, provided:

By virtue of the authority vested in me by the Constitution and laws of the United States of America, including Section 7 of Reorganization Plan No. 1 of 1977 (42 FR 56101 (October 21, 1977)) [set out in Appendix of Title 5, Government Organization and Employees], Section 301 of Title 3 of the United States Code, and Section 202 of the Budget and Accounting Procedures Act of 1950 (31 U.S.C. 581c), and as President of the United States of America, in order to provide for the transfer of certain science and technology functions, it is hereby ordered as follows:

SECTION 1. (a) The transfer, provided by Section 5A of Reorganization Plan No. 1 of 1977 (42 FR 56101) [set out in Appendix of Title 5, Government Organization and Employees], of certain functions under the National Science and Technology Policy, Organization, and Priorities Act of 1976, hereinafter referred to as the Act (90 Stat. 459, 42 U.S.C. 6601 et seq.), from the Office of Science and Technology Policy and its Director to the Director of the National Science Foundation is hereby effective.

(b) The abolition of the Intergovernmental Science, Engineering, and Technology Advisory Panel, the President's Committee on Science and Technology, and the Federal Coordinating Council for Science, Engineering and Technology (established in accordance with Titles II, III, and IV of the Act) [sections 6611 et seq., 6631 et seq., and 6651 of this title] and the transfer of their functions (Sections 205(b)(1), 303(a) and (b)(1), and 401 of the Act, 42 U.S.C. 6614(b)(1), 6633 (a) and (b)(1), and 6651(e)) to the President of the United States of America, provided by Section 5A of Reorganization Plan No. 1 of 1977 [set out in Appendix of Title 5, Government Organization and Employees], are hereby effective.

SEC. 2. (a) The intergovernmental science, engineering, and technology functions under Section 205(b)(1) of the Act (42 U.S.C. 6614(b)(1)), which were transferred to the President (see Section 1(b) of this Order), are delegated to the Director of the Office of Science and Technology Policy; *Except that*, the responsibility for fostering any policies to facilitate the transfer and utilization of research and development results is delegated to the Director of the Office of Management and Budget.

(b) The functions vested by subsection (a) of this Section in the Director of the Office of Management and Budget shall be performed in accord with the Director's responsibilities under the Intergovernmental Cooperation Act of 1968 (82 Stat. 1098, 42 U.S.C. 4201 et seq.). The Director of the Office of Science and Technology Policy shall advise the Director of the Office of Management and Budget with respect to the needs of State, regional, and local governments which may be assisted by the utilization of science, engineering, and technology research and development results.

(c) The functions vested by subsection (a) of this Section in the Director of the Office of Science and Technology Policy shall be performed in coordination with the Director of the Office of Management and Budget and with others as designated by the President.

(d) To advise the Director of the Office of Science and Technology Policy on the performance of those functions delegated to him by subsection (a) of this Section, he shall establish, in accord with the Federal Advisory Committee Act (5 U.S.C. App.), an Intergovernmental Science, Engineering, and Technology Advisory Panel. The Panel members shall include representatives of such Executive agencies and such officials of State and local governments as the Director may designate.

SEC. 3. The Federal science, engineering, and technology functions under Section 303 (a) and (b)(1) of the Act (42 U.S.C. 6633 (a) and (b)(1)), which were transferred to the President (see Section 1(b) of this Order), are delegated to the Director of the Office of Science and Technology Policy: *Except that*, those functions concerned with reorganization, including Federal-State liaison, are delegated to the Director of the Office of Management and Budget, who shall be provided advice and assistance thereon by the Director of the Office of Science and Technology Policy.

SEC. 4. The science, engineering, and technology and related activities functions under Section 401(e) of the Act (42 U.S.C. 6651(e)), which were transferred to the President (see Section 1(b) of this Order), are delegated to the Director of the Office of Science and Technology Policy.

SEC. 5. There is hereby established the Federal Coordinating Council for Science, Engineering, and Technology. The Council shall be composed of the Director of the Office of Science and Technology Policy, who shall be Chairman, and representatives of such other Executive agencies designated by the Chairman. The head of an agency so designated shall designate an appropriate individual to serve on the Council. The Council shall advise and assist the Director of the Office of Science and Technology Policy in the performance of those functions delegated under Section 4 of this Order.

SEC. 6. The records, property, personnel, and unexpended balances of appropriations, available or to be made available, which relate to the functions transferred, reassigned, or redelegated by this Order are hereby transferred to the Director of the Office of Management and Budget, the Director of the Office of Science and Technology Policy, or the Director of the National Science Foundation, as appropriate.

SEC. 7. The Director of the Office of Management and Budget shall make such determinations, issue such orders, and take all actions necessary or appropriate to effectuate the transfers or reassignments provided by this Order, including the transfer of funds, records, property, and personnel.

SEC. 8. This Order shall be effective on February 26, 1978.

JIMMY CARTER.

SUBCHAPTER II—OFFICE OF SCIENCE AND TECHNOLOGY POLICY

§ 6614. Policy planning; analysis; advice; establishment of advisory panel

TRANSFER OF FUNCTIONS

All functions vested in the Office of Science and Technology Policy and the Director thereof pursuant to subsec. (a)(2) of this section and sections 6615 and 6618 of this title were transferred to the Director of the National Science Foundation by section 5A of Reorg. Plan No. 1 of 1977, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President.

The Intergovernmental Science, Engineering, and Technology Advisory Panel, established pursuant to this section, was abolished and its functions transferred to the President by Reorg. Plan No. 1 of 1977, § 5A, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, effective on or before Apr. 1, 1978, at such time as specified by the President.

§ 6615. Five-year outlook

[*See main edition for text of* (*a*)]

(b) Annual revision

The Director of the National Science Foundation shall annually revise the five-year outlook developed under subsection (a) of this section so that it takes account of new problems, constraints and opportunities and changing national goals and circumstances, and shall extend the outlook so that it always extends five years into the future.

(c) Consultation with officials of departments and agencies having related programs and responsibilities

The Director of the National Science Foundation shall consult as necessary with officials of the departments and agencies having programs and responsibilities relating to the problems, constraints, and opportunities identified under subsections (a) and (b) of this section, in order to—

[*See main edition for text of* (*1*) *and* (*2*)]

(d) Consultation with officials of Office of Management and Budget and other appropriate elements of Executive Office of President

The Director of the National Science Foundation shall consult as necessary with officials of the Office of Management and Budget and other appropriate elements of the Executive Office of the President to ensure that the problems, constraints, opportunities, and alternative actions identified under subsections (a), (b), and (c) of this section are fully considered in the development of the President's Budgets and legislative programs.

(As amended 1977 Reorg. Plan No. 1, § 5A, 42 F.R. 56101, 91 Stat. 1634.)

TRANSFER OF FUNCTIONS

"Director of the National Science Foundation" was substituted for "Office" in subsec. (b) and "Director of the Office" in subsecs. (c) and (d) pursuant to Reorg. Plan No. 1 of 1977, § 5A, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President, which transferred all functions vested in the Office of Science and Technology Policy or the Director thereof under sections 6614(a)(2), 6615, and 6618 of this title to the Director of the National Science Foundation.

§ 6618. Science and technology report

(a) Transmittal to Congress; preparation; issues discussed

The President shall transmit annually to the Congress, beginning February 15, 1978, a Science and Technology Report (hereinafter referred to as the "Report") which shall be prepared by the Director of the National Science Foundation, with appropriate assistance from Federal departments and agencies and such consultants and contractors as the Director of the National Science Foundation deems necessary. The report shall draw upon the information prepared by the Director of the National Science Foundation pursuant to section 6615 of this title, and to the extent practicable, within the limitations of available knowledge and resources, discuss such issues as—

[*See main edition for text of (1) to (7)*]

(b) Use of relevant data available from National Science Foundation and other Government departments and agencies

In preparing the Report under subsection (a) of this section, the Director of the National Science Foundation shall make maximum use of relevant data available from the National Science Foundation and other Government departments and agencies.

(c) Availability as public document

The Director of the National Science Foundation shall insure that the Report, in the form approved by the President, is printed and made available as a public document.

(As amended 1977 Reorg. Plan No. 1, § 5A, 42 F.R. 56101, 91 Stat. 1634.)

Transfer of Functions

"Director of the National Science Foundation" was substituted for "Director" and "Office" in subsecs. (a), (b), and (c), pursuant to Reorg. Plan No. 1 of 1977, § 5A, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President, which transferred all functions vested in the Office of Science and Technology Policy or the Director thereof under sections 6614(a)(2), 6615, and 6618 of this title to the Director of the National Science Foundation.

SUBCHAPTER III—PRESIDENT'S COMMITTEE ON SCIENCE AND TECHNOLOGY

§§ 6631 to 6635

Transfer of Functions

The President's Committee on Science and Technology, established pursuant to this subchapter, was abolished and its functions transferred to the President, by Reorg. Plan No. 1 of 1977, § 5A, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President.

SUBCHAPTER IV—FEDERAL COORDINATING COUNCIL FOR SCIENCE, ENGINEERING, AND TECHNOLOGY

§ 6651. Establishment, membership, and functions of Council

[*See main edition for text of (a) to (g)*]

(h) Establishment of subcommittees and panels; Subcommittee on Food and Renewable Resources

For the purpose of conducting studies and making reports as directed by the Chairman, standing subcommittees and panels of the Council may be established. Among such standing subcommittees and panels of the Council shall be the Subcommittee on Food and Renewable Resources. This subcommittee shall review Federal research and development programs relevant to domestic and world food and fiber production and distribution, promote planning and coordination of this research in the Federal Government, and recommend policies and other measures concerning the food and agricultural sciences for the consideration of the Council. The subcommittee shall include, but not be limited to, representatives of each of the following departments or agencies; the Department of Agriculture, the Department of State, the Department of Defense, the Department of the Interior, the Department of Health, Education, and Welfare, the National Oceanic and Atmospheric Administration, the Energy Research and Development Administration, the National Science Foundation, the Environmental Protection Agency, and the Tennessee Valley Authority. The principal representatives of the Department of Agriculture shall serve as the chairman of the subcommittee.

(As amended Pub. L. 95-113, title XIV, § 1406, Sept. 29, 1977, 91 Stat. 986.)

Amendments

1977—Subsec. (h). Pub. L. 95-113 added provisions relating to the Subcommittee on Food and Renewable Resources.

Change of Name

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-113 effective Oct. 1, 1977, see section 1901 of Pub. L. 95-113, set out as an Effective Date of 1977 Amendment note under section 1307 of Title 7, Agriculture.

Transfer of Functions

The Federal Coordinating Council for Science, Engineering, and Technology, established pursuant to this section, was abolished and its functions transferred to the President by Reorg. Plan No. 1 of 1977, § 5A, 42 F.R. 56101, 91 Stat. 1634, set out in the Appendix to Title 5, Government Organization and Employees, effective on or before Apr. 1, 1978, at such time as specified by the President.

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

CHAPTER 80—PUBLIC WORKS DEVELOPMENT

SUBCHAPTER II—ANTIRECESSION PROVISIONS

Sec.
6736. Authorization of appropriations for Puerto Rico, Guam, American Samoa, and Virgin Islands [New].
  (a) Authorizations for five calendar quarters beginning July 1, 1977.
  (b) Allocations.
  (c) Payments to local governments.

SUBCHAPTER I—LOCAL PUBLIC WORKS

§ 6701. Definitions

As used in this subchapter, the term—

(1) "Secretary" means the Secretary of Commerce, acting through the Economic Development Administration.

(2) "State" includes the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Trust Territory of the Pacific Islands.

(3) "local government" means any city, county, town, parish, or other political subdivision of a State, and any Indian tribe.

(4) "public works project" includes a project for the transportation and provision of water to a drought-stricken area.

(As amended Pub. L. 95-28, title I, § 102, May 13, 1977, 91 Stat. 116.)

AMENDMENTS

1977—Par. (2). Pub. L. 95-28, § 102(a), added reference to the Trust Territory of the Pacific Islands.

Par. (4). Pub. L. 95-28, § 102(b), added par. (4).

SHORT TITLE OF 1977 AMENDMENTS

Pub. L. 95-30, title VI, § 601, May 23, 1977, 91 Stat. 164, provided that: "This title [enacting section 6736 of this title, amending sections 6722, 6723, 6724, 6727, and 6735 of this title, and repealing section 6726 of this title] may be cited as the 'Intergovernmental Antirecession Assistance Act of 1977'."

Section 101 of Pub. L. 95-28 provided that: "This title [amending this section and sections 6705, 6706, 6707, 6708, and 6710 of this title and enacting provisions set out as notes under this section and section 6710 of this title] may be cited as the 'Public Works Employment Act of 1977'."

PUBLIC WORKS INVESTMENT STUDY; PRELIMINARY REPORT; FINAL REPORT WITHIN 18 MONTHS AFTER MAY 13, 1977

Section 110 of Pub. L. 95-28, which provided that the Secretary of Commerce is authorized and directed to study public works investment in the United States and the implications for the future of recent trends in such investment and that the Secretary submit a report with respect to its findings and recommendations no later than 18 months after May 13, 1977, was omitted from the Code as executed.

§ 6705. Limitations on use of grants

[*See main edition for text of* (*a*) *to* (*d*)]

(e) Performance of projects by State or local governments prohibited; competitive bidding; illegal aliens

(1) No part of the construction (including demolition and other site preparation activities), renovation, repair, or other improvement of any public works project for which a grant is made under this chapter after May 13, 1977, shall be performed directly by any department, agency, or instrumentality of any State or local government. Construction of each such project shall be performed by contract awarded by competitive bidding, unless the Secretary shall affirmatively find that, under the circumstances relating to such project, some other method is in the public interest. Contracts for the construction of each project shall be awarded only on the basis of the lowest responsive bid submitted by a bidder meeting established criteria of responsibility. No requirement or obligation shall be imposed as a condition precedent to the award of a contract to such bidder for a project, or to the Secretary's concurrence in the award of a contract to such bidder, unless such requirement or obligation is otherwise lawful and is specifically set forth in the advertised specifications.

(2) No grant shall be made under this chapter for any local public works project unless the State or local government applying for such grant submits with its application a certification acceptable to the Secretary that no contract will be awarded in connection with such project to any bidder who will employ on such project any alien in the United States in violation of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.] or any other law, convention, or treaty of the United States relating to the immigration, exclusion, deportation, or expulsion of aliens.

(f) Use of products made in the United States; minority business enterprises

(1)(A) Notwithstanding any other provision of law, no grant shall be made under this chapter for any local public works project unless only such unmanufactured articles, materials, and supplies as have been mined or produced in the United States, and only such manufactured articles, materials, and supplies as have been manufactured in the United States substantially all from articles, materials, and supplies mined, produced, or manufactured, as the case may be, in the United States, will be used in such project.

(B) Subparagraph (A) of this paragraph shall not apply in any case where the Secretary determines it to be inconsistent with the public interest, or the cost to be unreasonable, or if articles, materials, or supplies of the class or kind to be used or the articles, materials, or supplies from which they are manufactured are not mined, produced, or manufactured, as the case may be, in the United States in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(2) Except to the extent that the Secretary determines otherwise, no grant shall be made under this chapter for any local public works project unless the applicant gives satisfactory assurance to the Secretary that at least 10 per centum of the amount of each grant shall be expended for minority business enterprises. For purposes of this paragraph, the term "minority business enterprise" means a business at least 50 per centum of which is owned by minority group members or, in case of a publicly owned business, at least 51 per centum of the stock of

which is owned by minority group members. For the purposes of the preceding sentence, minority group members are citizens of the United States who are Negroes, Spanish-speaking, Orientals, Indians, Eskimos, and Aleuts.

(g) Accessibility standards for handicapped and elderly

No grant shall be made under this chapter for any project for which the applicant does not give assurances satisfactory to the Secretary that the project will be designed and constructed in accordance with the standards for accessibility for public buildings and facilities to the handicapped and elderly under the Act entitled "An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped", approved August 12, 1968 (42 U.S.C. 4151 et seq.). The Architectural and Transportation Barriers Compliance Board established by the Rehabilitation Act of 1973 (P.L. 93-112) [29 U.S.C. 701 et seq.] is authorized to insure that any construction and renovation done pursuant to any grant made under this chapter complies with the accessibility standards for public bunldings [1] and facilities issued under the Act of August 12, 1968.

(As amended Pub. L. 95-28, title I, § 103, May 13, 1977, 91 Stat. 116.)

References in Text

The Immigration and Nationality Act, referred to in subsec. (e)(2), is act June 27, 1952, ch. 477, 66 Stat. 163, as amended, which is classified principally to chapter 12 (§ 1101 et seq.) of Title 8, Aliens and Nationality. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 8 and Tables.

The Act of August 12, 1968, entitled "An Act to insure that certain buildings financed with Federal funds are so designed and constructed as to be accessible to the physically handicapped", referred to in subsec. (g), is Pub. L. 90-480, Aug. 12, 1968, 82 Stat. 718, as amended, popularly known as the Architectural Barriers Act of 1968, which is classified generally to chapter 51 (§ 4151 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4151 of this title and Tables.

The Rehabilitation Act of 1973, referred to in subsec. (g), is Pub. L. 93-112, Sept. 26, 1973, 87 Stat. 355, as amended, which is classified principally to chapter 16 (§ 701 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 701 of Title 29 and Tables.

Amendments

1977—Subsecs. (e) to (g). Pub. L. 95-28 added subsecs. (e) to (g).

Section Referred to in Other Sections

This section is referred to in section 6707 of this title.

§ 6706. Implementing rules, regulations, and procedures; criteria; employment of disabled and Vietnam-era veterans; determination of applications for grants

The Secretary shall, not later than thirty days after July 22, 1976, prescribe those rules, regulations, and procedures (including application forms) necessary to carry out this chapter. Such rules, regulations, and procedures shall assure that adequate consideration is given to the relative needs of various sections of the country. The Secretary shall consider among other factors (1) the severity and duration of unemployment in proposed project areas, (2) the income levels and extent of underemployment in proposed project area, and (3) the extent to which proposed projects will contribute to the reduction of unemployment. The Secretary, in consultation with the Secretary of Labor, and consistent with existing applicable collective bargaining agreements and practices, shall promulgate regulations to assure special consideration to the employment in projects under this chapter of qualified disabled veterans (as defined in section 2011(1) of title 38) and qualified Vietnam-era veterans (as defined in section 2011(2)(A) of such title 38). The Secretary shall make a final determination with respect to each application for a grant submitted to him under this chapter not later than the sixtieth day after the date he receives such application. Failure to make such final determination within such period shall be deemed to be an approval by the Secretary of the grant requested. For purposes of this section, in considering the extent of unemployment or underemployment, the Secretary shall consider the amount of unemployment or underemployment in the construction and construction-related industries.

(As amended Pub. L. 95-28, title I, § 104, May 13, 1977, 91 Stat. 117.)

Amendments

1977—Pub. L. 95-28 added provision directing the Secretary to promulgate regulations to assure special consideration to the employment in projects of qualified disabled veterans and qualified Vietnam-era veterans.

§ 6707. Priority and amounts of projects

(a) Allocation of appropriated funds; Indian tribes and Alaska Native villages; prior applications; unemployment ratio; limits on grants for any one State; territories

The Secretary shall allocate funds appropriated after May 13, 1977, under section 6710 of this title as follows:

(1) 2½ per centum of such funds shall be set aside and shall be expended only for grants for public works projects under this chapter to Indian tribes and Alaska Native villages. None of the remainder of such funds shall be expended for such grants to such tribes and villages.

(2) After the set aside required by paragraph (1) of this subsection, $70,000,000 shall be set aside and expended only for grants for any public works project the application for a grant for which was made under this chapter after July 22, 1976, and before December 24, 1976, and which application was not received, was not considered, or was rejected solely because of an error by an officer or employee of the United States. Any allocation made to an applicant pursuant to regulation shall be re-

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[1] So in original. Probably should be "buildings".

duced by the amount of any grant made to such applicant under this paragraph.

(3) After the set asides required by paragraphs (1) and (2) of this subsection, 65 per centum of such funds shall be allocated among the States on the basis of the ratio that the number of unemployed persons in each State bears to the total number of unemployed persons in all the States and 35 per centum of such funds shall be allocated among those States with an average unemployment rate for the preceding twelve-month period in excess of 6.5 per centum on the basis of the relative severity of unemployment in each such State, except that (A) no State shall be allocated less than three-quarters of one per centum or more than 12½ per centum of such funds for local public works projects within such State, except that in the case of Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, not less than one-half of one per centum in the aggregate shall be granted for such projects in all four of these jurisdictions, and (B) no State whose unemployment data was converted for the first time in 1976 to the benchmark data of the current population survey annual average compiled by the Bureau of Labor Statistics shall receive a percentage of such funds less than the percentage of funds allocated to such State under this chapter from funds appropriated to carry out this chapter prior to May 13, 1977.

(b) Local government projects; energy conservation; endorsement of project by general purpose local government; projects requested by school districts

(1) In making grants under this chapter, the Secretary shall give priority and preference to public works projects of local governments.

(2) In making grants for projects for construction, renovation, repair, or other improvement of buildings, the Secretary shall also give consideration as between such building projects to those projects which will result in conserving energy, including, but not limited to, projects to redesign and retrofit existing public facilities for energy conservation purposes, and projects using alternative energy systems.

(3) In making grants under this chapter, the Secretary shall also give priority and preference to any public works project requested by a State or by a special purpose unit of local government which is endorsed by a general purpose local government within such State.

(4) A project requested by a school district shall be accorded the full priority and preference to public works projects of local governments provided in paragraph (1).

(c) Unemployment rates; priority; States receiving minimum allocations

In making grants under this chapter, if for the twelve most recent consecutive months, the national unemployment rate is equal to or exceeds 6½ per centum, the Secretary shall (1) expedite and give priority to applications submitted by States or local governments having unemployment rates for the twelve most recent consecutive months in excess of the national unemployment rate and (2) shall give priority thereafter to applications submitted by States or local governments having unemployment rates for the twelve most recent consecutive months in excess of 6½ per centum, but less than the national unemployment rate. Information regarding unemployment rates may be furnished either by the Federal Government, or by States or local governments, provided the Secretary determines that the unemployment rates furnished by States or local governments are accurate, and shall provide assistance to States or local governments in the calculation of such rates to insure validity and standardization. The Secretary may waive the application of the first sentence of this subsection to any State which receives a minimum allocation pursuant to paragraph (3) of subsection (a) of this section.

(d) Priorities for projects in State or localities with two or more projects

Whenever a State or local government submits applications for grants under this chapter for two or more projects, such State or local government shall submit as part of such applications its priority for each such project.

(e) Community or neighborhood basis of unemployment rates

The unemployment rate of a local government shall, for the purposes of this chapter, and upon request of the applicant, be based upon the unemployment rate of any community or neighborhood (defined without regard to political or other subdivisions or boundaries) within the jurisdiction of such local government, except that any grant made to a local government based upon the unemployment rate of a community or neighborhood within its jurisdiction must be for a project to be constructed in such community or neighborhood.

(f) Repealed. Pub. L. 95-28, title I, § 107(e), May 13, 1977, 91 Stat. 119

[*See main edition for text of* (*g*)]

(h) Applications not submitted on or before December 23, 1976; grants prohibited; exceptions

(1) Except as provided in paragraph (2) of this subsection, the Secretary shall not consider or approve or make a grant for any project for which any application was not submitted for a grant under this chapter on or before December 23, 1976.

(2) The Secretary may receive applications for grants for projects under this chapter—

(A) from the Trust Territory of the Pacific Islands;

(B) from Indian tribes and Alaska Native villages;

(C) from any applicant to use any allocation which may be made pursuant to regulation, to the extent necessary to expend such allocation, if a sufficient number of applications were not submitted on or before December 23, 1976, to use such allocation.

(i) Substitution of projects to alleviate drought or other emergency or disaster-related conditions or damage

The Secretary may allow any applicant which has received a grant for a project under this chapter to substitute one or more projects for such project if in the judgment of the Secretary (1) the Federal cost in the aggregate of such substituted project or projects does not exceed such grant, (2) such substituted project or projects comply with section 6705(d) of this title, and (3) such substituted project or projects will in fact aid in alleviating drought or other emergency or disaster-related conditions or damage. Section 6705(a) of this title shall not apply to projects substituted under this subsection.

(j) Private nonprofit health care or rehabilitation facilities

Notwithstanding subsection (h)(1) of this section, grants may be made from appropriations made under section 6710 of this title after September 30, 1977, to States or local governments for projects for the construction, renovation, repair, or other improvements of health care or rehabilitation facilities owned and operated by private nonprofit entities.

(As amended Pub. L. 95-28, title I, §§ 105-107, May 13, 1977, 91 Stat. 117, 118.)

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-28, § 105, added par. (1) and the introductory provisions preceding par. (1), par. (2), and, in par. (3), the introductory provisions preceding cl. (A) and cl. (B), designated existing provisions as cl. (A) of par. (3) and, in such cl. (A) as so designated, added reference to the Trust Territory of the Pacific Islands and substituted "three-quarters of one percentum" for "one-half of one percentum" and "of such funds" for "of all amounts appropriated to carry out this subchapter".

Subsec. (b). Pub. L. 95-28, § 106, designated existing provisions as par. (1) and added pars. (2) to (4).

Subsec. (c). Pub. L. 95-28, § 107(a), (b), substituted "twelve most recent consecutive months" for "three most recent consecutive months" and authorized the Secretary to waive the application of the first sentence of the subsection to any State which receives a minimum allocation pursuant to subsec. (a)(3) of this section.

Subsec. (d). Pub. L. 95-28, § 107(c), substituted provisions directing State or local governments that submit two or more projects to submit as part of their applications the priorities assigned to each project for provisions directing that seventy percentum of all amounts appropriated to carry out this chapter be granted for public works projects submitted by State or local governments given priority under clause (1) of the first sentence of subsec. (c) of this section, with the remaining thirty percentum available for public works projects submitted by State or local governments in other classifications of priority.

Subsec. (e). Pub. L. 95-28, § 107(d), substituted "to be constructed in such community or neighborhood" for "of direct benefit to, or provide employment for, unemployed persons who are residents of that community or neighborhood".

Subsec. (f). Pub. L. 95-28, § 107(e), struck out subsec. (f) which directed that, in determining the unemployment rate of a local government for purposes of this section, the unemployment in those adjoining areas from which the labor force for such project might be drawn were to be taken into consideration.

Subsecs. (h) to (j). Pub. L. 95-28, § 107(f), added subsecs. (h) to (j).

§ 6708. Wage standards for laborers and mechanics; enforcement

All laborers and mechanics employed on projects assisted by the Secretary under this chapter shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C. 276a—276a-5). The Secretary shall not extend any financial assistance under this chapter for such project without first obtaining adequate assurance that these labor standards will be maintained upon the construction work. The Secretary of Labor shall have, with respect to the labor standards specified in this provision, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 276c of title 40.

(As amended Pub. L. 95-28, title I, § 108, May 13, 1977, 91 Stat. 119.)

AMENDMENTS

1977—Pub. L. 95-28 substituted "All laborers and mechanics employed" for "All laborers and mechanics employed by contractors or subcontractors".

§ 6710. Authorization of appropriations

There is authorized to be appropriated not to exceed $6,000,000,000 for the period ending December 31, 1978, to carry out this chapter.

(As amended Pub. L. 95-28, title I, § 109, May 13, 1977, 91 Stat. 119.)

AMENDMENTS

1977—Pub. L. 95-28 substituted "$6,000,000,000 for the period ending December 31, 1978" for "$2,000,000,000 for the period ending September 30, 1977".

IMMEDIATE INITIATION OF CONSTRUCTION ON CERTAIN PROJECTS

Section 111 of Pub. L. 95-28 provided that: "The Secretary of Agriculture and the Secretary of the Interior shall immediately initiate the construction of those Federal public works projects (A) which are the responsibility of their respective departments, (B) which have been authorized, and (C) which can be commenced within 60 days of the date of enactment of this section [May 13, 1977] and completed no later than the 180th day after commencement of construction. No funds authorized by section 111 of the Local Public Works Capital Development and Investment Act of 1976 (Public Law 94-369) [this section] may be used to carry out this section."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6707 of this title.

SUBCHAPTER II—ANTIRECESSION PROVISIONS

§ 6722. Financial assistance

[*See main edition for text of (a)*]

(b) Authorization of appropriations

Subject to the provisions of subsections (c) and (d) of this section, there are authorized to be appropriated for each of the five succeeding calendar quarters (beginning with the calendar quarter which begins on July 1, 1977) for the purpose of payments under this subchapter—

(1) $125,000,000, plus

(2) $30,000,000 multiplied by the number of whole one-tenth percentage points by which

the rate of seasonally adjusted national unemployment for the most recent calendar quarter which ended three months before the beginning of such quarter exceeded 6 per centum.

(c) Aggregate authorization

In no case shall the aggregate amount authorized to be appropriated under the provisions of subsection (b) of this section for the five successive calendar quarters beginning with the calendar quarter which begins July 1, 1977, exceed $2,250,000,000.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 95-30, title VI, § 602, May 23, 1977, 91 Stat. 164.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-30, § 602(a), substituted "July 1, 1977" for "July 1, 1976" in the introductory provisions preceding par. (1) and in par. (2) substituted "$30,000,000 multiplied by the number of whole one-tenth" for "$62,500,000 multiplied by the number of one-half" and "such quarter exceeded 6 per centum" for "such calendar quarter exceeded 6 percent".

Subsec. (c). Pub. L. 95-30, § 602(b), substituted "five successive calendar quarters beginning with the calendar quarter which begins July 1, 1977, exceed $2,250,000,000" for "five calendar quarters beginning with the calendar quarter which begins July 1, 1976, exceed $1,250,000,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6723, 6736 of this title.

§ 6723. Allocation of amounts

[*See main edition for text of* (*a*)]

(b) State allocation; percentage; definitions

[*See main edition for text of* (1) *and* (2)]

(3) For the purposes of this section—

[*See main edition for text of* (*A*) *to* (*C*)]

(D) the State revenue sharing amount is the amount determined under section 1226 of title 31 for the most recently completed entitlement period, as defined under section 1261(b) of title 31.

(c) Local government allocation; percentage; definitions; special limitation

(1) The Secretary shall allocate from amounts reserved under subsection (a)(2) of this section an amount for the purpose of making payments to each local government, subject to the provisions of paragraph (4), equal to the total amount reserved under such subsection for calendar quarter multiplied by the local government percentage.

[*See main edition for text of* (*2*)]

(3) For purposes of this subsection—

(A) the local excess unemployment percentage is equal to the difference resulting from the subtraction of 4.5 percentage points from the local unemployment rate, but shall not be less than zero;

(B) the local unemployment rate is equal to the rate of unemployment in the jurisdiction of the local government during the appropriated calendar quarter, as determined or assigned by the Secretary of Labor and reported to the Secretary (in the case of a local government for which the Secretary of Labor cannot determine a local unemployment rate, he shall assign such local government the local unemployment rate of the smallest unit or subunit of local government for which he has determined a local unemployment rate and within the jurisdiction of which such local government is located, unless—

(i) the Governor of the State in which such local government is located has provided the Secretary of Labor with a local unemployment rate for such local government, and

(ii) the Secretary of Labor finds that such local unemployment rate provided by the Governor has been determined in a manner consistent with the procedures and methodologies used by the Secretary of Labor in determining local unemployment rates,

in which case the Secretary of Labor shall assign such local government the local unemployment rate provided by such Governor);

(C) the local revenue sharing amount is the amount determined under section 1227 of title 31 for the most recently completed entitlement period, as defined under section 1261(b) of title 31;

(D) the term "local government" means the government of a county, municipality, township, or other unit of government below the State which—

(i) is a unit of general government (determined on the basis of the same principles as are used by the Bureau of the Census for general statistical purposes), and

(ii) performs substantial governmental functions. Such term includes the District of Columbia and also includes the recognized governing body of an Indian tribe or Alaskan Native village which performs substantial governmental functions. Such term does not include the government of a township area unless such government performs substantial governmental functions.

(4) If the amount which would be allocated to any unit of local government under this subsection is less than $100, then no amount shall be allocated for such unit of local government under this subsection.

(As amended Pub. L. 95-30, title VI, § 603(a)-(h), May 23, 1977, 91 Stat. 165, 166.)

AMENDMENTS

1977—Subsec. (b)(3)(D). Pub. L. 95-30, § 603(a), substituted "for the most recently completed entitlement period, as defined under section 1261(b) of title 31" for "for the one-year period beginning on July 1, 1975".

Subsec. (c)(1). Pub. L. 95-30, § 603(b), substituted "paragraph (4)" for "paragraphs (3) and (5)".

Subsec. (c)(3). Pub. L. 95-30, § 603(c) to (h), struck out former par. (3) which had set out special rules for local governments other than identifiable local governments, redesignated former par. (4) as (3) and, in par. (3) as so redesignated, substituted "determined or assigned" for "determined" in subpar. (B), substituted provisions covering local governments for which the Secretary of Labor cannot determine a local unemployment rate for provisions covering local governments treated as one local government in subpar. (B), substituted "for the most recently completed entitlement period, as defined under section 1261(b) of title 31" for "for the one-year period beginning July 1, 1975" in subpar. (C), struck out parenthetical provisions covering local governments treated as one local government in subpar. (C), struck out former subpar. (D) which had defined "identifiable local government", redesignated former subpar. (E) as (D), substituted "Bureau of the Census" for "Social and Economic Statistics Administration" in cl. (i) of subpar. (D) as so redesignated, and struck out provisions which had directed the Secretary of Labor to make determinations with respect to rates of unemployment for the purposes of title VI of the Comprehensive Employment and Training Act of 1973.

Subsec. (c)(4). Pub. L. 95-30, § 603(c), redesignated former par. (5) as (4). Former par. (4) was redesignated (3) and amended.

Subsec. (c)(5). Pub. L. 95-30, § 602(c), redesignated former par. (5) as (4).

Section Referred to in Other Sections

This section is referred to in sections 6730, 6736 of this title.

§ 6724. Uses of payments

Each State and local government shall use payments made under this subchapter for the maintenance of basic services customarily provided to persons in that State or in the area under the jurisdiction of that local government, as the case may be. State and local governments may not use emergency support payments made under this subchapter for the acquisition of supplies and materials or for construction, except for normal supplies or repairs necessary to maintain basic services.

(As amended Pub. L. 95-30, title VI, § 604, May 23, 1977, 91 Stat. 166.)

Amendments

1977—Pub. L. 95-30 substituted "or for construction, except for normal supplies or repairs necessary to maintain basic services" for "and for construction, unless such supplies and materials or construction are to maintain basic services".

Section Referred to in Other Sections

This section is referred to in sections 6725, 6736 of this title.

§ 6725. Statement of assurances as prerequisite for payments; rules governing time and manner of filing; contents of statement

Section Referred to in Other Sections

This section is referred to in sections 6730, 6732, 6736 of this title.

§ 6726. Repealed. Pub. L. 95-30, title VI, § 603(i), May 23, 1977, 91 Stat 166

Section, Pub. L. 94-369, title II, § 206, July 22, 1976, 90 Stat. 1007, provided for the filing of optional state allocation plans.

§ 6727. Nondiscrimination

(a)(1) No person in the United States shall, on the ground of race, color, national origin, or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity of a State government or unit of local government, which government or unit receives funds made available under this subchapter. Any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 [42 U.S.C. 6101 et seq.] or with respect to an otherwise qualified handicapped individual as provided in section 794 of title 29 shall also apply to any such program or activity. Any prohibition against discrimination on the basis of religion, or any exemption, from such prohibition, as provided in the Civil Rights Act of 1964 [42 U.S.C. 2000a et seq.] or title VIII of the Act of April 11, 1968, commonly referred to as Civil Rights Act of 1968 [42 U.S.C. 3601 et seq.], shall also apply to any such program or activity.

(2)(A) The provisions of paragraph (1) of this subsection shall not apply where any State government or unit of local government demonstrates, by clear and convincing evidence, that the program or activity with respect to which the allegation of discrimination has been made is not funded in whole or in part with funds made available under this subchapter.

(B) The provisions of paragraph (1), relating to discrimination on the basis of handicapped status, shall not apply with respect to construction projects commenced prior to January 1, 1977.

(b) The provisions of subsection (a) of this section shall be enforced by the Secretary in the same manner and in accordance with the same procedures as are required by sections 122, 124, and 125 of the State and Local Fiscal Assistance Act of 1972 [31 U.S.C. 1242, 1244, and 1245] to enforce compliance with section 122(a) of such Act [31 U.S.C. 1242(a)]. The Attorney General shall have the same authority, functions, and duties with respect to funds made available under this subchapter as the Attorney General has under sections 122(g) and (h) and 124(c) of such Act [31 U.S.C. 1242(g), (h), 1244(c)] with respect to funds made available under that Act [31 U.S.C. 1221 et seq.]. Any person aggrieved by a violation of subsection (a) of this section shall have the same rights and remedies as a person aggrieved by a violation of subsection (a) of section 122 of such Act [31 U.S.C. 1242(a)], including the rights provided under section 124(c) of such Act [31 U.S.C. 1244(c)].

(As amended Pub. L. 95-30, title VI, § 605, May 23, 1977, 91 Stat. 166.)

References in Text

The Age Discrimination Act of 1975, referred to in subsec. (a)(1), is Pub. L. 94-135, title III, Nov. 28, 1975, 89 Stat. 728, as amended, which is classified generally to chapter 76 (§ 6101 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6101 of this title and Tables.

The Civil Rights Act of 1964, referred to in subsec. (a)(1), is Pub. L. 88-352, July 2, 1964, 78 Stat. 241, as amended, which is classified principally to subchapters II to IX (§ 2000a et seq.) of chapter 21 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2000a of this title and Tables.

Title VIII of the Act of April 11, 1968, commonly referred to as Civil Rights Act of 1968, referred to in subsec. (a)(1), is Pub. L. 90-284, title VIII, Apr. 11, 1968, 82 Stat. 81, as amended, which is classified principally to subchapter I of chapter 45 (§ 3601 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

"That Act", referred to in subsec. (b), means the State and Local Fiscal Assistance Act of 1972, Pub. L. 92-512, title I, Oct. 20, 1972, 86 Stat. 919, as amended, which is classified principally to chapter 24 (§ 1221 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see Short Title note set out under section 1221 of Title 31 and Tables.

AMENDMENTS

1977—Pub. L. 95-30 rewrote the section in its entirety adding reference to discriminatory practices prohibited by the Age Discrimination Act of 1975 and the Rehabilitation Act of 1973 and generally restructuring the enforcement and remedies provisions to incorporate the procedures of the Secretary and of the Attorney General under the State and Local Fiscal Assistance Act of 1972.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6725, 6736 of this title.

§ 6728. Wage standards for laborers and mechanics; enforcement

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6725, 6736 of this title.

§ 6729. Reports to Secretary by States and local governments; contents

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6725, 6736 of this title.

§ 6730. Reports

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6736 of this title.

§ 6731. Economization by State and local governments; statement of assurances, etc., required

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6736 of this title.

§ 6732. Withholding of payments for failure to comply with statement of assurances; procedures applicable

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6733, 6736 of this title.

§ 6733. Reports to Congress by Secretary; contents

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6736 of this title.

§ 6735. Program studies and recommendations; evaluation; countercyclical study

[*See main edition for text of* (a) *and* (b)]

(c) The Secretary shall, in consultation with the Secretary of Commerce, conduct an investigation of—

(1) the extent to which allocations of funds provided under this chapter might be more precisely related to true economic conditions by the use of data on aggregate declines in private real wages and salaries;

(2) the extent to which other factors, such as relative tax effort, should also be made part of the allocation system provided by this chapter; and

(3) the availability and reliability of data concerning Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Trust Territory of the Pacific Islands, and the extent to which such territories may properly be made part of the regular allocation system applicable to the several States.

The results of such investigation shall be submitted to the Congress not later than March 1, 1978, in order that such results may be available during congressional consideration of any extension of this chapter beyond the fiscal year ending September 30, 1978.

(As amended Pub. L. 95-30, title VI, § 606, May 23, 1977, 91 Stat. 167.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-30 added subsec. (c).

§ 6736. Authorization of appropriations for Puerto Rico, Guam, American Samoa, and Virgin Islands

(a) Authorizations for five calendar quarters beginning July 1, 1977

There is hereby authorized to be appropriated for each of the five succeeding calendar quarters (beginning with the calendar quarter which begins on July 1, 1977) for the purpose of making payments under this subchapter to Puerto Rico, Guam, American Samoa, and the Virgin Islands, an amount equal to 1 percent of the amount authorized for each such quarter under section 6722(b) of this title.

(b) Allocations

(1) The Secretary shall allocate from the amount authorized under subsection (a) of this section an amount for the purpose of making payments to such governments equal to the total authorized for the calendar quarter multiplied by the applicable territorial percentage.

(2) For the purposes of this subsection, the applicable territorial percentage is equal to the quotient resulting from the division of the territorial population by the sum of the territorial population for all territories.

(3) For purposes of this section—

(A) The term "territory" means Puerto Rico, Guam, American Samoa, and the Virgin Islands.

(B) The term "territorial population" means the most recent population for each territory as determined by the Bureau of Census.

(C) The provisions of sections 6723(c)(4), 6724, 6725, 6726, 6727, 6728, 6729, 6730, 6731, 6732, and 6733 of this title shall apply to the funds authorized under this section.

(c) Payments to local governments

The governments of the territories are authorized to make payments to local governments within their jurisdiction from sums received under this section as they deem appropriate.

(Pub. L. 94-369, title II, § 216, as added Pub. L. 95-30, title VI, § 607, May 23, 1977, 91 Stat. 167.)

References in Text

Section 6726 of this title, referred to in subsec. (b)(3)(C), was repealed by Pub. L. 95-30, title VI, § 603(i), May 23, 1977, 91 Stat. 166.

CHAPTER 81—ENERGY CONSERVATION AND RESOURCE RENEWAL

SUBCHAPTER I—ELECTRIC UTILITY RATE DESIGN INITIATIVES

Sec.
6808. Authorization of appropriations [New].

SUBCHAPTER III—ENERGY CONSERVATION AND RENEWABLE RESOURCE ASSISTANCE FOR EXISTING BUILDINGS

Part A—Weatherization Assistance for Low-Income Persons

6873. Availability of labor [New].

SUBCHAPTER I—ELECTRIC UTILITY RATE DESIGN INITIATIVES

§ 6801. Congressional findings and purpose

Transfer of Functions

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 6802. Definitions

As used in this subchapter:

(1) The term "Secretary" means the Secretary of Energy.

[*See main edition for text of* (*2*) *to* (*7*)]

(As amended Pub. L. 95-617, title I, § 143, Nov. 9, 1978, 92 Stat. 3134.)

Amendments

1978—Par. (1). Pub. L. 95-617 substituted "The term 'Secretary' means the Secretary of Energy" for "The term 'Administrator' means the Administrator of the Federal Energy Administration; except that after such Administration ceases to exist, such term means any officer of the United States designated by the President for purposes of this subchapter".

§ 6803. Development of electric utility rate design proposals by Secretary; contents; submission to Congress; supporting analysis

(a) The Secretary shall develop proposals to improve electric utility rate design. Such proposals shall be designed to encourage energy conservation, minimize the need for new electrical generating capacity, and minimize costs of electric energy to consumers, and shall include (but not be limited to) proposals which provide for the development and implementation of—

[*See main edition for text of* (*1*) *to* (*4*); (*b*)]

(As amended Pub. L. 95-617, title I, § 143, Nov. 9, 1978, 92 Stat. 3134.)

Amendments

1978—Subsec. (a). Pub. L. 95-617 substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration.

§ 6804. Funding administrative, and judicial authorities of Secretary

The Secretary may—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) on request of any State, utility regulatory commission, or party to any action to obtain judicial review of an administrative proceeding in which the Secretary intervened or participated under paragraph (2), intervene and participate in such action.

(As amended Pub. L. 95-617, title I, § 143, Nov. 9, 1978, 92 Stat. 3134.)

Amendments

1978—Pub. L. 95-617 substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration in two places.

Section Referred to in Other Sections

This section is referred to in section 6808 of this title; title 16 section 2633.

§ 6805. Grants for State consumer protection offices by Secretary

(a) Establishment, operation, and purpose; qualifications for funds

The Secretary may make grants to States, or otherwise as provided in subsection (c) of this section, under this section to provide for the establishment and operation of offices of consumer services to assist consumers in their presentations before utility regulatory commissions. Any assistance provided under this section shall be provided only for an office of consumer services which is operated independently of any such utility regulatory commission and which is empowered to—

[*See main edition for text of* (*1*) *to* (*3*)]

(b) Grants subject to State assurance on funds

Grants pursuant to subsection (a) of this section shall be made only to States which furnish such assurances as the Secretary may require that funds made available under such section will be in addition to, and not in substitution for, funds made available to offices of consumer services from other sources.

[*See main edition for text of* (*c*)]

(As amended Pub. L. 95-617, title I, § 143, Nov. 9, 1978, 92 Stat. 3134.)

Amendments

1978—Subsecs. (a), (b). Pub. L. 95-617 substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration.

Section Referred to in Other Sections

This section is referred to in section 6808 of this title.

§ 6806. Annual report and recommendations to Congress by Secretary

Not later than the last day in December in each year, the Secretary shall transmit to the Congress a report with respect to activities conducted under this subchapter and recommendations as to the need for and types of further Federal legislation.

(As amended Pub. L. 95-617, title I, § 143, Nov. 9, 1978, 92 Stat. 3134.)

AMENDMENTS

1978—Pub. L. 95-617 substituted "Secretary" for "Administrator", meaning Administrator of the Federal Energy Administration.

§ 6807. State utility regulatory assistance

(a) Grants to State utility regulatory commissions and nonregulated electric utilities

The Secretary may make grants to State utility regulatory commissions and nonregulated electric utilities (as defined in the Public Utility Regulatory Policies Act of 1978 [16 U.S.C. 2602]) to carry out duties and responsibilities under titles I [16 U.S.C. 2601 et seq.] and III [15 U.S.C. 3201 et seq.], and section 210 [16 U.S.C. 824a-3], of the Public Utility Regulatory Policies Act of 1978. No grant may be made under this section to any Federal agency.

(b) Unnecessary requirements prohibited

Any requirements established by the Secretary with respect to grants under this section may be only such requirements as are necessary to assure that such grants are expended solely to carry out duties and responsibilities referred to in subsection (a) of this section or such as are otherwise required by law.

(c) Application for grant

No grant may be made under this section unless an application for such grant is submitted to the Secretary in such form and manner as the Secretary may require. The Secretary may not approve an application of a State utility regulatory commission or nonregulated electric utility unless such commission or nonregulated electric utility assures the Secretary that funds made available under this section will be in addition to, and not in substitution for, funds made available to such commission or nonregulated electric utility from other governmental sources.

(d) Apportionment of funds

The funds appropriated for purposes of this section shall be apportioned among the States in such manner that grants made under this section in each State shall not exceed the lesser of—

(1) the amount determined by dividing equally among all States the total amount available under this section for such grants, or

(2) the amount which the Secretary is authorized to provide pursuant to subsections (b) and (c) of this section for such State.

(As amended Pub. L. 95-617, title I, § 141, Nov. 9, 1978, 92 Stat. 3133.)

REFERENCES IN TEXT

The Public Utility Regulatory Policies Act of 1978, referred to in subsec. (a), is Pub. L. 95-617, Nov. 9, 1978, 92 Stat. 3117, as amended. Title I of such Act is classified principally to chapter 46 (§ 2601 et seq.) of Title 16, Conservation, and title III of such Act is classified generally to chapter 59 (§ 3201 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 16 and Tables.

AMENDMENTS

1978—Pub. L. 95-617 substituted provisions relating to grants to State utility regulatory commissions and nonregulated electric utilities for provisions authorizing appropriations to carry out this subchapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6808 of this title.

§ 6808. Authorization of appropriations

There are authorized to be appropriated—

(1) not to exceed $40,000,000 for each of the fiscal years 1979 and 1980 to carry out section 6807 of this title (relating to State utility regulatory assistance);

(2) not to exceed $10,000,000 for each of the fiscal years 1979 and 1980 to carry out section 6805 of this title (relating to State offices of consumer services); and

(3) not to exceed $8,000,000 for the fiscal year 1979, and $10,000,000 for the fiscal year 1980 to carry out section 6804(1)(B) of this title (relating to innovative rate structures).

(Pub. L. 94-385, title II, § 208, as added Pub. L. 95-617, title II, § 142, Nov. 9, 1978, 92 Stat. 3134.)

SUBCHAPTER II—ENERGY CONSERVATION STANDARDS FOR NEW BUILDINGS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 7154 of this title; title 12 section 1735f-4.

§ 6831. Congressional findings and purpose

CROSS REFERENCES

Energy conservation in Federal buildings, see section 8251 et seq. of this title.

Residential energy conservation, see section 8211 et seq. of this title.

§ 6832. Definitions

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 6833. Development and promulgation of energy conservation performance standards for new commercial and residential buildings

[*See main edition for text of* (a) *and* (b)]

(c) Periodic review and updating of standards

The Secretary, in consultation with the Administrator, the Secretary of Housing and Urban Development, the Secretary of Commerce, the Administrator of the General Services Administration, and the heads of other appropriate Federal agencies, and the National Institute of Building Sciences, shall periodically review and provide for the updating of performance standards promulgated pursuant to subsection (a) of this section.

[*See main edition for text of* (*d*)]

(As amended Pub. L. 95-91, title VII, § 709(e)(1), Aug. 4, 1977, 91 Stat. 608.)

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-91 added "the Secretary of Housing and Urban Development," following "the Administrator,".

TRANSFER OF FUNCTIONS

The functions vested in the "Secretary", (meaning the Secretary of Housing and Urban Development) under this section to develop and promulgate energy conservation standards for new buildings were transferred to the Secretary of Energy by section 7154(a) of this title.

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6834, 6839, 7154, 8211, 8225 of this title.

§ 6834. Requirements for availability or approval of Federal financial assistance for new construction of buildings

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6836, 8211 of this title.

§ 6836. Grants to States, etc., for adoption and implementation of performance standards and administration of State certification procedures or approval process; authorization of appropriations

[*See main edition for text of* (*a*)]

(b) There is authorized to be appropriated, for the purpose of carrying out this section, the following amounts—

(1) for the fiscal year ending September 30, 1977, not to exceed $5,000,000;

(2) for the fiscal year ending September 30, 1978, not to exceed $10,000,000; and

(3) for the fiscal year ending September 30, 1979, not to exceed $10,000,000.

Any amount appropriated pursuant to this subsection shall remain available until expended.

(As amended Pub. L. 95-619, title II, § 255, Nov. 9, 1978, 92 Stat. 3238.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-619 added provisions authorizing appropriations of $10,000,000 for fiscal year ending Sept. 30, 1978, and $10,000,000 for fiscal year ending Sept. 30, 1979.

§ 6839. Support activities necessary or appropriate to develop and implement performance standards

The Secretary, in cooperation with the Administrator, Secretary of Housing and Urban Development, the Secretary of Commerce utilizing the services of the Director of the National Bureau of Standards, and the heads of other appropriate Federal agencies, and the National Institute of Building Sciences, shall carry out any activities which the Secretary determines may be necessary or appropriate to assist in the development of performance standards under section 6833(a) of this title and to facilitate the implementation of such standards by State and local governments. Such activities shall be designed to assure that such standards are adequately analyzed in terms of energy efficiency, stimulation of use of nondepletable sources of energy, institutional resources, habitability, economic cost and benefit, and impact upon affected groups.

(As amended Pub. L. 95-91, title VII, § 709(e)(2), Aug. 4, 1977, 91 Stat. 608.)

AMENDMENTS

1977—Pub. L. 95-91 added "Secretary of Housing and Urban Development," following "the Administrator,".

TRANSFER OF FUNCTIONS

The functions vested in the "Secretary" (meaning the Secretary of Housing and Urban Development) under section 6833 of this title to develop and promulgate energy conservation standards for new buildings were transferred to the Secretary of Energy by section 7154(a) of this title.

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SUBCHAPTER III—ENERGY CONSERVATION AND RENEWABLE-RESOURCE ASSISTANCE FOR EXISTING BUILDINGS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in title 29 section 825.

§ 6851. Congressional findings and purpose

CROSS REFERENCES

Energy conservation in Federal buildings, see section 8251 et seq. of this title.

Residential energy conservation, see section 8211 et seq. of this title.

PART A—WEATHERIZATION ASSISTANCE FOR LOW-INCOME PERSONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 1474, 6873 of this title.

§ 6862. Definitions

As used in this part:

[*See main edition for text of* (*1*) *to* (*4*)]

(5) The term "handicapped person" means any individual (A) who is a handicapped individual as defined in section 7(7) of the Rehabilitation Act of 1973 [29 U.S.C. 706(7)], (B) who is under a disability as defined in section 1614(a)(3)(A) or 233(d)(1) of the Social Secu-

rity Act [42 U.S.C. 1382c(a)(3)(A), 423(d)(1)] or in section 102(7) of the Developmental Disabilities Services and Facilities Construction Act [42 U.S.C. 6001(7)], or (C) who is receiving benefits under chapter 11 or 15 of title 38.

[*See main edition for text of (6)*]

(7) The term "low-income" means that income in relation to family size which (A) is at or below 125 percent of the poverty level determined in accordance with criteria established by the Director of the Office of Management and Budget, except that the Administrator may establish a higher level if the Administratror, after consulting with the Secretary of Agriculture and the Director of the Community Services Administration, determines that such a higher level is necessary to carry out the purposes of this part and is consistent with the eligibility criteria established for the weatherization program under section 2809(a)(12) this title, or (B) is the basis on which cash assistance payments have been paid during the preceding 12-month period under titles IV and XVI of the Social Security Act [42 U.S.C. 601 et seq., 1381 et seq.] or applicable State or local law.

(8) The term "State" means each of the States and the District of Columbia.

(9) The term "weatherization materials" means—

(A) caulking and weatherstripping of doors and windows;

(B) furnace efficiency modifications limited to—

(i) replacement burners designed to substantially increase the energy efficiency of the heating system,

(ii) devices for modifying flue openings which will increase the energy efficiency of the heating system, and

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(C) clock thermostats;

(D) ceiling, attic, wall, floor, and duct insulation;

(E) water heater insulation;

(F) storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective window and door materials; and

(G) such other insulating or energy conserving devices or technologies as the Administrator may determine, by rule, after consulting with the Secretary of Housing and Urban Development, the Secretary of Agriculture, and the Director, of the Community Services Administration.

(As amended Pub. L. 95-602, title I, § 122(e), Nov. 6, 1978, 92 Stat. 2987; Pub. L. 95-619, title II, § 231(a)(1), (b)(2), Nov. 9, 1978, 92 Stat. 3224, 3225.)

AMENDMENTS

1978—Par. (5). Pub. L. 95-602 substituted "section 7(7) of the Rehabilitation Act of 1973" for "section 7(6) of the Rehabilitation Act of 1973".

Par. (7)(A). Pub. L. 95-619, § 231(a)(1), inserted "125 percent of" following "at or below" and added provision authorizing the Administrator to establish a higher level for low-income computations after determining such higher level to be necessary to carry out the purposes of this part.

Par. (9). Pub. L. 95-619, § 231(b)(2), substituted a specific listing of items to be considered weatherization materials for purposes of this part for a general statement of the sort of materials that could be considered as such.

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1437k, 1474, 6372 of this title; title 12 sections 1703, 1723f.

§ 6863. Weatherization program

(a) Development and conduct of program by Administrator; grants to States and Indian tribal organizations

The Administrator shall develop and conduct, in accordance with the purpose and provisions of this part, a weatherization program. In developing and conducting such program, the Administrator may, in accordance with this part and regulations promulgated under this part, make grants (1) to States, and (2) in accordance with the provisions of subsection (d) of this section, to Indian tribal organizations to serve Native Americans. Such grants shall be made for the purpose of providing financial assistance with regard to projects designed to provide for the weatherization of dwelling units, particularly those where elderly or handicapped low-income persons reside, occupied by low-income families.

(b) Consultation by Administrator with other Federal departments and agencies on development and publication in Federal Register of proposed regulations; required regulatory provisions; standards

[*See main edition for text of (1) and (2)*]

(3) The Administrator, in coordination with the Secretaries and Director described in paragraph (2)(A) and with the Director of the Community Services Administration and the Secretary of Agriculture, shall and publish in the Federal Register for public comment, not later than 60 days after November 9, 1978, proposed amendments to the regulations prescribed under paragraph (1). Such amendments shall provide that the standards described in paragraph (2)(A) shall include a set of procedures to be applied to each dwelling unit to determine the optimum set of cost-effective measures, within the cost guidelines set for the program, to be installed in such dwelling unit. Such standards shall, in order to achieve such optimum savings of energy, take into consideration the following factors—

(A) the cost of the weatherization material;

(B) variation in climate; and

(C) the value of energy saved by the application of the weatherization material.

Such standards shall be utilized by the Administrator in carrying out this part, the Secretary of Agriculture in carrying out the weatherization program under section 1474(c) of this title, and the Director of the Community Services Administration in carrying out weatherization programs under section 2809(a)(12) of this title. The Administrator shall take into consideration comments submitted regarding such proposed amendment and shall promulgate and publish final amended regulations not later than 120 days after November 9, 1978.

[*See main edition for text of* (*c*) *to* (*e*)]

(As amended Pub. L. 95-619, title II, § 231(a)(2), (b)(1), Nov. 9, 1978, 92 Stat. 3224.)

Amendments

1978—Subsec. (a). Pub. L. 95-619, § 231(a)(2), substituted "occupied by low-income families" for "in which the head of the household is a low-income person".

Subsec. (b)(3). Pub. L. 95-619, § 231(b)(1), added par. (3).

Change of Name

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

Transfer of Functions

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1474, 6864, 6865, 6868 of this title.

§ 6864. Financial assistance; annual application; contents; allocation to States; requirements for assistance

References in Text

The Comprehensive Employment and Training Act of 1973, referred to in text, is Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 839, as amended, now known as the Comprehensive Employment and Training Act, which is classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 29 and Tables.

Transfer of Functions

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 6865. Limitations on financial assistance

(a) Purchase of materials and administration of projects

Financial assistance provided under this part shall, to the maximum extent practicable as determined by the Administrator, be used for the purchase of weatherization materials and related matter described in subsection (c) of this section, except that not more than 5 percent of any grant made pursuant to section 6863(a) of this title and not more than 5 percent of any amount allocated under this section may be used for administration in carrying out duties under this part.

[*See main edition for text of* (*b*)]

(c) Limitations on expenditures; exceptions

(1) Except as provided in paragraph (2), not more than $800 of any financial assistance provided under this part may be expended with respect to weatherization materials and the following related matters for any dwelling unit—

(A) the appropriate portion of the cost of tools and equipment used to install such materials for such unit;

(B) the cost of transporting labor, tools, and material to such unit;

(C) the cost of having onsite supervisory personnel; and

(D) the cost (not to exceed $100) of making incidental repairs to such unit if such repairs are necessary to make the installation of weatherization materials effective.

(2) The limitation of $800 described in paragraph (1) shall not apply if the State policy advisory council, established pursuant to section 6864(b)(1) of this title, requests the Administrator to provide for a greater amount with respect to specific categories of units or materials in the State, and the Administrator approves such request.

(As amended Pub. L. 95-619, title II, § 231(c), Nov. 9, 1978, 92 Stat. 3225.)

Amendments

1978—Subsec. (a). Pub. L. 95-619, § 231(c)(1), authorized the expenditure of allocations under this part for costs related to weatherization of a dwelling unit as provided in subsec. (c) of this section and substituted an administrative expenses limitation of five per cent of any allocation under this section for a similar limitation of ten per cent of any such allocation.

Subsec. (c). Pub. L. 95-619, § 231(c)(2), included the expenditure of financial assistance provided under this section for costs related to the procurement and installation of weatherization materials in dwelling units in the maximum amount available per dwelling unit and increased such maximum amount to $800 per unit.

Transfer of Functions

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

Section Referred to in Other Sections

This section is referred to in sections 1474, 6863, 6864 of this title.

§§ 6866 to 6871

Transfer of Functions

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 6872. Authorization of appropriations

There are authorized to be appropriated for purposes of carrying out the weatherization program under this part, not to exceed $55,000,000 for the fiscal year ending September 30, 1977, not to exceed $130,000,000 for the fiscal year ending September 30, 1978, not to exceed $200,000,000 for the fiscal year ending September 30, 1979, and not to exceed

$200,000,000 for the fiscal year ending September 30, 1980, such sums to remain available until expended.

(As amended Pub. L. 95-619, title II, § 231(d), Nov. 9, 1978, 92 Stat. 3226.)

AMENDMENTS

1978—Pub. L. 95-619 substituted an appropriations authorization of not to exceed $130,000,000 for the fiscal year ending September 30, 1978, for an authorization of not to exceed $65,000,000 for such fiscal year, substituted an authorization of not to exceed $200,000,000 for the fiscal year ending September 30, 1979, for an authorization of $80,000,000 for such fiscal year, and added an authorization of not to exceed $200,000,000 for the fiscal year ending September 30, 1980.

§ 6873. Availability of labor

The following actions shall be taken in order to assure that there is, a sufficient number of volunteers and training participants and public service employment workers, assisted pursuant to the Comprehensive Employment Training Act of 1973 [29 U.S.C. 801 et seq.] and the Older American Community Service Employment Act [42 U.S.C. 3056 et seq.], available to work in support of weatherization programs conducted under part A of the Energy Conservation in Existing Buildings Act of 1976 [42 U.S.C. 6861 et seq.], section 222(a)(5) of the Economic Opportunity Act of 1964 [42 U.S.C. 2809(a)(5)], and section 504 of the Housing Act of 1949 [42 U.S.C. 1474]:

(1) First, the Secretary of Energy (in consultation with the Director of the Community Services Administration, the Secretary of Agriculture, and the Secretary of Labor) shall determine the number of individuals needed to supply sufficient labor to carry out such weatherization programs in the various areas of the country.

(2) After the determination in paragraph (1) is made, the Secretary of Labor shall identify the areas of the country in which there is an insufficient number of such volunteers and training participants and public service employment workers.

(3) After such areas are identified, the Secretary of Labor shall take steps to assure that such weatherization programs are supported to the maximum extent practicable in such areas by such volunteers and training participants and public service employment workers.

(Pub. L. 95-619, title II, § 233, Nov. 9, 1978, 92 Stat. 3227.)

REFERENCES IN TEXT

The Comprehensive Employment and Training Act of 1973, referred to in text, is Pub. L. 93-203, Dec. 28, 1973, 87 Stat. 839, as amended, now known as the Comprehensive Employment and Training Act, which is classified generally to chapter 17 (§ 801 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see Short Title note set out under section 801 of Title 29 and Tables.

The Older American Community Service Employment Act, referred to in provision preceding par. (1), is title IX of Pub. L. 89-73, § 901, as added Pub. L. 94-135, title I, § 113(a), Nov. 28, 1975, 89 Stat. 720, and amended, which is classified generally to subchapter IX (§ 3056 et seq.) of chapter 35 of this title. For complete classification of this Act to the Code, see Short Title of 1975 Amendment note set out under section 3001 of this title and Tables.

The Energy Conservation in Existing Buildings Act of 1976, referred to in provision preceding par. (1), is title IV of Pub. L. 94-385, Aug. 14, 1976, 90 Stat. 1150, as amended. Part A of the Energy Conservation in Existing Buildings Act of 1976 is classified generally to Part A (§ 6861 et seq.) of subchapter III of this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 6801 of this title and Tables.

CODIFICATION

Section 222(a)(5) of the Economic Opportunity Act of 1964, referred to in text, was substituted for "section 222(a)(12) of the Economic Opportunity Act of 1964" to reflect the redesignation of subsec. (a)(12) of section 222 as subsec. (a)(5) by Pub. L. 95-568, Nov. 2, 1978, § 5(a)(2)(E), 92 Stat. 2426.

Section was enacted as a part of the National Energy Conservation Policy Act, and not as a part of the Energy Conservation and Production Act which comprises this chapter.

PART B—ENERGY CONSERVATION AND RENEWABLE-RESOURCE OBLIGATION GUARANTEES

§ 6881. Energy resource and renewable-resource obligation guarantee program

[*See main edition for text of* (*a*) *to* (*f*)]

(g) Limitation on aggregate outstanding principal amount of obligations guaranteed; time limitation on guarantees and commitments to guarantee; authorization of appropriations

[*See main edition for text of* (*1*) *and* (*2*)]

(3) There is authorized to be appropriated to carry out the provisions of this part, including administrative costs, but not for the payment of amounts to be paid under subsection (f) of this section—

(A) for the fiscal year ending September 30, 1977, not to exceed $1,836,000; and

(B) for the fiscal year ending September 30, 1978, not to exceed $4,950,000.

[*See main edition for text of* (*h*) *and* (*i*)]

(As amended Pub. L. 95-70, § 5, July 21, 1977, 91 Stat. 277.)

AMENDMENTS

1977—Subsec. (g)(3). Pub. L. 95-70 added par. (3).

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

PART C—MISCELLANEOUS PROVISIONS

§§ 6891, 6892

TRANSFER OF FUNCTIONS

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

CHAPTER 82—SOLID WASTE DISPOSAL

Chapter Referred to in Other Sections

This chapter is referred to in sections 2022, 2114, 4365, 5919, 6344a, 8302 of this title; title 30 section 1292.

SUBCHAPTER I—GENERAL PROVISIONS

§ 6901. Congressional findings

(a) Solid waste

The Congress finds with respect to solid waste—

[*See main edition for text of (1) to (3)*]

(4) that while the collection and disposal of solid wastes should continue to be primarily the function of State, regional, and local agencies, the problems of waste disposal as set forth above have become a matter national in scope and in concern and necessitate Federal action through financial and technical assistance and leadership in the development, demonstration, and application of new and improved methods and processes to reduce the amount of waste and unsalvageable materials and to provide for proper and economical solid waste disposal practices.

(b) Environment and health

The Congress finds with respect to the environment and health, that—

[*See main edition for text of (1) and (2)*]

(3) as a result of the Clean Air Act [42 U.S.C. 7401 et seq.], the Water Pollution Control Act [33 U.S.C. 1251 et seq.], and other Federal and State laws respecting public health and the environment, greater amounts of solid waste (in the form of sludge and other pollution treatment residues) have been created. Similarly, inadequate and environmentally unsound practices for the disposal or use of solid waste have created greater amounts of air and water pollution and other problems for the environment and for health;

[*See main edition for text of (4) to (6); (c), (d)*]

(As amended Pub. L. 95-609, § 7(a), Nov. 8, 1978, 92 Stat. 3081.)

References in Text

The Clean Air Act, referred to in subsec. (b)(3), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

Codification

Subsec. (b)(3) is set out in this supplement to reflect the current citation for the Clean Air Act, which was reclassified to chapter 85 (§ 7401 et seq.) of this title, on enactment of Pub. L. 95-95.

Amendments

1978—Subsec. (a)(4). Pub. L. 95-609 substituted "solid waste" for "solid-waste".

Federal Compliance With Pollution Control Standards

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

§ 6903. Definitions

As used in this chapter:

[*See main edition for text of (1) to (7)*]

(8) For purposes of Federal financial assistance (other than rural communities assistance), the term "implementation" does not include the acquisition, leasing, construction, or modification of facilities or equipment or the acquisition, leasing, or improvement of land.

[*See main edition for text of (9)*]

(10) The term "interstate agency" means an agency of two or more municipalities in different States, or an agency established by two or more States, with authority to provide for the management of solid wastes and serving two or more municipalities located in different States.

[*See main edition for text of (11) to (28)*]

(29) The term "solid waste management facility" includes—

(A) any resource recovery system or component thereof,

(B) any system, program, or facility for resource conservation, and

(C) any facility for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid wastes, including hazardous wastes, whether such facility is associated with facilities generating such wastes or otherwise.

[*See main edition for text of (30) to (35)*]

(As amended Pub. L. 95-609, § 7(b), Nov. 8, 1978, 92 Stat. 3081.)

Amendments

1978—Par. (8). Pub. L. 95-609, § 7(b)(1), struck out provision stating that employees' salaries due pursuant to subchapter IV of this chapter would not be included after December 31, 1979.

Par. (10). Pub. L. 95-609, § 7(b)(2), substituted "management" for "disposal".

Par. (29). Pub. L. 95-609, § 7(b)(3), substituted "the collection, source separation, storage, transportation, transfer processing, treatment or disposal" for "the treatment" in subpar. (C).

Transfer of Functions

Enforcement functions of Administrator or other official of the Environmental Protection Agency related to compliance with resource conservation and recovery permits used under this chapter with respect to preconstruction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§ 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5919, 6921 of this title.

§ 6904. Governmental cooperation

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6905. Application of chapter and integration with other Acts

[*See main edition for text of* (*a*)]

(b) Integration with other acts

The Administrator shall integrate all provisions of this chapter for purposes of administration and enforcement and shall avoid duplication, to the maximum extent practicable, with the appropriate provisions of the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Federal Insecticide, Fungicide, and Rodenticide Act [7 U.S.C. 136 et seq.], the Safe Drinking Water Act [42 U.S.C. 300f et seq.], the Marine Protection, Research and Sanctuaries Act of 1972 [33 U.S.C. 1401 et seq.], and such other Acts of Congress as grant regulatory authority to the Administrator. Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies expressed in this chapter and in the other acts referred to in this subsection.

[*See main edition for credits*]

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (b), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

CODIFICATION

Subsec. (b) is set out in this supplement to reflect the current citation for the Clean Air Act, which was reclassified to chapter 85 (§ 7401 et seq.) of this title, on enactment of Pub. L. 95-95.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6906. Financial disclosure

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6907. Solid waste management information and guidelines

(a) Guidelines

Within one year of October 21, 1976, and from time to time thereafter, the Administrator shall, in cooperation with appropriate Federal, State, municipal, and intermunicipal agencies, and in consultation with other interested persons, and after public hearings, develop and publish suggested guidelines for solid waste management. Such suggested guidelines shall—

[*See main edition for text of* (*1*)]

(2) not later than two years after October 21, 1976, describe levels of performance, including appropriate methods and degrees of control, that provide at a minimum for (A) protection of public health and welfare; (B) protection of the quality of ground waters and surface waters from leachates; (C) protection of the quality of surface waters from runoff through compliance with effluent limitations under the Federal Water Pollution Control Act, as amended [33 U.S.C. 1251 et seq.]; (D) protection of ambient air quality through compliance with new source performance standards or requirements of air quality implementation plans under the Clean Air Act, as amended [42 U.S.C. 7401 et seq.]; (E) disease and vector control; (F) safety; and (G) esthetics; and

(3) provide minimum criteria to be used by the States to define those solid waste management practices which constitute the open dumping of solid waste or hazardous waste and are to be prohibited under subchapter IV of this chapter.

Where appropriate, such suggested guidelines also shall include minimum information for use in deciding the adequate location, design, and construction of facilities associated with solid waste management practices, including the consideration of regional, geographic, demographic, and climatic factors.

(b) Notice

The Administrator shall notify the Committee on Environment and Public Works of the Senate and the Committee on Interstate and Foreign Commerce of the House of Representatives a reasonable time before publishing any suggested guidelines or proposed regulations under this chapter of the content of such proposed suggested guidelines or proposed regulations under this chapter.

(As amended Pub. L. 95-609, § 7(c), (d), Nov. 8, 1978, 92 Stat. 3081.)

REFERENCES IN TEXT

The Clean Air Act, as amended, referred to in subsec. (a)(2), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

CODIFICATION

Subsec. (a)(2) is set out in this supplement to reflect the current citation for the Clean Air Act, which was reclassified to chapter 85 (§ 7401 et seq.) of this title, on enactment of Pub. L. 95-95.

Subchapter IV of this chapter, referred to in subsecs. (a)(3), was in the original "subtitle D of this Act". Reference to subtitle D of this Act probably means subtitle D of title II of this Act (Pub. L. 89-272), as added by Pub. L. 94-580, which is known as the Solid Waste Disposal Act and which is classified generally to subchapter IV (§ 6941 et seq.) of this chapter.

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95-609, § 7(c), substituted "subchapter IV of this chapter" for "title IV of this Act". See Codification note above.

Subsec. (b). Pub. L. 95-609, § 7(d), struck out the phrase "pursuant to this section" following "any suggested guidelines" and inserted the phrase "or proposed regulations under this chapter" after "suggested guidelines" in two places.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5919, 5920, 6948, 6964, 6981, 6984, 6986 of this title.

SUBCHAPTER II—OFFICE OF SOLID WASTE; AUTHORITIES OF THE ADMINISTRATOR

§§ 6911, 6912

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6913. Resource Recovery and Conservation Panels

The Administrator shall provide teams of personnel, including Federal, State, and local employees or contractors (hereinafter referred to as "Resource Conservation and Recovery Panels") to provide Federal agencies, States and local governments upon request with technical assistance on solid waste management, resource recovery, and resource conservation. Such teams shall include technical, marketing, financial, and institutional specialists, and the services of such teams shall be provided without charge to States or local governments.

(As amended Pub. L. 95-609, § 7(e), Nov. 8, 1978, 92 Stat. 3081.)

AMENDMENTS

1978—Pub. L. 95-609 inserted "Federal agencies," after "Panels") to provide".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§§ 6914 to 6916

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

SUBCHAPTER III—HAZARDOUS WASTE MANAGEMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 2022, 6916, 6948, 6972 of this title.

§ 6921. Identification and listing of hazardous waste

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6922. Standards applicable to generators of hazardous waste

Not later than eighteen months after October 21, 1976, and after notice and opportunity for public hearings and after consultation with appropriate Federal and State agencies, the Administrator shall promulgate regulations establishing such standards, applicable to generators of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall establish requirements respecting—

[*See main edition for text of (1) to (4)*]

(5) use of a manifest system to assure that all such hazardous waste generated is designated for treatment, storage, or disposal in treatment, storage, or disposal facilities (other than facilities on the premises where the waste is generated) for which a permit has been issued as provided in this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.]; and

(6) submission of reports to the Administrator (or the State agency in any case in which such agency carries out an authorized permit program pursuant to this subchapter) at such times as the Administrator (or the State agency if appropriate) deems necessary, setting out—

[*See main edition for text of (A) and (B)*]

(As amended Pub. L. 95-609, § 7(f), Nov. 8, 1978, 92 Stat. 3082.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act, referred to in par. (5), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§ 1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

AMENDMENTS

1978—Par. (5). Pub. L. 95-609, § 7(f)(1), added provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Par. (6). Pub. L. 95-609, § 7(f)(2), closed the parenthesis after "to this subchapter".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6923. Standards applicable to transporters of hazardous waste

(a) Standards

Not later than eighteen months after October 21, 1976, and after opportunity for public hearings, the Administrator, after consultation with the Secretary of Transportation and the States, shall promulgate regulations establishing such standards, applicable to transporters of hazardous waste identified or listed under this subchapter, as may be necessary to protect human health and the environment. Such standards shall include but need not be limited to requirements respecting—

[*See main edition for text of* (*1*) *to* (*3*)]

(4) transportation of all such hazardous waste only to the hazardous waste treatment, storage, or disposal facilities which the shipper designates on the manifest form to be a facility holding a permit issued under this subchapter, or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.].

(b) Coordination with regulations of Secretary of Transportation

In case of any hazardous waste identified or listed under this subchapter which is subject to the Hazardous Materials Transportation Act (88 Stat. 2156; 49 U.S.C. 1801 and following), the regulations promulgated by the Administrator under this section shall be consistent with the requirements of such Act and the regulations thereunder. The Administrator is authorized to make recommendations to the Secretary of Transportation respecting the regulations of such hazardous waste under the Hazardous Materials Transportation Act and for addition of materials to be covered by such Act.

(As amended Pub. L. 95-609, § 7(g), Nov. 8, 1978, 92 Stat. 3082.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (a)(4), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§ 1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

AMENDMENTS

1978—Subsec. (a)(4). Pub. L. 95-609, § 7(g)(1), added provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Subsec. (b). Pub. L. 95-609, § 7(g)(2), substituted "Administrator under this section" for "Administrator under this subchapter".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6924. Standards applicable to transporters of hazardous waste

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6925. Permits for treatment, storage, or disposal of hazardous waste

(a) Permit requirements

Not later than eighteen months after October 21, 1976, the Administrator shall promulgate regulations requiring each person owning or operating a facility for the treatment, storage, or disposal of hazardous waste identified or listed under this subchapter to have a permit issued pursuant to this section. Such regulations shall take effect on the date provided in section 6930 of this title and upon and after such date the treatment, storage, or disposal of any such hazardous waste is prohibited except in accordance with such a permit.

[*See main edition for text of* (*b*) *to* (*e*)]

(As amended Pub. L. 95-609, § 7(h), Nov. 8, 1978, 92 Stat. 3082.)

AMENDMENTS

1978—Subsec (a). Pub. L. 95-609 inserted "treatment, storage, or" after "and after such date the"

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6926. Authorized State hazardous waste programs

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Interim authorization

Any State which has in existence a hazardous waste program pursuant to State law before the date ninety days after the date of promulgation of regulations under sections 6922, 6923, 6924, and 6925 of this title, may submit to the Administrator evidence of such existing program and may request a temporary authorization to carry out such program under this subchapter. The Administrator shall, if the evidence submitted shows the existing State program to be substantially equivalent to the Federal program under this subchapter, grant an interim authorization to the State to carry out such program in lieu of the Federal program pursuant to this subchapter for a twenty-four month period beginning on the date six months after the date of promulgation of regulations under sections 6922 through 6925 of this title.

[*See main edition for text of* (*d*) *and* (*e*)]

(As amended Pub. L. 95-609, § 7(i), Nov. 8, 1978, 92 Stat. 3082.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-609 substituted "of" for "required for" wherever appearing and "may submit" for "submit".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6927. Inspections

(a) Access entry

For purposes of developing or assisting in the development of any regulation or enforcing the provisions of this subchapter, any person who generates, stores, treats, transports, disposes of, or otherwise handles hazardous wastes shall, upon request of any officer or employee of the Environmental Protection Agency, duly designated by the Administrator, or upon request of any duly designated officer[1] employee of a State having an authorized hazardous waste program, furnish or permit such person at all reasonable times to have access to, and to copy all records relating to such wastes. For the purposes of developing or assisting in the development of any regulation or enforcing the provisions of this chapter, such officers or employees are authorized—

(1) to enter at reasonable times any establishment or other place maintained by any person where hazardous wastes are generated, stored, treated, disposed of, or transported from;

[*See main edition for text of* (*2*) *and concluding par.;* (*b*)]

(As amended Pub. L. 95-609, § 7(j), Nov. 8, 1978, 92 Stat. 3082.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-609 substituted "disposed of, or transported from" for "or disposed of".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6928. Federal enforcement

[*See main edition for text of* (*a*) *to* (*c*)]

(d) Criminal penalty

Any person who knowingly—

(1) transports any hazardous waste identified or listed under this subchapter to a facility which does not have a permit under section 6925 (or 6926 in the case of a State program), or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.],

(2) treats, stores, or disposes of any hazardous waste identified or listed under this subchapter without having obtained a permit under section 6925 (or 6926 in the case of a State program) or pursuant to title I of the Marine Protection, Research, and Sanctuaries Act (86 Stat. 1052) [33 U.S.C. 1411 et seq.],

(3) makes any false statement or representation in any application, label, manifest, record, report, permit or other document filed, maintained, or used for purposes of compliance with this subchapter,

shall, upon conviction, be subject to a fine of not more than $25,000 for each day of violation, or to imprisonment not to exceed one year, or both. If the conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(As amended Pub. L. 95-609, § 7(k), Nov. 8, 1978, 92 Stat. 3082.)

REFERENCES IN TEXT

The Marine Protection, Research, and Sanctuaries Act, referred to in subsec. (d)(1), (2), probably means the Marine Protection, Research, and Sanctuaries Act of 1972, Pub. L. 92-532, Oct. 23, 1972, 86 Stat. 1052, as amended. Title I of the Marine Protection, Research, and Sanctuaries Act of 1972 is classified generally to subchapter I (§ 1411 et seq.) of chapter 27 of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1401 of Title 33 and Tables.

AMENDMENTS

1978—Subsec. (d)(1). Pub. L. 95-609, § 7(k)(1), added provision relating to title I of the Marine Protection, Research, and Sanctuaries Act.

Subsec. (d)(2). Pub. L. 95-609, § 7(k)(2), added provisions relating to treatment or storage of hazardous wastes and relating to title I of the Marine Protection, Research, and Sanctuaries Act.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§§ 6930, 6931

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

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[1] So in original. Probably should be "officer or."

SUBCHAPTER IV—STATE OR REGIONAL SOLID WASTE PLANS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6903, 6907, 6986 of this title.

§ 6942. Federal guidelines for plans

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§§ 6944 to 6946

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6947. Approval of State plan; Federal assistance

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Existing activities

Nothing in this subchapter shall be construed to prevent or affect any activities respecting solid waste planning or management which are carried out by State, regional, or local authorities unless such activities are inconsistent with a State plan approved by the Administrator under this subchapter.

(As amended Pub. L. 95-609, § 7(*l*), Nov. 8, 1978, 92 Stat. 3082.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-609 substituted "(c)" for "(C)" in subsection designation requiring no change in text in view of editorial use of lower case "(c)" in original codification of section.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6948. Federal assistance

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6949. Rural communities assistance

(a) In general

The Administrator shall make grants to States to provide assistance to municipalities with a population of five thousand or less, or counties with a population of ten thousand or less or less than twenty persons per square mile and not within a metropolitan area, for solid waste management facilities (including equipment) necessary to meet the requirements of section 6945 of this title or restrictions on open burning or other requirements arising under the Clean Air Act [42 U.S.C. 7401 et seq.] or the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.]. Such assistance shall only be available—

[*See main edition for text of* (*1*) *to* (*3*); (*b*) *to* (*d*); *credits*]

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

CODIFICATION

Subsec. (a) is set out in part in this supplement to reflect the current citation for the Clean Air Act, which was reclassified to chapter 85 (§ 7401 et seq.) of this title, on enactment of Pub. L. 95-95.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

SUBCHAPTER VI—FEDERAL RESPONSIBILITIES

§ 6961. Application of Federal, State, and local law to Federal facilities

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any solid waste management facility or disposal site, or (2) engaged in any activity resulting, or which may result, in the disposal or management of solid waste or hazardous waste shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural (including any requirement for permits or reporting or any provisions for injunctive relief and such sanctions as may be imposed by a court to enforce such relief), respecting control and abatement of solid waste or hazardous waste disposal in the same manner, and to the same extent, as any person is subject to such requirements, including the payment of reasonable service charges. Neither the United States, nor any agent, employee, or officer thereof, shall be immune or exempt from any process or sanction of any State or Federal Court with respect to the enforcement of any such injunctive relief. The President may exempt any solid waste management facility of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be granted for periods not to exceed one year upon the President's making a new determination. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(As amended Pub. L. 95-609, § 7(m), Nov. 8, 1978, 92 Stat. 3082.)

AMENDMENTS

1978—Pub. L. 95-609 inserted "or management" following "disposal" in cl. (2).

§ 6962. Federal procurement

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Requirements

(1) After two years after October 21, 1976, each procuring agency shall procure items composed of the highest percentage of recovered materials practicable consistent with maintaining a satisfactory level of competition. The decision not to procure such items shall be based on a determination that such procurement items—

(A) are not reasonably available within a reasonable period of time;

(B) fail to meet the performance standards set forth in the applicable specifications or fail to meet the reasonable performance standards of the procuring agencies; or

(C) are only available at an unreasonable price. Any determination under clause (B) shall be made on the basis of the guidelines of the Bureau of Standards in any case in which such material is covered by such guidelines.

(2) Agencies that generate heat, mechanical, or electrical energy from fossil fuel in systems that have the technical capability of using recovered material and recovered-material-derived fuel as a primary or supplementary fuel shall use such capability to the maximum extent practicable.

(3) After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section, contracting officers shall require that vendors certify the percentage of the total material utilized for the performance of the contract which is recovered materials.

[*See main edition for text of* (*d*)]

(e) Guidelines

The Administrator, after consultation with the Administrator of General Services, the Secretary of Commerce (acting through the Bureau of Standards), and the Public Printer, shall prepare, and from time to time revise, guidelines for the use of procuring agencies in complying with the requirements of this section. Such guidelines shall set forth recommended practices with respect to the procurement of recovered materials and items containing such materials and with respect to certification by vendors of the percentage of recovered materials used, and shall provide information as to the availability, sources of supply, and potential uses of such materials and items.

[*See main edition for text of* (*f*) *and* (*g*)]

(As amended Pub. L. 95-609, § 7(n), Nov. 8, 1978, 92 Stat. 3082.)

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-609, § 7(n)(1), (2), redesignated former subpar. (1)(A) as par. (1), former subpars. (1)(B) and (C) as pars. (2) and (3), respectively, and former cls. (i) to (iii) of former subpar. (1)(A) as subpars. (A) to (C), respectively, of par. (1), and in par. (3), as so redesignated, inserted "After the date specified in any applicable guidelines prepared pursuant to subsection (e) of this section," preceding "contracting".

Subsec. (e). Pub. L. 95-609, § 7(n)(3) added provision dealing with certification by vendors of the materials used.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6963. Cooperation with Environmental Protection Agency

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6964. Applicability of solid waste disposal guidelines to Executive agencies

(a) Compliance

(1) If—

(A) an Executive agency (as defined in section 105 of title 5) has jurisdiction over any real property or facility the operation or administration of which involves such agency in solid waste management activities, or

(B) such an agency enters into a contract with any person for the operation by such person of any Federal property or facility, and the performance of such contract involves such person in solid waste management activities,

then such agency shall insure compliance with the guidelines recommended under section 6907 of this title and the purposes of this chapter in the operation or administration of such property or facility, or the performance of such contract, as the case may be.

[*See main edition for text of* (*2*) *to* (*4*)]

(b) Licenses and permits

Each Executive agency which issues any license or permit for disposal of solid waste shall, prior to the issuance of such license or permit, consult with the Administrator to insure compliance with guidelines recommended under section 6907 of this title and the purposes of this chapter.

(As amended Pub. L. 95-609, § 7(*o*), Nov. 8, 1978, 92 Stat. 3083.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-609, § 7(*o*)(1), (2), substituted the term "management" for "disposal" in two places.

Subsec. (b). Pub. L. 95-609, § 7(*o*)(3), substituted the term "Administrator" for "Secretary".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

SUBCHAPTER VII—MISCELLANEOUS PROVISIONS

§ 6971. Employee protection

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6972. Citizen suits

[*See main edition for text of* (*a*) *and* (*b*)]

(c) Notice

No action may be commenced under paragraph (a)(2) of this section prior to sixty days after the plaintiff has given notice to the Administrator that he will commence such action, except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of subchapter III of this chapter. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation. Any action respecting a violation under this chapter may be brought under this section only in the judicial district in which such alleged violation occurs.

[*See main edition for text of* (*d*)]

(e) Costs

The court, in issuing any final order in any action brought pursuant to this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such an award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

[*See main edition for text of* (*f*)]

(As amended Pub. L. 95-609, § 7(p), Nov. 8, 1978, 92 Stat. 3083.)

CODIFICATION

Subchapter III of this chapter, referred to in subsec. (c), was in the original "subtitle C of this Act". Reference to subtitle C of this Act probably means subtitle C of title II of this Act (Pub. L. 89-272), as added by Pub. L. 94-580, which is known as the Solid Waste Disposal Act and which is classified generally to subchapter III (§ 6921 et seq.) of this chapter.

AMENDMENTS

1978—Subsec. (c). Pub. L. 95-609, § 7(p)(1), substituted "subchapter III of this chapter" for "section 212 of this Act." See Codification note above.

Subsec. (e). Pub. L. 95-609, § 7(p)(2), substituted "require" for "requiring".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6973. Imminent hazard

Notwithstanding any other provision of this chapter, upon receipt of evidence that the handling, storage, treatment, transportation or disposal of any solid waste or hazardous waste is presenting an imminent and substantial endangerment to health or the environment, the Administrator may bring suit on behalf of the United States in the appropriate district court to immediately restrain any person contributing to the alleged disposal to stop such handling, storage, treatment, transportation, or disposal or to take such other action as may be necessary. The Administrator shall provide notice to the affected State of any such suit.

(As amended Pub. L. 95-609, § 7(q), Nov. 8, 1978, 92 Stat. 3083.)

AMENDMENTS

1978—Pub. L. 95-609 struck out the word "for" following "restrain any person".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6974. Petition for regulations; Public participation

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6976. Judicial review

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6977. Grants or contracts for training projects

[See main edition for text of (a)]

(b) Purposes

(1) Subject to the provisions of paragraph (2), grants or contracts may be made to pay all or a part of the costs, as may be determined by the Administrator, of any project operated or to be operated by an eligible organization, which is designed—

(A) to develop, expand, or carry out a program (which may combine training, education, and employment) for training persons for occupations involving the management, supervision, design, operation, or maintenance of solid waste management and resource recovery equipment and facilities; or

(B) to train instructors and supervisory personnel to train or supervise persons in occupations involving the design, operation, and maintenance of solid waste management and resource recovery equipment and facilities.

[See main edition for text of (2)]

(c) Study

The Administrator shall make a complete investigation and study to determine—

[See main edition for text of (1) and (2)]

(3) the extent and nature of obstacles to employment and occupational advancement in the solid waste management and resource recovery field which may limit either available manpower or the advancement of personnel in such field.

He shall report the results of such investigation and study, including his recommendations to the President and the Congress.

(As amended Pub. L. 95-609, § 7(r), Nov. 8, 1978, 92 Stat. 3083.)

AMENDMENTS

1978—Subsec. (b)(1). Pub. L. 95-609, § 7(r)(1), (2), substituted "management" for "disposal" in two places, and "resource" for "resources".

Subsec. (c)(3). Pub. L. 95-609, § 7(r)(3), substituted "management" for "disposal".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6978. Payments

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

SUBCHAPTER VIII—RESEARCH, DEVELOPMENT, DEMONSTRATION, AND INFORMATION

§ 6981. Research, demonstration, training, and other activities

(a) General authority

The Administrator, alone or after consultation with the Administrator of the Federal Energy Administration, the Administrator of the Energy Research and Development Administration, or the Chairman of the Federal Power Commission, shall conduct, and encourage, cooperate with, and render financial and other assistance to appropriate public (whether Federal, State, interstate, or local) authorities, agencies, and institutions, private agencies and institutions, and individuals in the conduct of, and promote the coordination of, research, investigations, experiments, training, demonstrations, surveys, public education programs, and studies relating to—

(1) any adverse health and welfare effects of the release into the environment of material present in solid waste, and methods to eliminate such effects;

(2) the operation and financing of solid waste management programs;

[See main edition for text of (3) to (12)]

(13) any adverse effects on air quality (particularly with regard to the emission of heavy metals) which result from solid waste which is burned (either alone or in conjunction with other substances) for purposes of treatment, disposal or energy recovery.

[See main edition for text of (b) and (c)]

(As amended Pub. L. 95-609, § 7(s), Nov. 8, 1978, 92 Stat. 3083.)

AMENDMENTS

1978—Subsec. (a)(2). Pub. L. 95-609, § 7(s)(1), substituted "management" for "disposal".

Subsec. (a)(13). Pub. L. 95-609, § 7(s)(2), inserted the word "treatment" following "for purpose of".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

The Energy Research and Development Administration and the Federal Energy Administration were terminated and functions vested by law in their respective Administrators were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

§ 6982. Special studies; plans for research, development, and demonstrations

[See main edition for text of (a) to (f)]

(g) Sludge

The Administrator shall undertake a comprehensive study and publish a report on sludge. Such study shall include an analysis of—

(1) what types of solid waste (including but not limited to sewage and pollution treatment residues and other residues from industrial operations such as extraction of oil from shale, liquefaction and gasification of coal and coal slurry pipeline operations) shall be classified as sludge;

[*See main edition for text of* (*2*) *to* (*6*); (*h*) *and* (*i*)]

(j) Resource Conservation Committee

(1) The Administrator shall serve as Chairman of a Committee composed of himself, the Secretary of Commerce, the Secretary of Labor, the Chairman of the Council on Environmental Quality, the Secretary of Treasury, the Secretary of the Interior, the Secretary of Energy, the Chairman of the Council of Economic Advisors, and a representative of the Office of Management and Budget, which shall conduct a full and complete investigation and study of all aspects of the economic, social, and environmental consequences of resource conservation with respect to—

[*See main edition for text of* (*A*) *to* (*E*)]

(2) The study required in paragraph (1)(D) may include pilot scale projects, and shall consider and evaluate alternative strategies with respect to—

[*See main edition for text of* (*A*) *to* (*E*)]

(3) The design for the study required in paragraph (1) of this subsection shall include timetables for the completion of the study. A preliminary report putting forth the study design shall be sent to the President and the Congress within six months following October 21, 1976, and followup reports shall be sent six months thereafter. Each recommendation resulting from the study shall include at least two alternatives to the proposed recommendation.

[*See main edition for text of* (*4*) *and* (*5*); (*k*)]

(*l*) Completion of research and studies

The Administrator shall complete the research and studies, and submit the reports, required under subsections (b), (c), (d), (e), (f), (g), and (k) of this section not later than October 1, 1978. The Administrator shall complete the research and studies, and submit the reports, required under subsections (a), (h), and (i) of this section not later than October 1, 1979. Upon completion, each study specified in subsections (a) through (k) of this section, the Administrator shall prepare a plan for research, development, and demonstration respecting the findings of the study and shall submit any legislative recommendations resulting from such study to appropriate committees of Congress.

[*See main edition for text of* (*m*)]

(As amended Pub. L. 95-609, § 7(t), Nov. 8, 1978, 92 Stat. 3083.)

AMENDMENTS

1978—Subsec. (g)(1). Pub. L. 95-609, § 7(t)(1), substituted "shale, liquefaction" for "shale liquefaction".

Subsec. (j)(1). Pub. L. 95-609, § 7(t)(2), enacted a provision adding the Secretary of Energy and the Chairman of the Council of Economic Advisors to the Committee.

Subsec. (j)(2). Pub. L. 95-609, § 7(t)(3), substituted "paragraph (1)(D)" for "paragraph (2)(D)".

Subsec. (j)(3). Pub. L. 95-609, § 7(t)(4), substituted "paragraph (1)" for "paragraph (2)(D)".

Subsec. (*l*). Pub. L. 95-609, § 7(t)(5), struck out requirement of submission of reports under subsec. (j) of this section.

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6983. Coordination, collection, and dissemination of information

(a) Information

The Administrator shall develop, collect, evaluate, and coordinate information on—

[*See main edition for text of* (*1*) *and* (*2*)]

(3) the amounts and percentages of resources (including energy) that can be recovered from solid waste by use of various solid waste management practices and various technologies;

[*See main edition for text of* (*4*) *to* (*9*); (*b*) *to* (*g*)]

(As amended Pub. L. 95-609, § 7(u), Nov. 8, 1978, 92 Stat. 3083.)

AMENDMENTS

1978—Subsec. (a)(3). Pub. L. 95-609 substituted "solid waste" for "discarded materials".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

§ 6984. Full-scale demonstration facilities

(a) Authority

The Administrator may enter into contracts with public agencies or authorities or private persons for the construction and operation of a full-scale demonstration facility under this chapter, or provide financial assistance in the form of grants to a full-scale demonstration facility under this chapter only if the Administrator finds that—

(1) such facility or proposed facility will demonstrate at full scale a new or significantly improved technology or process, a practical and significant improvement in solid waste management practice, or the technological feasibility and cost effectiveness of an existing, but unproven technology, process, or practice, and will not duplicate any other Federal, State, local, or commercial facility

which has been constructed or with respect to which construction has begun (determined as of the date action is taken by the Administrator under this chapter),

[*See main edition for text of* (2) *to* (5); (*b*) *to* (*d*)]

(As amended Pub. L. 95-609, § 7(v), Nov. 8, 1978, 92 Stat. 3084.)

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-609 substituted "solid waste" for "discarded material".

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5920, 6981 of this title.

§§ 6985, 6986

TRANSFER OF FUNCTIONS

For transfer of certain enforcement functions of Administrator or other official of the Environmental Protection Agency under this chapter to Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, see Transfer of Functions note set out under section 6903 of this title.

CHAPTER 83—ENERGY EXTENSION SERVICE [NEW]

Sec.

7001. Congressional declaration and statement of purposes.
7002. Establishment of Energy Extension Service in Energy Research and Development Administration.
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7003. Development and implementation of comprehensive program.
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7004. Initial implementation; State energy extension service plans.
7005. National implementation; State energy extension service plans.
  (a) Invitation to non-participating States to submit plans.
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  (d) Approval of State plans.
  (e) Revision of submitted plans.
  (f) Development of State plans by Director; use of existing offices, personnel, and delivery mechanisms; revisions; transmittal of Director-developed plans.
  (g) Annual review of plan implementation; remedial action; termination of Federal assistance.
Sec.
  (h) State energy extension service plans to complement or supplement State energy conservation plans submitted under Energy Policy and Conservation Act.
  (i) Financial assistance; information and technical assistance.
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7006. Administration.
  (a) Regulations and directives.
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7007. Energy education, extension, and information.
  (a) Program and plan; consultation; coordination with other activities.
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7008. National Energy Extension Service Advisory Board.
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7009. Records.
7010. Authorization of appropriations.
7011. Definitions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 5813 of this title.

§ 7001. Congressional declaration and statement of purposes

(a) The Congress hereby declares—

(1) that the general welfare and the common defense and security require a greater public knowledge of energy conservation opportunities;

(2) that scientific identification and practical demonstration of specifically designed energy conservation opportunities, the dissemination of information relating thereto, and the prompt delivery and acceptance of specific energy conservation opportunities require a national effort;

(3) that the national effort required to develop, demonstrate, and encourage acceptance and adoption of energy conservation opportunities should be coordinated at the Federal level by the Energy Research and Development Administration;

(4) that a special effort must be made to develop and demonstrate practical alternative energy technologies such as solar heating and cooling;

(5) that successful implementation of energy conservation and new energy technologies will require both public awareness and individual capability to use the conservation opportunities and new technology;

(6) that this required awareness and capability can only be achieved on a national basis by an active outreach effort;

(7) that existing energy outreach programs are underfunded;

(8) that any Federal outreach program should be organized with the States as full

participants, and each State should plan and coordinate the outreach activities within the State, optimizing the use of existing outreach capabilities;

(9) that Federal assistance should be provided for energy outreach activity, including coordinated energy outreach activities and technical support in each State for such efforts;

(10) that the Energy Research and Development Administration should provide overall national direction and review of federally assisted State energy outreach programs.

(b) The Congress declares that the purposes of this chapter are—

(1) to establish a positive energy outreach program directed toward small business and individual energy consumers and the organizations that influence energy consumption;

(2) to stimulate, provide for and supplement programs for the conduct of evaluation, planning and other technical support of energy conservation efforts, including energy outreach activities of States.

(Pub. L. 95-39, title V, § 502, June 3, 1977, 91 Stat. 191.)

SHORT TITLE

Section 501 of Pub. L. 95-39, title V, provided that: "This title [enacting this chapter and amending sections 5813 and 5818 of this title] may be cited as the 'National Energy Extension Service Act'."

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 7002. Establishment of Energy Extension Service in Energy Research and Development Administration

(a) Director; Deputy Director

There is established in the Energy Research and Development Administration an office to be designated as the Energy Extension Service (hereinafter in this chapter referred to as the "Service"). The Service shall be headed by a Director who shall be appointed by and directly responsible to the Administrator of the Energy Research and Development Administration (hereinafter referred to as the "Administrator"). The Director shall be a person who by reason of training, experience, and attainments is exceptionally qualified to implement the programs of the Service. There shall be in the Service a Deputy Director who shall be appointed by the Administrator, who shall have such functions, powers, and duties as may be prescribed from time to time by the Director, and who shall act for, and exercise the powers of, the Director during the absence or disability of, or in the event of a vacancy in the office of, the Director.

(b) Compensation of Director

The Director shall receive basic pay at the rate provided for level IV of the Executive Schedule in section 5315 of title 5.

(c) Duties of Director

The Director shall have overall responsibility for the national direction of the comprehensive program developed under section 7003 of this title and of all other activities conducted under this chapter and shall annually review the programs of the various States under sections 7004 and 7005 of this title to insure that they are effectively promoting the realization of the objectives of this chapter.

(Pub. L. 95-39, title V, § 503, June 3, 1977, 91 Stat. 192.)

CODIFICATION

This chapter, referred to in subsec. (a), in the original read "this Act", probably meaning the National Energy Extension Service Act, which is title V of Pub. L. 95-39 which is classified principally to this chapter.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 7003. Development and implementation of comprehensive program

(a) Energy conserving opportunities, techniques, materials, and equipment

The Service shall develop and implement a comprehensive program for the identification, development, and practical demonstration of energy conserving opportunities, techniques, materials, and equipment, including opportunities, techniques, or methods responsive to local needs or resources, and alternative energy technologies such as solar heating and cooling, for—

(1) agricultural, commercial, and small business operations, and

(2) new and existing residential, commercial, and agricultural buildings or structures.

Such program shall provide for technical assistance, instruction, information, dissemination, and practical demonstrations in energy conservation opportunities, and shall provide an active interface with end use energy consumers at the local level for the purpose of offering active outreach assistance and affording a communication channel for end user technology requirements. Such outreach assistance shall be provided by means of such appropriate local offices, including metropolitan city offices, county agents, and technical staff assistants, and may be required to provide energy extension services.

(b) Technical support institutes in each State

The program authorized under subsection (a) of this section shall permit each State to establish a technical support institute at one or more colleges or universities designated by the Governor of that State. Each such institute shall—

(1) have as its purpose to assist in implementation of the State energy extension service; and

(2) provide such analyses and technical support as is necessary for effective State energy extension service activities.

(c) Implementation

The comprehensive program developed under subsection (a) of this section shall be implemented and carried out within each State pursuant to sections 7004 and 7005 of this title.

(d) Minimum conflict with existing services in private sector

The Director shall take such steps as may be necessary to insure that the comprehensive program is implemented in a manner which minimizes conflict with existing services in the private sector of the economy that are similar to those provided under such program.

(Pub. L. 95-39, title V, § 504, June 3, 1977, 91 Stat. 192.)

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7002, 7004, 7005, 7007, 7008 of this title.

§ 7004. Initial implementation; State energy extension service plans

(a) The Director shall within forty-five days after June 3, 1977, invite the Governor of each State through competitive procurement to submit a plan for the conduct of energy extension service activities as described in section 7003 of this title throughout such State including provisions for appropriate technical support within such State of such activities, to disseminate information and provide advice and assistance to individuals, groups, and units of State and local government by means of—

(1) specific studies and recommendations applicable to individual residences, businesses, and agricultural or commercial establishments;

(2) demonstration projects;

(3) distribution of studies and instructional materials;

(4) seminars and other training sessions for State and local government officials and the public; and

(5) other public outreach programs.

(b) Each State shall be accorded not more than ninety days to submit a plan to the Director under subsection (a) of this section. The Director shall promptly review such proposals and shall, with the approval of the Administrator, and subject to the limitations of section 7010(c)(1) and (2) of this title, provide funds adequate for the support of the proposed energy outreach plan of a State if the Director finds that, such plan—

(1) meets the objectives of this chapter;

(2) was prepared with opportunity for input from State, county, and local officials, State universities, colleges and community colleges, cooperative extension services, community service action agencies, and other public or private organizations involved in active energy outreach programs;

(3) consistent with the objectives and requirements of this chapter, makes optimum use of existing outreach or delivery mechanisms or programs, and includes to the optimum extent any existing State, local, university, college, or other organizations' programs for energy information, education, or technology transfer which have objectives similar to those of this chapter and activities similar or related to those specified in section 7003 of this title and subsection (a) of this section;

(4) provides that the State will maintain, or require other participating entities within the State to maintain, and make available upon request to the Director, such records with respect to the use and expenditure of any Federal funds paid to the State, or to entities within the State, under this chapter as the Director may require;

(5) provides for the establishment of effective procedures for responding to external inputs and inquiries;

(6) requires that, to the extent possible, within personnel and funding limitations, onsite energy evaluations will be made available to all consumers and small business concerns, and to other business concerns within such limitations (as to size or otherwise) as the Director may specify;

(7) provides that the State will furnish and widely disseminate information on the types of assistance available under this chapter, and under other Federal and State laws, with respect to the planning, financing, installation, and effective monitoring of energy-related facilities and activities;

(8) provides that the allocation within the State of the funds made available to it under this chapter will be based on, or give due consideration to, such factors (specifically including potential energy savings and number of persons affected) as the Director determines will best carry out the purpose of this chapter;

(9) requires the establishment and implementation of policies and procedures designed to assure that assistance provided under this chapter does not replace or supplant the expenditure of other Federal or State or local funds for the same purposes, but rather supplements such funds and increases the expenditure of such State or local funds to the maximum extent possible: *Provided*, That there shall be no requirement for matching State or local funds in the guidelines, unless such requirement is included in an annual authorization;

(10) requires effective coordination of the programs under such State plans with other Federal programs which provide funds for university extension programs, in order to avoid duplication;

(11) requires the establishment and implementation of effective procedures specifically designed for the dissemination of information to small business concerns;

(12) limits to a maximum of 20 per centum the portion of the funds made available under this chapter which may be used for the purchase of equipment, facilities, and library and related materials;

(13) prohibits the use of any such funds for the purchase of land or interests therein or the repair of buildings or structures; and

(14) satisfies such other criteria as the Director may establish to carry out the purpose of this chapter.

(Pub. L. 95-39, title V, § 505, June 3, 1977, 91 Stat. 193.)

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7002, 7003, 7005, 7007, 7008, 7010 of this title.

§ 7005. National implementation; State energy extension service plans

(a) Invitation to non-participating States to submit plans

Notwithstanding the provisions of section 7004 of this title, the Director, on behalf of the Administrator, is authorized and directed to invite in each State of the United States not then participating in the program at the earliest practicable date, but no later than October 1, 1978, to submit a plan for the conduct of energy extension service activities, including provisions for appropriate technical support in such State, to disseminate information and provide advice and assistance to individuals, groups, and units of State and local government by means of—

(1) specific studies and recommendations applicable to individual residences, businesses, and agricultural or commercial establishments;

(2) demonstration projects;

(3) distribution of studies and instructional materials;

(4) seminars and other training sessions for State and local government officials and the public; and

(5) other public outreach programs.

(b) Guidelines for preparation and submission of State plans

Pursuant to authority described in subsection (a) of this section, the Director, with the approval of the Administrator, shall issue guidelines for the preparation and submission of State plans under subsection (c) of this section. Such guidelines shall be designated to assure that the plans so submitted will be consistent with this chapter and will effectively contribute to the achievement of its objectives, and shall allow maximum flexibility and the exercise of maximum discretion by the States. In the preparation of such guidelines, the Administrator shall provide a reasonable opportunity for inputs by representatives of the several States and for a reasonable period for public review and comment. In any event, such guidelines—

(1) shall require the establishment and implementation of policies and procedures designed to assure that assistance provided under this chapter does not replace or supplant the expenditure of other Federal or State or local funds for the same purposes, but rather supplements such funds and increases the expenditure of such State or local funds to the maximum extent possible;

(2) shall require effective coordination of the programs under such State plans with other Federal programs which provide funds for university extension programs, in order to avoid duplication;

(3) shall require the establishment and implementation of effective procedures specifically designed for the dissemination of information to small business concerns;

(4) shall limit to a maximum of 20 per centum the portion of the funds made available under this chapter which may be used for the purchase of equipment, facilities, and library and related materials; and

(5) shall prohibit the use of any such funds for the purchase of land or interests therein or the repair of buildings or structures.

(c) Invitation to Governors of non-participating States to submit plans after effective date of guidelines

On the effective date of the guidelines described in subsection (b) of this section, the Director shall invite the Governor of each State not then participating in the program to submit a plan for the conduct of energy extension service activities throughout such State.

(d) Approval of State plans

Each State plan submitted under subsection (c) of this section shall be approved by the Director if the Director finds that such plan—

(1) meets the objectives of this chapter;

(2) was prepared with opportunity for input from State, county, and local officials, State universities and community colleges, cooperative extension services, community service action agencies, and other public or private organizations involved in active energy outreach programs;

(3) consistent with the objectives and requirements of this chapter, makes optimum use of existing active outreach or delivery mechanisms or programs, and includes to the optimum extent any existing State, local, university, or other organizations' programs for energy information, education, or technology transfer which have objectives similar to those of this chapter and activities similar or related to those specified in section 7003 of this title and subsection (a) of this section;

(4) provides that the State will maintain, or require other participating entities within the State to maintain, and make available upon request to the Director, such records with respect to the use and expenditure of any Federal funds paid to the State, or to entities within the State, under this chapter as the Director may require;

(5) provides for the establishment of effective procedures for responding to external inputs and inquiries;

(6) requires that, to the extent possible, within personnel and funding limitations, onsite energy evaluations will be made available to all consumers and small business concerns, and to other business concerns within such limitations (as to size or otherwise) as the Director may specify;

(7) provides that the State will furnish and widely disseminate information on the types

of assistance available under this chapter, and under other Federal and State laws, with respect to the planning, financing, installation, and effective monitoring of energy-related facilities and activities;

(8) provides that the allocation within the State of the funds made available to it under this chapter will be based on, or give due consideration to, such factors (specifically including potential energy savings and number of persons affected) as the Director determines will best carry out the purpose of this chapter; and

(9) satisfies such other criteria as the Director may establish to carry out the purpose of this chapter.

(e) Revision of submitted plans

If the Director finds that a State plan submitted under subsection (c) of this section does not satisfy the requirements of subsection (d) of this section, he shall provide a reasonable opportunity for the State to present arguments in support of such plan and to revise the plan within a reasonable period of time to satisfy such requirements.

(f) Development of State plans by Director; use of existing offices, personnel, and delivery mechanisms; revisions; transmittal of Director-developed plans

(1) If a State does not submit a plan under subsection (a) of this section or its plan as so submitted (with any revisions made under subsection (e) of this section) is not acceptable, the Director (after giving notice and an opportunity for comment to the Governor of such State) shall develop consistent with other subsections of this section an energy extension service plan for the State involved, which conforms to the requirements of subsection (d) of this section. In conducting energy extension service activities under any plan developed under this subsection, the Director is authorized to enter into agreements for the utilization of existing Agriculture Extension Service offices and personnel, or such other offices and personnel as may be appropriate, and to provide funds for such operations; and in carrying out the functions of such offices the Director shall make maximum use of any existing delivery mechanisms for the State or local region concerned which are appropriate for purposes of this section, while coordinating his activities in connection with the performance of such functions with all such mechanisms in the State or region which are related to, but not directly involved, in the program under this chapter.

(2) Each State shall have a period of one hundred and eighty days after the issuance of the indication referred to in subsection (b) of this section (or a longer period if the Director finds, at the request of the Governor of such State, that an extension is justified) within which to submit its plan under subsection (c) of this section and if necessary to revise such plan under subsection (e) of this section before the Director may undertake the development of a plan for such State under paragraph (1) of this subsection.

(3) Any such plan developed by the Director shall be transmitted to the Governor of such State and shall not be implemented for ninety days after the date of transmittal: *Provided*, That notwithstanding the provisions of paragraphs (1) and (2) of this subsection, no such plan shall be implemented if the Governor within the ninety-day period notifies the Administration in writing of his objection to the implementation of said plan.

(g) Annual review of plan implementation; remedial action; termination of Federal assistance

The Director shall annually review the implementation of State plans approved under subsection (d) of this section to insure continued conformance with the requirements of this chapter. If the Director determines that the implementation of any approved State plan does not satisfy any of such requirements, he shall notify the Governor of the State and any other designated officials of the deficiency, with specific details, and shall provide a reasonable time and opportunity for remedial action. If, after such reasonable time and opportunity, satisfying remedial action has not been taken to place the implementation in conformance with such requirements, the Director shall so inform the Administrator, who shall give the Governor notice of intention to terminate Federal assistance, after the opportunity for the Governor's comment, if the implementation continues to not satisfy all such requirements. Federal assistance shall be terminated thereafter if satisfactory action is not taken. In the event Federal assistance is terminated under this subsection, the Director shall proceed in accordance with the procedures in subsection (f) of this section to develop an energy extension service for the State. In so doing, the Director shall provide for continuation of all activities under the State plan which were in conformance with the requirements of this chapter and shall effect only such changes in the activities under such plan as are necessary to satisfy such requirements. The Director shall give the Governor notice of any such changes and shall provide a reasonable opportunity for the Governor to comment prior to proceeding with the changes.

(h) State energy extension service plans to complement or supplement State energy conservation plans submitted under Energy Policy and Conservation Act

In any case where a State has submitted a State energy conservation plan under part C of title III of the Energy Policy and Conservation Act, as amended [42 U.S.C. 6321 et seq.], the State's plan submitted under subsection (c) of this section shall specifically indicate how its proposed extension service program will complement or supplement any programs of public education under section 362(d)(4) of such Act [42 U.S.C. 6322(d)(4)] which are included under such energy conservation plan. In any event, each State plan submitted under subsection (c) of this section shall indicate how its proposed extension service program will complement or supplement any other energy conservation programs being carried out within the State with assistance from Federal funds or under other Federal laws.

(i) Financial assistance; information and technical assistance

The Director shall provide financial assistance to each State having a plan approved under subsection (d) of this section, from funds allocated to such State under section 7010(c) of this title, and shall provide information and technical assistance to such State, for the development, implementation, or modification of the State's plan submitted under subsection (c) of this section.

(j) Relationships between States and educational institutions not to be modified or altered

Nothing in this chapter, or in the comprehensive program developed under section 7003 of this title or any State plan approved under this section, shall have the effect of modifying or altering the relationships existing between educational institutions and the States in which they are located in connection with activities provided for under this chapter.

(Pub. L. 95-39, title V, § 506, June 3, 1977, 91 Stat. 195.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in subsec. (h), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended. Part C of title III of the Energy Policy and Conservation Act, as amended, is classified generally to part B (§ 6321 et seq.) of subchapter III of chapter 77 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7002, 7003, 7007, 7008, 7010 of this title.

§ 7006. Administration

(a) Regulations and directives

The Director shall promulgate such regulations and directives as may be necessary to carry out the functions and projects of the Service.

(b) Consultation and cooperation

The Director shall consult and cooperate with the Secretary of Housing and Urban Development, the Administrator of the Federal Energy Administration, the Secretary of Agriculture, the Administrator of the Environmental Protection Agency, the Secretary of Health, Education, and Welfare, the Community Services Administration (and its Institute for Appropriate Technology), the Secretary of Commerce (and the Regional Centers of the Economic Development Administration in the Department of Commerce), the Administrator of the Small Business Administration, and the heads of other Federal agencies administering energy-related programs, with a view toward achieving maximum coordination with such other programs, and for the purpose of insuring to the maximum extent possible that all energy conservation and new energy technology information disseminated by or through Federal programs in a given area are consistent and are fully coordinated in order to minimize duplication of effort and to maximize public confidence in the credibility of Federal or federally assisted programs. It shall be the responsibility of the Director to promote the coordination of programs under this chapter with other public or private programs or projects of a similar nature.

(c) Dissemination of information

Federal agencies described in subsection (b) of this section shall cooperate with the Director in disseminating information with respect to the availability of assistance under this chapter, and in promoting the identification and interests of individuals, groups, or business and commercial establishments eligible for assistance through programs funded under this chapter.

(d) Interagency Advisory Group

At such time as the Energy Resources Council is terminated, pursuant to section 5818 of this title, there shall be established an Interagency Advisory Group, consisting of the Director (as Chairman) and the heads of the Federal agencies described in subsection (b) of this section or their delegates, to assist the Director in carrying out his responsibilities under this section and to provide a mechanism for use by the Director and the heads of such agencies in the performance of their functions under subsections (b) and (c) of this section.

(Pub. L. 95-39, title V, § 507, June 3, 1977, 91 Stat. 198.)

REFERENCES IN TEXT

Section 5818 of this title, referred to in subsec. (d), was repealed by Pub. L. 95-91, title VII, § 709(b), Aug. 4, 1977, 91 Stat. 608, and the Energy Resources Council terminated.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration and the Federal Energy Administration were terminated and functions vested by law in their respective Administrators were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7007 of this title.

§ 7007. Energy education, extension, and information

(a) Program and plan; consultation; coordination with other activities

The Administrator is authorized and directed to prepare a comprehensive program and plan for Federal energy education, extension, and information activities authorized by this chapter and any other law. In the preparation of the program and plan, the Administrator shall utilize and consult with the head of each agency referred to in this chapter and any other Federal agency with an energy education, extension, or information program. Preparation of such program and plan shall not delay in any way the procedures specified in sections 7004 and 7005 of this title or the implementation otherwise of this chapter. Rather, the program and plan should reflect the activities mandated by this chapter and serve as a mechanism for Federal Government-wide coordination and management of those activities with the activities of other Federal agencies under other law.

(b) Elements of program and plan

The comprehensive program and plan shall include, but not be limited to, the following elements:

(1) specific delineation of responsibility of each participating Federal agency in the conduct of this chapter;

(2) mechanisms established to coordinate the activities under this chapter, pursuant to section 7006(b), (c), and (d) of this title;

(3) a detailed summary of all related Federal programs under other law, including program descriptions, types of delivery mechanisms, budget, and objectives;

(4) procedures for defining and measuring the effectiveness, in terms of increased energy efficiency, fuel savings, adoption of new energy technologies, and other appropriate criteria, of the activities under this chapter and related activities under other law;

(5) an assessment of other existing Federal assistance and incentives, other than public education, extension, and outreach programs, and their relation to such programs, in achieving the objectives of this chapter;

(6) procedures pursuant to section 7003(d) of this title to minimize conflict with existing services in the private sector of the economy which are similar to those under this chapter and other law; and

(7) a comprehensive and integrated plan for the resulting Federal program, taking into account paragraphs (1) through (6).

(c) Transmittal of program and plan to President and Congress; annual revision

The Administrator shall transmit the comprehensive program and plan to the President and to each House of Congress within one hundred and eighty days after June 3, 1977. Thereafter, the Administrator shall revise the program and plan on an annual basis and submit the revisions as part of the annual fiscal year budget submission and the report required by section 5914 of this title.

(Pub. L. 95-39, title V, § 508, June 3, 1977, 91 Stat. 199.)

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 7008. National Energy Extension Service Advisory Board

(a) Establishment; membership; chairman; reimbursement for expenses

There is hereby established a National Energy Extension Service Advisory Board (hereinafter in this section referred to as the "Board"), which shall consist of not less than fifteen nor more than twenty members appointed by the Administrator from among persons representative of State, county, and local governments, State universities, community colleges, community service action agencies, consumers, small business, and agriculture. The Administrator shall designate one of the members of the Board to serve as its chairman, and shall provide the Board with such services and facilities as may be necessary for the performance of its functions. The Administrator shall reimburse members of the Board for the full amount of any expenses (including travel expenses) necessarily incurred by them in the performance of their duties as such.

(b) Review and evaluation functions

The Board shall carry on a continuing review of the operation of the comprehensive program developed under section 7003 of this title and the various State plans approved under sections 7004 and 7005 of this title, for the purpose of evaluating their effectiveness in achieving the objectives of this chapter and determining how their operation might be improved in furtherance of such objectives.

(c) Report to Administrator, Director, and Congress

The Board shall report at least annually to the Administrator, the Director, and the Congress on the status of the program under this chapter, including any recommendations it may have for administrative or legislative changes to improve its operation.

(Pub. L. 95-39, title V, § 509, June 3, 1977, 91 Stat. 199.)

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

TERMINATION OF ADVISORY BOARDS

Advisory boards established after Jan. 5, 1973 to terminate not later than the expiration of the two-year period beginning on the date of its establishment unless in the case of a board established by the President or an officer of the federal government, such board is renewed by appropriate action prior to the end of such period, or in the case of a board established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 7009. Records

Each State or other entity within a State receiving Federal funds under this chapter shall make and retain such records as the Administrator shall require, including records which fully disclose the amount and disposition of such funds; the total cost of the facilities and activities for which such funds were given or used; the source and amount of any funds not supplied by the Administrator; and any data and information which the Administrator determines are necessary to protect the interests of the United States and to facilitate an effective financial audit and performance evaluation. Such recordkeeping shall be in accordance with Federal Management Circular 74-7 (34 CFR part 256) and any modification thereto. The Administrator, or any of his duly authorized representatives, shall have access until the expiration of three years after the completion of the facilities or activities involved, to any books, documents, papers, and records or receipts which the Administrator deems to be related or pertinent, directly or indirectly, to any such Federal funds.

(Pub. L. 95-39, title V, § 511, June 3, 1977, 91 Stat. 201.)

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 7010. Authorization of appropriations

(a) There are authorized to be appropriated to the Director to carry out this chapter such sums as may be included in the annual authorization, for the fiscal year 1977 (as provided in section 101(7)(G) of title I of this Act), for the nonnuclear programs of the Energy Research and Development Administration.

(b) To the extent provided in the Act making the appropriation involved, any portion of the amount appropriated pursuant to subsection (a) of this section for any fiscal year may be transferred by the Director, with the approval of the Administrator, to the head of any other Federal agency for payment to or expenditure within one or more States under sections 7004 and 7005 of this title upon a determination by the Director that the existence of regular payment channels or administrative relationships between that agency and the State involved (or entities within such State) makes such transfer and such payment or expenditure administratively more efficient or effective or otherwise promotes the achievement of the objectives of this chapter; but no transfer of funds under this subsection shall result in any loss by the Director of any authority over program direction or control which is vested in him by this chapter.

(c)(1) The total amount appropriated pursuant to subsection (a) of this section for the initial implementation of the energy extension service (other than the portion thereof needed for administrative expenses and special State projects) shall be allocated among the participating States according to the amounts needed to implement their proposed initial programs.

(2) The total amount appropriated pursuant to subsection (a) of this section for any fiscal year (other than the portion thereof needed for administrative expenses and special State projects) shall be allocated among the States in accordance with the following formula:

(i) one-half shall be divided equally among all the States; and

(ii) one-half shall be divided among the States in proportion to their respective populations, with each State being entitled to a sum that bears the same ratio to one-half of such total amount as such State's population (determined on the basis of the most recent decennial census) bears to the total population of all the States (as so determined).

(3) During the fiscal year in which this chapter becomes effective, the Director shall provide funds in accordance with paragraph (1) of this subsection for the implementation of the energy extension service activities in the maximum number of States determined by the Director to be feasible with the total amount appropriated pursuant to subsection (a) of this section: *Provided*, That in no case shall such number be less than ten States.

(Pub. L. 95-39, title V, § 512, June 3, 1977, 91 Stat. 201.)

REFERENCES IN TEXT

Section 101(7)(G) of title I of this Act, referred to in subsec. (a), is section 101(7)(G) of title I of Pub. L. 95-39, June 3, 1977, 91 Stat. 182, which was not classified to the Code.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7004, 7005 of this title.

§ 7011. Definitions

As used in this chapter, the term—

(1) "energy conservation" means energy conservation, efficient energy use and the utilization of renewable energy resources; and

(2) "State" means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, or any territory or possession of the United States.

(Pub. L. 95-39, title V, § 513, June 3, 1977, 91 Stat. 202.)

CHAPTER 84—DEPARTMENT OF ENERGY [NEW]

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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in title 15 sections 3347, 3393; title 16 section 824a-1; title 30 section 1303; title 43 section 1331, 1866.

§ 7101. Definitions

(a) As used in this chapter, unless otherwise provided or indicated by the context, the term the "Department" means the Department of Energy or any component thereof, including the Federal Energy Regulatory Commission.

(b) As used in this chapter (1) reference to "function" includes reference to any duty, obligation, power, authority, responsibility, right, privilege, and activity, or the plural thereof, as the case may be; and (2) reference to "perform", when used in relation to functions, includes the undertaking, fulfillment, or execution of any duty or obligation; and the exercise of power, authority, rights, and privileges.

(c) As used in this chapter, "Federal lease" means an agreement which, for any consideration, including but not limited to, bonuses, rents, or royalties conferred and covenants to be observed, authorizes a person to explore for, or develop, or produce (or to do any or all of these) oil and gas, coal, oil shale, tar sands, and geothermal resources on lands or interests in lands under Federal jurisdiction.

(Pub. L. 95-91, § 2, Aug. 4, 1977, 91 Stat. 567.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b), and (c), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 1 of Pub. L. 95-91 provided: "That this Act [which enacted this chapter and section 916 of Title 7, Agriculture, amended sections 6833 and 6839 of this title, section 19 of Title 3, The President, sections 101, 5108, and 5312 to 5316 of Title 5, Government Organization and Employees, section 1701z-8 of Title 12, Banks and Banking, and sections 766, 790a, 790d, and 2002 of Title 15, Commerce and Trade, repealed sections 2036 and 5818 of this title and sections 763, 768, and 786 of Title 15, enacted provisions set out as a note under section 2201 of this title, and repealed provisions set out as a note under section 761 of Title 15] may be cited as the 'Department of Energy Organization Act'."

EX. ORD. NO. 12083. ENERGY COORDINATING COMMITTEE

Ex. Ord. No. 12083, Sept. 27, 1978, 43 F.R. 44813, as amended by Ex. Ord. No. 12121, Feb. 26, 1979, 44 F.R. 11195; Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, provided:

By the authority vested in me as President by the Constitution of the United States of America, and in order to provide for the coordination of Federal energy policies, it is hereby ordered as follows:

1-1. ESTABLISHMENT OF THE COMMITTEE

1-101. There is established an Energy Coordinating Committee, hereinafter referred to as the Committee.

1-102. The Committee shall be composed of the following, and such other members as the President may, from time to time, designate.

(a) The Secretary of Energy, who shall be the Chairman.

(b) The Secretary of State.

(c) The Secretary of the Treasury

(d) The Secretary of Defense.

(e) The Attorney General.

(f) The Secretary of the Interior.

(g) The Secretary of Agriculture.

(h) The Secretary of Commerce.

(i) The Secretary of Labor.

(j) The Secretary of Health, Education, and Welfare.

(k) The Secretary of Housing and Urban Development.

(l) The Secretary of Transportation.

(m) The Special Representative for Trade Negotiations.

(n) The Director of the Office of Management and Budget.

(o) The Chairman of the Council of Economic Advisers.

(p) The Chairman of the Council on Environmental Quality.

(q) The Administrator of the Environmental Protection Agency.

(r) The Director of the Office of Science and Technology Policy.

(s) The Administrator of General Services.

(t) The Director of the National Science Foundation.

(u) The Assistant to the President for National Security Affairs.

(v) The Assistant to the President for Domestic Affairs and Policy.

(w) The Chairman of the Nuclear Regulatory Commission, who is invited to be a member.

(x) The Director of the Community Services Administration.

(y) The Chairman of the Council on Wage and Price Stability.

(z) The Director of the Federal Emergency Management Agency.

1-2. FUNCTIONS OF THE COMMITTEE

1-201. The Committee shall ensure that there is communication and coordination among Executive agencies concerning energy policy and the management of energy resources.

1-202. The Committee shall, from time to time, develop and consider recommendations for improvements in the implementation of Federal energy policies or the management of energy resources that involve two or more Executive agencies.

1-203. The functions of the Committee shall neither substitute for nor replace Executive Office of the President clearance, review, and decisionmaking procedures. Those procedures shall also be used for submitting to the President any of the conclusions or recommendations developed through the Committee's energy coordinating functions.

1-204. The Committee shall meet at the call of the Chairman.

1-3. EXECUTIVE COUNCIL

1-301. During periods when the Committee is not meeting, the functions of the Committee are delegated to an Executive Council. Meetings may be called by any regular member of the Council.

1-302. The Executive Council shall be composed of the following, and such others as may be appropriate due to the specific matters to be considered.

(a) The Chairman of the Committee, who shall be Chairman of the Executive Council.

(b) The Director of the Office of Management and Budget.

(c) The Chairman of the Council of Economic Advisers.

(d) The Assistant to the President for National Security Affairs.

(e) The Assistant to the President for Domestic Affairs and Policy.

1-4. REVOCATION OF A PRIOR ORDER

Executive Order No. 11814, as amended, [set out as a note under section 5818 of this title in the main edition] which provided for an Energy Resources Council, is revoked.

JIMMY CARTER.

SUBCHAPTER I—DECLARATION OF FINDINGS AND PURPOSES

§ 7111. Congressional findings

The Congress of the United States finds that—

(1) the United States faces an increasing shortage of nonrenewable energy resources;

(2) this energy shortage and our increasing dependence on foreign energy supplies present a serious threat to the national security of the United States and to the health, safety and welfare of its citizens;

(3) a strong national energy program is needed to meet the present and future energy needs of the Nation consistent with overall national economic, environmental and social goals;

(4) responsibility for energy policy, regulation, and research, development and demonstration is fragmented in many departments and agencies and thus does not allow for the comprehensive, centralized focus necessary for effective coordination of energy supply and conservation programs; and

(5) formulation and implementation of a national energy program require the integration of major Federal energy functions into a single department in the executive branch.

(Pub. L. 95-91, title I, § 101, Aug. 4, 1977, 91 Stat. 567.)

§ 7112. Congressional declaration of purpose

The Congress therefore declares that the establishment of a Department of Energy is in the public interest and will promote the general welfare by assuring coordinated and effective administration of Federal energy policy and programs. It is the purpose of this chapter—

(1) to establish a Department of Energy in the executive branch;

(2) to achieve, through the Department, effective management of energy functions of the Federal Government, including consulta-

tion with the heads of other Federal departments and agencies in order to encourage them to establish and observe policies consistent with a coordinated energy policy, and to promote maximum possible energy conservation measures in connection with the activities within their respective jurisdictions;

(3) to provide for a mechanism through which a coordinated national energy policy can be formulated and implemented to deal with the short-, mid- and long-term energy problems of the Nation; and to develop plans and programs for dealing with domestic energy production and import shortages;

(4) to create and implement a comprehensive energy conservation strategy that will receive the highest priority in the national energy program;

(5) to carry out the planning, coordination, support, and management of a balanced and comprehensive energy research and development program, including—

(A) assessing the requirements for energy research and development;

(B) developing priorities necessary to meet those requirements;

(C) undertaking programs for the optimal development of the various forms of energy production and conservation; and

(D) disseminating information resulting from such programs, including disseminating information on the commercial feasibility and use of energy from fossil, nuclear, solar, geothermal, and other energy technologies;

(6) to place major emphasis on the development and commercial use of solar, geothermal, recycling and other technologies utilizing renewable energy resources;

(7) to continue and improve the effectiveness and objectivity of a central energy data collection and analysis program within the Department;

(8) to facilitate establishment of an effective strategy for distributing and allocating fuels in periods of short supply and to provide for the administration of a national energy supply reserve;

(9) to promote the interests of consumers through the provision of an adequate and reliable supply of energy at the lowest reasonable cost;

(10) to establish and implement through the Department, in coordination with the Secretaries of State, Treasury, and Defense, policies regarding international energy issues that have a direct impact on research, development, utilization, supply, and conservation of energy in the United States and to undertake activities involving the integration of domestic and foreign policy relating to energy, including provision of independent technical advice to the President on international negotiations involving energy resources, energy technologies, or nuclear weapons issues, except that the Secretary of State shall continue to exercise primary authority for the conduct of foreign policy relating to energy and nuclear nonproliferation, pursuant to policy guidelines established by the President;

(11) to provide for the cooperation of Federal, State, and local governments in the development and implementation of national energy policies and programs;

(12) to foster and assure competition among parties engaged in the supply of energy and fuels;

(13) to assure incorporation of national environmental protection goals in the formulation and implementation of energy programs, and to advance the goals of restoring, protecting, and enhancing environmental quality, and assuring public health and safety;

(14) to assure, to the maximum extent practicable, that the productive capacity of private enterprise shall be utilized in the development and achievement of the policies and purposes of this chapter;

(15) to provide for, encourage, and assist public participation in the development and enforcement of national energy programs;

(16) to create an awareness of, and responsibility for, the fuel and energy needs of rural and urban residents as such needs pertain to home heating and cooling, transportation, agricultural production, electrical generation, conservation, and research and development;

(17) to foster insofar as possible the continued good health of the Nation's small business firms, public utility districts, municipal utilities, and private cooperatives involved in energy production, transportation, research, development, demonstration, marketing, and merchandising; and

(18) to provide for the administration of the functions of the Energy Research and Development Administration related to nuclear weapons and national security which are transferred to the Department by this chapter.

(Pub. L. 95-91, title I, § 102, Aug. 4, 1977, 91 Stat. 567.)

REFERENCES IN TEXT

This chapter, referred to in text preceding par. (1) and pars. (14) and (18), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7133 of this title.

§ 7113. Relationship with States

Whenever any proposed action by the Department conflicts with the energy plan of any State, the Department shall give due consideration to the needs of such State, and where practicable, shall attempt to resolve such conflict through consultations with appropriate State officials. Nothing in this chapter shall affect the authority of any State over matters exclusively within its jurisdiction.

(Pub. L. 95-91, title I, § 103, Aug. 4, 1977, 91 Stat. 569.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SUBCHAPTER II—ESTABLISHMENT OF THE DEPARTMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7232, 7341 of this title.

§ 7131. Establishment

There is established at the seat of government an executive department to be known as the Department of Energy. There shall be at the head of the Department a Secretary of Energy (hereinafter in this chapter referred to as the "Secretary"), who shall be appointed by the President by and with the advice and consent of the Senate. The Department shall be administered, in accordance with the provisions of this chapter, under the supervision and direction of the Secretary.

(Pub. L. 95-91, title II, § 201, Aug. 4, 1977, 91 Stat. 569.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7132. Principal officers

(a) There shall be in the Department a Deputy Secretary, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5. The Deputy Secretary shall act for and exercise the functions of the Secretary during the absence or disability of the Secretary or in the event the office of Secretary becomes vacant. The Secretary shall designate the order in which the Under Secretary and other officials shall act for and perform the functions of the Secretary during the absence or disability of both the Secretary and Deputy Secretary or in the event of vacancies in both of those offices.

(b) There shall be in the Department an Under Secretary and a General Counsel, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall perform such functions and duties as the Secretary shall prescribe. The Under Secretary shall bear primary responsibility for energy conservation. The Under Secretary shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, and the General Counsel shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(Pub. L. 95-91, title II, § 202, Aug. 4, 1977, 91 Stat. 569.)

§ 7133. Assistant Secretaries; appointment and confirmation; identification of responsibilities

(a) There shall be in the Department eight Assistant Secretaries, each of whom shall be appointed by the President, by and with the advice and consent of the Senate; who shall be compensated at the rate provided for at level IV of the Executive Schedule under section 5315 of title 5; and who shall perform, in accordance with applicable law, such of the functions transferred or delegated to, or vested in, the Secretary as he shall prescribe in accordance with the provisions of this chapter. The functions which the Secretary shall assign to the Assistant Secretaries include, but are not limited to, the following:

(1) Energy resource applications, including functions dealing with management of all forms of energy production and utilization, including fuel supply, electric power supply, enriched uranium production, energy technology programs, and the management of energy resource leasing procedures on Federal lands.

(2) Energy research and development functions, including the responsibility for policy and management of research and development for all aspects of—

(A) solar energy resources;

(B) geothermal energy resources;

(C) recycling energy resources;

(D) the fuel cycle for fossil energy resources; and

(E) the fuel cycle for nuclear energy resources.

(3) Environmental responsibilities and functions, including advising the Secretary with respect to the conformance of the Department's activities to environmental protection laws and principles, and conducting a comprehensive program of research and development on the environmental effects of energy technologies and programs.

(4) International programs and international policy functions, including those functions which assist in carrying out the international energy purposes described in section 7112 of this title.

(5) National security functions, including those transferred to the Department from the Energy Research and Development Administration which relate to management and implementation of the nuclear weapons program and other national security functions involving nuclear weapons research and development.

(6) Intergovernmental policies and relations, including responsibilities for assuring that national energy policies are reflective of and responsible to the needs of State and local governments, and for assuring that other components of the Department coordinate their activities with State and local governments, where appropriate, and develop intergovernmental communications with State and local governments.

(7) Competition and consumer affairs, including responsibilities for the promotion of

competition in the energy industry and for the protection of the consuming public in the energy policymaking processes, and assisting the Secretary in the formulation and analysis of policies, rules, and regulations relating to competition and consumer affairs.

(8) Nuclear waste management responsibilities, including—

(A) the establishment of control over existing Government facilities for the treatment and storage of nuclear wastes, including all containers, casks, buildings, vehicles, equipment, and all other materials associated with such facilities;

(B) the establishment of control over all existing nuclear waste in the possession or control of the Government and all commercial nuclear waste presently stored on other than the site of a licensed nuclear power electric generating facility, except that nothing in this paragraph shall alter or effect title to such waste;

(C) the establishment of temporary and permanent facilities for storage, management, and ultimate disposal of nuclear wastes;

(D) the establishment of facilities for the treatment of nuclear wastes;

(E) the establishment of programs for the treatment, management, storage, and disposal of nuclear wastes;

(F) the establishment of fees or user charges for nuclear waste treatment or storage facilities, including fees to be charged Government agencies; and

(G) the promulgation of such rules and regulations to implement the authority described in this paragraph,

except that nothing in this section shall be construed as granting to the Department regulatory functions presently within the Nuclear Regulatory Commission, or any additional functions than those already conferred by law.

(9) Energy conservation functions, including the development of comprehensive energy conservation strategies for the Nation, the planning and implementation of major research and demonstration programs for the development of technologies and processes to reduce total energy consumption, the administration of voluntary and mandatory energy conservation programs, and the dissemination to the public of all available information on energy conservation programs and measures.

(10) Power marketing functions, including responsibility for marketing and transmission of Federal power.

(11) Public and congressional relations functions, including responsibilities for providing a continuing liaison between the Department and the Congress and the Department and the public.

(b) At the time the name of any individual is submitted for confirmation to the position of Assistant Secretary, the President shall identify with particularity the function or functions described in subsection (a) of this section (or any portion thereof) for which such individual will be responsible.

(Pub. L. 95-91, title II, § 203, Aug. 4, 1977, 91 Stat. 570.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title, and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7139, 7158 of this title.

§ 7134. Federal Energy Regulatory Commission; compensation of Chairman and members

There shall be within the Department, a Federal Energy Regulatory Commission established by subchapter IV of this chapter (hereinafter referred to in this chapter as the "Commission"). The Chairman shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5. The other members of the Commission shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5. The Chairman and members of the Commission shall be individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy.

(Pub. L. 95-91, title II, § 204, Aug. 4, 1977, 91 Stat. 571.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7135. Energy Information Administration

(a) Establishment; appointment of Administrator; compensation; qualifications; duties

(1) There shall be within the Department an Energy Information Administration to be headed by an Administrator who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for in level IV of the Executive Schedule under section 5315 of title 5. The Administrator shall be a person who, by reason of professional background and experience, is specially qualified to manage an energy information system.

(2) The Administrator shall be responsible for carrying out a central, comprehensive, and unified energy data and information program which will collect, evaluate, assemble, analyze, and disseminate data and information which is relevant to energy resource reserves, energy production, demand, and technology, and related economic and statistical information, or which is relevant to the adequacy of energy resources to meet demands in the near and longer term future for the Nation's economic and social needs.

(b) Delegation of functions

The Secretary shall delegate to the Administrator (which delegation may be on a nonexclusive basis as the Secretary may determine may be necessary to assure the faithful execution of his authorities and responsibilities under law) the functions vested in him by law relating to gathering, analysis, and dissemination of energy information (as defined in section 796 of title 15) and the Administrator may act in the name of the Secretary for the purpose of obtaining enforcement of such delegated functions.

(c) Functions of Director of the Office of Energy Information and Analysis

In addition to, and not in limitation of the functions delegated to the Administrator pursuant to other subsections of this section, there shall be vested in the Administrator, and he shall perform, the functions assigned to the Director of the Office of Energy Information and Analysis under part B of the Federal Energy Administration Act of 1974 [15 U.S.C. 790 et seq.], and the provisions of sections 53(d) and 59 thereof [15 U.S.C. 790b(d), 790h] shall be applicable to the Administrator in the performance of any function under this chapter.

(d) Collection or analysis of information and preparation of reports without approval

The Administrator shall not be required to obtain the approval of any other officer or employee of the Department in connection with the collection or analysis of any information; nor shall the Administrator be required, prior to publication, to obtain the approval of any other officer or employee of the United States with respect to the substance of any statistical or forecasting technical reports which he has prepared in accordance with law.

(e) Annual audit

The Energy Information Administration shall be subject to an annual professional audit review of performance as described in section 55 of part B of the Federal Energy Administration Act of 1974 [15 U.S.C. 790d].

(f) Furnishing information or analysis to any other administration, commission, or office within the Department

The Administrator shall, upon request, promptly provide any information or analysis in his possession pursuant to this section to any other administration, commission, or office within the Department which such administration, commission, or office determines relates to the functions of such administration, commission, or office.

(g) Availability of information to public

Information collected by the Energy Information Administration shall be cataloged and, upon request, any such information shall be promptly made available to the public in a form and manner easily adaptable for public use, except that this subsection shall not require disclosure of matters exempted from mandatory disclosure by section 552(b) of title 5. The provisions of section 796(d) of title 15, and section 5916 of this title, shall continue to apply to any information obtained by the Administrator under such provisions.

(h) Identification and designation of "major energy producing companies"; format for financial report; accounting practices; filing of financial report; annual report of Department; definitions; confidentiality

(1)(A) In addition to the acquisition, collection, analysis, and dissemination of energy information pursuant to this section, the Administrator shall identify and designate "major energy-producing companies" which alone or with their affiliates are involved in one or more lines of commerce in the energy industry so that the energy information collected from such major energy-producing companies shall provide a statistically accurate profile of each line of commerce in the energy industry in the United States.

(B) In fulfilling the requirements of this subsection the Administrator shall—

(i) utilize, to the maximum extent practicable, consistent with the faithful execution of his responsibilities under this chapter, reliable statistical sampling techniques; and

(ii) otherwise give priority to the minimization of the reporting of energy information by small business.

(2) The Administrator shall develop and make effective for use during the second full calendar year following August 4, 1977, the format for an energy-producing company financial report. Such report shall be designed to allow comparison on a uniform and standardized basis among energy-producing companies and shall permit for the energy-related activities of such companies—

(A) an evaluation of company revenues, profits, cash flow, and investments in total, for the energy-related lines of commerce in which such company is engaged and for all significant energy-related functions within such company;

(B) an analysis of the competitive structure of sectors and functional groupings within the energy industry;

(C) the segregation of energy information, including financial information, describing company operations by energy source and geographic area;

(D) the determination of costs associated with exploration, development, production, processing, transportation, and marketing and other significant energy-related functions within such company; and

(E) such other analyses or evaluations as the Administrator finds is necessary to achieve the purposes of this chapter.

(3) The Administrator shall consult with the Chairman of the Securities and Exchange Commission with respect to the development of accounting practices required by the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] to be followed by persons engaged in whole or in part in the production of crude oil and natural gas and shall endeavor to assure that the energy-producing company financial report described in paragraph (2) of this subsection, to the extent practicable and consistent

with the purposes and provisions of this chapter, is consistent with such accounting practices where applicable.

(4) The Administrator shall require each major energy-producing company to file with the Administrator an energy-producing company financial report on at least an annual basis and may request energy information described in such report on a quarterly basis if he determines that such quarterly report of information will substantially assist in achieving the purposes of this chapter.

(5) A summary of information gathered pursuant to this section, accompanied by such analysis as the Administrator deems appropriate, shall be included in the annual report of the Department required by subsection (a)[1] of section 7267 of this title.

(6) As used in this subsection the term—

(A) "energy-producing company" means a person engaged in:

(i) ownership or control of mineral fuel resources or nonmineral energy resources;

(ii) exploration for, or development of, mineral fuel resources;

(iii) extraction of mineral fuel or nonmineral energy resources;

(iv) refining, milling, or otherwise processing mineral fuels or nonmineral energy resources;

(v) storage of mineral fuels or nonmineral energy resources;

(vi) the generation, transmission, or storage of electrical energy;

(vii) transportation of mineral fuels or nonmineral energy resources by any means whatever; or

(viii) wholesale or retail distribution of mineral fuels, nonmineral energy resources or electrical energy;

(B) "energy industry" means all energy-producing companies; and

(C) "person" has the meaning as set forth in section 796 of title 15.

(7) The provisions of section 1905 of title 18 shall apply in accordance with its terms to any information obtained by the Administration pursuant to this subsection.

(Pub. L. 95-91, title II, § 205, Aug. 4, 1977, 91 Stat. 572.)

References In Text

The Federal Energy Administration Act of 1974, referred to in subsec. (c), is Pub. L. 93-275, May 7, 1974, 88 Stat. 96, as amended. Part B of the Federal Energy Administration Act of 1974 is classified generally to subchapter II (§ 790 et seq.) of chapter 16B of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

This chapter, referred to in subsecs. (c), (h)(1)(B)(i), 2(E), (3), (4), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

The Energy Policy and Conservation Act, referred to in subsec. (h)(3), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 7135a. Delegation by Secretary of Energy of energy research, etc., functions to Administrator of Energy Information Administration; prohibition against required delegation; utilization of capabilities by Secretary

Notwithstanding any other provision of law, the Secretary of Energy shall not be required to delegate to the Administrator of the Energy Information Administration any energy research, development, and demonstration function vested in the Secretary, pursuant to the Atomic Energy Act [42 U.S.C. 2011 et seq.], the Federal Nonnuclear Energy Research and Development Act [42 U.S.C. 5901 et seq.], the Geothermal Research, Development and Demonstration Act [30 U.S.C. 1101 et seq.], the Electric and Hybrid Vehicle Research, Development and Demonstration Act [15 U.S.C. 2501 et seq.], the Solar Heating and Cooling Demonstration Act [42 U.S.C. 5501 et seq.], the Solar Energy Research, Development and Demonstration Act [42 U.S.C. 5551 et seq.], and the Energy Reorganization Act [42 U.S.C. 5801 et seq.]. Additionally, the Secretary may utilize the capabilities of the Energy Information Administration as he deems appropriate for the conduct of such programs.

(Pub. L. 95-238, title I, § 104(b), Feb. 25, 1978, 92 Stat. 53.)

References in Text

The Atomic Energy Act, referred to in text, probably means the Atomic Energy Act of 1954 act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, as amended, which is classified generally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

The Federal Nonnuclear Energy Research and Development Act, referred to in text, probably means the Federal Nonnuclear Energy Research and Development Act of 1974, Pub. L. 93-577, Dec. 31, 1974, 88 Stat. 1878, as amended, which is classified generally to chapter 74 (§ 5901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5901 of this title and Tables.

The Geothermal Research, Development, and Demonstration Act, referred to in text, probably means the Geothermal Energy, Research, Development, and Demonstration Act of 1974, Pub. L. 93-410, Sept. 3, 1974, 88 Stat. 1079, as amended, which is classified generally to chapter 24 (§ 1101 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1101 of Title 30 and Tables.

The Electric and Hybrid Vehicle Research, Development and Demonstration Act referred to in text, probably means the Electric and Hybrid Vehicle Research, Development, and Demonstration Act of 1976, Pub. L. 94-413, Sept. 17, 1976, 90 Stat. 1260, which is classified principally to chapter 52 (§ 2501 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2501 of Title 15 and Tables.

The Solar Heating and Cooling Demonstration Act, referred to in text, probably means the Solar Heating and Cooling Demonstration Act of 1974, Pub. L. 93-409, Sept. 3, 1974, 88 Stat. 1069, as amended, which is classified generally to subchapter I (§ 5501 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

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[1] So in original. Section 7267 of this title was not enacted with a subsec. (a).

The Solar Energy Research, Development, and Demonstration Act, referred to in text, probably means the Solar Energy Research, Development, and Demonstration Act of 1974, Pub. L. 93-473, Oct. 26, 1974, 88 Stat. 1431, as amended, which is classified generally to subchapter II (§ 5551 et seq.) of chapter 71 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5501 of this title and Tables.

The Energy Reorganization Act, referred to in text, probably means the Energy Reorganization Act of 1974, Pub. L. 93-438, Oct. 11, 1974, 88 Stat. 1233, as amended, which is classified principally to chapter 73 (§ 5801 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5801 of this title and Tables.

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7136. Economic Regulatory Administration; appointment of Administrator; compensation; qualifications; functions

(a) There shall be within the Department an Economic Regulatory Administration to be headed by an Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at a rate provided for level IV of the Executive Schedule under section 5315 of title 5. Such Administrator shall be, by demonstrated ability, background, training, or experience, an individual who is specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy. The Secretary shall by rule provide for a separation of regulatory and enforcement functions assigned to, or vested in, the Administration.

(b) Consistent with the provisions of subchapter IV of this chapter, the Secretary shall utilize the Economic Regulatory Administration to administer such functions as he may consider appropriate.

(Pub. L. 95-91, title II, § 206, Aug. 4, 1977, 91 Stat. 574.)

§ 7137. Functions of Comptroller General

The functions of the Comptroller General of the United States under section 771 of title 15 shall apply with respect to the monitoring and evaluation of all functions and activities of the Department under this chapter or any other Act administered by the Department.

(Pub. L. 95-91, title II, § 207, Aug. 4, 1977, 91 Stat. 574.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7138. Office of Inspector General

(a) Appointment and confirmation of Inspector General and Deputy Inspector General; removal; assistants; compensation

(1) There shall be within the Department an Office of Inspector General to be headed by an Inspector General, who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Inspector General shall report to, and be under the general supervision of, the Secretary or, to the extent such authority is delegated, the Deputy Secretary, but shall not be under the control of, or subject to supervision by, any other officer of the Department.

(2) There shall also be in the Office a Deputy Inspector General who shall be appointed by the President, by and with the advice and consent of the Senate, solely on the basis of integrity and demonstrated ability and without regard to political affiliation. The Deputy shall assist the Inspector General in the administration of the Office and shall, during the absence or temporary incapacity of the Inspector General, or during a vacancy in that Office, act as Inspector General.

(3) The Inspector General or the Deputy may be removed from office by the President. The President shall communicate the reasons for any such removal to both Houses of Congress.

(4) The Inspector General shall, in accordance with applicable laws and regulations governing the civil service, appoint an Assistant Inspector General for Audits and an Assistant Inspector General for Investigations.

(5) The Inspector General shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, and the Deputy Inspector General shall be compensated at the rate provided for level V of the Executive Schedule under section 5316 of title 5.

(b) Duties and responsibilities of Inspector General

It shall be the duty and responsibility of the Inspector General—

(1) to supervise, coordinate, and provide policy direction for auditing and investigative activities relating to the promotion of economy and efficiency in the administration of, or the prevention or detection of fraud or abuse in, programs and operations of the Department;

(2) to recommend policies for, and to conduct, supervise, or coordinate other activities carried out or financed by the Department for the purpose of promoting economy and efficiency in the administration of, or preventing and detecting fraud and abuse in, its programs and operations;

(3) to recommend policies for, and to conduct, supervise, or coordinate relationships between the Department and other Federal agencies, State and local governmental agencies, and nongovernmental entities with respect to (A) all matters relating to the promotion of economy and efficiency in the administration of, or the prevention and detection

of fraud and abuse in, programs and operations administered or financed by the Department, and (B) the identification and prosecution of participants in such fraud or abuse;

(4) to keep the Secretary and the Congress fully and currently informed, by means of the reports required by subsection (c) of this section and otherwise, concerning fraud and other serious problems, abuses, and deficiencies relating to the administration of programs and operations administered or financed by the Department, to recommend corrective action concerning such problems, abuses, and deficiencies, and to report on the progress made in implementing such corrective action; and

(5) to seek to coordinate his actions with the actions of the Comptroller General of the United States with a view to avoiding duplication.

(c) Annual report to Secretary, Federal Energy Regulatory Commission, and Congress

The Inspector General shall, not later than March 31 of each year, submit a report to the Secretary, to the Federal Energy Regulatory Commission, and to the Congress summarizing the activities of the Office during the preceding calendar year. Such report shall include, but need not be limited to—

(1) an identification and description of significant problems, abuses, and deficiencies relating to the administration of programs and operations of the Department disclosed by such activities;

(2) a description of recommendations for corrective action made by the Office with respect to significant problems, abuses, or deficiencies identified and described under paragraph (1);

(3) an evaluation of progress made in implementing recommendations described in the report or, where appropriate, in previous reports; and

(4) a summary of matters referred to prosecutive authorities and the extent to which prosecutions and convictions have resulted.

(d) Report on problems, abuses, or deficiencies relating to administration of Department programs and operations

The Inspector General shall report immediately to the Secretary, to the Federal Energy Regulatory Commission as appropriate, and, within thirty days thereafter, to the appropriate committees or subcommittees of the Congress whenever the Office becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the Department. The Deputy and Assistant Inspectors General shall have particular responsibility for informing the Inspector General of such problems, abuses, or deficiencies.

(e) Additional investigations and reports

The Inspector General (1) may make such additional investigations and reports relating to the administration of the programs and operations of the Department as are, in the judgment of the Inspector General, necessary or desirable, and (2) shall provide such additional information or documents as may be requested by either House of Congress or, with respect to matters within their jurisdiction, by any committee or subcommittee thereof.

(f) Transmittal of reports, information, or documents without clearance or approval

Notwithstanding any other provision of law, the reports, information, or documents required by or under this section shall be transmitted to the Secretary, to the Federal Energy Regulatory Commission, if applicable, and to the Congress, or committees or subcommittees thereof, by the Inspector General without further clearance or approval. The Inspector General shall, insofar as feasible, provide copies of the reports required under subsection (c) of this section to the Secretary and the Commission, if applicable, sufficiently in advance of the due date for the submission to Congress to provide a reasonable opportunity for comments of the Secretary and the Commission to be appended to the reports when submitted to Congress.

(g) Additional authority of Inspector General

In addition to the authority otherwise provided by this section, the Inspector General, in carrying out the provisions of this section, is authorized—

(1) to have access to all records, reports, audits, reviews, documents, papers, recommendations, and other material available to the Department which relate to programs and operations with respect to which the Inspector General has responsibilities under this section;

(2) to require by subpena the production of all information, documents, reports, answers, records, accounts, papers, and other data and documentary evidence necessary in the performance of the functions assigned by this section, which subpena, in the case of contumacy or refusal to obey, shall be enforceable by order of any appropriate United States district court; and

(3) to have direct and prompt access to the Secretary when necessary for any purpose pertaining to the performance of functions under this section.

(Pub. L. 95-91, title II, § 208, Aug. 4, 1977, 91 Stat. 575.)

REFERENCES IN TEXT

The civil service laws, referred to in subsec. (a)(4), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

§ 7139. Office of Energy Research; establishment; appointment of Director; compensation; duties

(a) There shall be within the Department an Office of Energy Research to be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate, and who shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(b) It shall be the duty and responsibility of the Director—

(1) to advise the Secretary with respect to the physical research program transferred to the Department from the Energy Research and Development Administration;

(2) to monitor the Department's energy research and development programs in order to advise the Secretary with respect to any undesirable duplication or gaps in such programs;

(3) to advise the Secretary with respect to the well-being and management of the multipurpose laboratories under the jurisdiction of the Department, excluding laboratories that constitute part of the nuclear weapons complex;

(4) to advise the Secretary with respect to education and training activities required for effective short- and long-term basic and applied research activities of the Department;

(5) to advise the Secretary with respect to grants and other forms of financial assistance required for effective short- and long-term basic and applied research activities of the Department; and

(6) to carry out such additional duties assigned to the Office by the Secretary relating to basic and applied research, including but not limited to supervision or support of research activities carried out by any of the Assistant Secretaries designated by section 7133 of this title, as the Secretary considers advantageous.

(Pub. L. 95-91, title II, § 209, Aug. 4, 1977, 91 Stat. 577.)

§ 7140. Leasing Liaison Committee; establishment; composition

There is established a Leasing Liaison Committee which shall be composed of an equal number of members appointed by the Secretary and the Secretary of the Interior.

(Pub. L. 95-91, title II, § 210, Aug. 4, 1977, 91 Stat. 577.)

§ 7141. Office of Minority Economic Impact

(a) Establishment; appointment of Director; compensation

There shall be established within the Department an Office of Minority Economic Impact. The Office shall be headed by a Director, who shall be appointed by the President, by and with the advice and consent of the Senate. The Director shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5.

(b) Advice to Secretary on effect of energy policies, regulations, and other actions of Department respecting minority participation in energy programs

The Director shall have the duty and responsibility to advise the Secretary on the effect of energy policies, regulations, and other actions of the Department and its components on minorities and minority business enterprises and on ways to insure that minorities are afforded an opportunity to participate fully in the energy programs of the Department.

(c) Research programs respecting effects of national energy programs, policies, and regulations of Department on minorities

The Director shall conduct an ongoing research program, with the assistance of the Administrator of the Energy Information Administration, and such other Federal agencies as the Director determines appropriate, to determine the effects (including the socio-economic and environmental effects) of national energy programs, policies, and regulations of the Department on minorities. In conducting such program, the Director shall, from time to time, develop and recommend to the Secretary policies to assist, where appropriate, such minorities and minority business enterprises concerning such effects. In addition, the Director shall, to the greatest extent practicable—

(1) determine the average energy consumption and use patterns of minorities relative to other population categories;

(2) evaluate the percentage of disposable income spent on energy by minorities relative to other population categories; and

(3) determines how programs, policies, and actions of the Department and its components affect such consumption and use patterns and such income.

(d) Management and technical assistance to minority educational institutions and business enterprises to foster participation in research, development, demonstration, and contract activities of Department

The Director may provide the management any[1] technical assistance he considers appropriate to minority educational institutions and minority business enterprises to enable these enterprises and institutions to participate in the research, development, demonstration, and contract activities of the Department. In carrying out his functions under this section, the Director may enter into contracts, in accordance with section 7256 of this title and other applicable provisions of law, with any person, including minority educational institutions, minority business enterprises, and organizations the primary purpose of which is to assist the development of minority communities. The management and technical assistance may include—

(1) a national information clearinghouse which will develop and disseminate information on the aspects of energy programs to minority business enterprises, minority educational institutions and other appropriate minority organizations;

(2) market research, planning economic and business analysis, and feasibility studies to identify and define economic opportunities for minorities in energy research, production, conservation, and development;

(3) technical assistance programs to encourage, promote, and assist minority business enterprises in establishing and expanding energy-related business opportunities which are located in minority communities and that can provide jobs to workers in such communities; and

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[1] So in original. Probably should be "and".

(4) programs to assist minority business enterprises in the commercial application of energy-related technologies.

(e) Loans to minority business enterprises; restriction on use of funds; interest; deposits into Treasury

(1) The Secretary, acting through the Office, may provide financial assistance in the form of loans to any minority business enterprise under such rules as he shall prescribe to assist such enterprises in participating fully in research, development, demonstration, and contract activities of the Department to the extent he considers appropriate. He shall limit the use of financial assistance to providing funds necessary for such enterprises to bid for and obtain contracts or other agreements, and shall limit the amount of the financial assistance to any recipient to not more than 75 percent of such costs.

(2) The Secretary shall determine the rate of interest on loans under this section in consultation with the Secretary of the Treasury.

(3) The Secretary shall deposit into the Treasury as miscellaneous receipts amounts received in connection with the repayment and satisfaction of such loans.

(f) Definitions

As used in this section, the term—

(1) "minority" means any individual who is a citizen of the United States and who is a Negro, Puerto Rican, American Indian, Eskimo, Oriental, or Aleut or is a Spanish speaking individual of Spanish descent;

(2) "minority business enterprise" means a firm, corporation, association, or partnership which is at least 50 percent owned or controlled by a minority or group of minorities; and

(3) "minority educational institution" means an educational institution with an enrollment in which a substantial proportion (as determined by the Secretary) of the students are minorities.

(g) Authorization of appropriations

There is authorized to be appropriated to the Secretary to carry out the functions of the Office not to exceed $3,000,000 for fiscal year 1979, not to exceed $5,000,000 for fiscal year 1980, and not to exceed $6,000,000 for fiscal year 1981. Of the amounts so appropriated each fiscal year, assistance under subsection (e) of this section.

(Pub. L. 95-91, title II, § 211, as added Pub. L. 95-619, title VI, § 641, Nov. 9, 1978, 92 Stat. 3284.)

SUBCHAPTER III—TRANSFERS OF FUNCTIONS

Subchapter Referred to in Other Sections

This subchapter is referred to in section 7301 of this title.

§ 7151. General transfers

(a) Except as otherwise provided in this chapter, there are transferred to, and vested in, the Secretary all of the functions vested by law in the Administrator of the Federal Energy Administration or the Federal Energy Administration, the Administrator of the Energy Research and Development Administration or the Energy Research and Development Administration; and the functions vested by law in the officers and components of either such Administration.

(b) Except as provided in subchapter IV of this chapter, there are transferred to, and vested in, the Secretary the function of the Federal Power Commission, or of the members, officers, or components thereof. The Secretary may exercise any power described in section 7172(a)(2) of this title to the extent the Secretary determines such power to be necessary to the exercise of any function within his jurisdiction pursuant to the preceding sentence.

(Pub. L. 95-91, title III, § 301, Aug. 4, 1977, 91 Stat. 577.)

References in Text

This chapter, referred to in subsec. (a), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

Ex. Ord. No. 12038. Transfer of Certain Functions to Secretary of Energy

Ex. Ord. No. 12038, Feb. 3, 1978, 43 F.R. 4957, as amended by Ex. Ord. No. 12156, Sept. 10, 1979, 44 F.R. 53073, provided:

By virtue of the authority vested in me as President of the United States of America, in order to reflect the responsibilities of the Secretary of Energy for the performance of certain functions previously vested in other officers of the United States by direction of the President and subsequently transferred to the Secretary of Energy pursuant to the Department of Energy Organization Act (91 Stat. 565; 42 U.S.C. 7101 et seq.) it is hereby ordered as follows:

Section 1. *Functions of the Federal Energy Administration.* In accordance with the transfer of all functions vested by law in the Federal Energy Administration, or the Administrator thereof, to the Secretary of Energy pursuant to Section 301(a) of the Department of Energy Organization Act [subsec. (a) of this section], hereinafter referred to as the Act, the Executive Orders and Proclamations referred to in this Section, which conferred authority or responsibility upon the Administrator of the Federal Energy Administration, are amended as follows:

(a) Executive Order No. 11647, as amended [set out as a note under section 16 of Title 31, Money and Finance], relating to Federal Regional Councils, is further amended by deleting "The Federal Energy Administration" in Section 1(a)(10) and substituting "The Department of Energy", and by deleting "The Deputy Administrator of the Federal Energy Administration" in Section 3(a)(10) and substituting "The Deputy Secretary of Energy".

(b) Executive Order No. 11790 of June 25, 1974 [set out as a note under section 761 of Title 15, Commerce and Trade], relating to the Federal Energy Administration Act of 1974, is amended by deleting "Administrator of the Federal Energy Administration" and "Administrator" wherever they appear in Sections 1 through 6 and substituting "Secretary of Energy" and "Secretary", respectively, and by deleting Section 7 through 10.

(c) Executive Order No. 11912, as amended [set out as a note under section 6201 of this title], relating to energy policy and conservation, and Proclamation No. 3279, as amended [set out as a note under section 1862 of Title 19, Customs Duties], relating to imports of petroleum and petroleum products, are further amended by deleting "Administrator of the Federal Energy Administration", "Federal Energy Administration", and "Administrator" (when used in reference to the Federal Energy Administration) wherever those terms appear and by substituting "Secretary of Energy", "Department of Energy", and "Secretary", respectively, and by deleting "the Administrator of Energy Research and Development" in Section 10(a)(1) of Executive Order No. 11912, as amended.

SEC. 2. *Functions of the Federal Power Commission.* In accordance with the transfer of functions vested in the Federal Power Commission to the Secretary of Energy pursuant to Section 301(b) of the Act [subsec. (b) of this section], the Executive Orders referred to in this Section, which conferred authority or responsibility upon the Federal Power Commission, or Chairman thereof, are amended or modified as follows:

(a) Executive Order No. 10485 of September 3, 1953, [set out as a note under section 717b of Title 15], relating to certain facilities at the borders of the United States is amended by deleting Section 2 thereof, and by deleting "Federal Power Commission" and "Commission" wherever those terms appear in Sections 1, 3 and 4 of such Order and substituting for each "Secretary of Energy".

(b) Executive Order No. 11969 of February 2, 1977 [set out as a note under section 717 of Title 15], relating to the administration of the Emergency Natural Gas Act of 1977 [set out as a note under section 717 of Title 15], is hereby amended by deleting the second sentence in Section 1, by deleting "the Secretary of the Interior, the Administrator of the Federal Energy Administration, other members of the Federal Power Commission and in Section 2, and by deleting "Chairman of the Federal Power Commission" and "Chairman" wherever those terms appear and substituting therefor "Secretary of Energy" and "Secretary", respectively.

(c) Paragraph (2) of Section 3 of Executive Order No. 11331, as amended [set out as a note under section 1962b of this title], relating to the Pacific Northwest River Basins Commission, is hereby amended by deleting "from each of the following Federal departments and agencies" and substituting therefor "to be appointed by the head of each of the following Executive agencies", by deleting "Federal Power Commission" and substituting therefor "Department of Energy", and by deleting "such member to be appointed by the head of each department or independent agency he represents,".

SEC. 3. *Functions of the Secretary of the Interior.* In accordance with the transfer of certain functions vested in the Secretary of the Interior to the Secretary of Energy pursuant to Section 302 of the Act [section 7152 of this title], the Executive Orders referred to in this Section, which conferred authority or responsibility on the Secretary of the Interior, are amended or modified as follows:

(a) Sections 1 and 4 of Executive Order No. 8526 of August 27, 1940, relating to functions of the Bonneville Power Administration, are hereby amended by substituting "Secretary of Energy" for "Secretary of the Interior", by adding "of the Interior" after "Secretary" in Sections 2 and 3, and by adding "and the Secretary of Energy," after "the Secretary of the Interior" wherever the latter term appears in Section 5.

(b) Executive Order No. 11177 of September 16, 1964, relating to the Columbia River Treaty, is amended by deleting "Secretary of the Interior" and "Department of the Interior" wherever those terms appear and substituting therefor "Secretary of Energy" and "Department of Energy", respectively.

SEC. 4. *Functions of the Atomic Energy Commission and the Energy Research and Development Administration.*

(a) In accordance with the transfer of all functions vested by law in the Administrator of Energy Research and Development to the Secretary of Energy pursuant to Section 301(a) of the Act [subsec. (a) of this section] the Executive Orders referred to in this Section are amended or modified as follows:

(1) All current Executive Orders which refer to functions of the Atomic Energy Commission, including Executive Order No. 10127, as amended; Executive Order No. 10865, as amended [set out as a note under section 401 of Title 50, War and National Defense]; Executive Order No. 10899 of December 9, 1960 [set out as a note under section 2162 of this title]; Executive Order No. 11057 of December 18, 1962 [set out as a note under section 2162 of this title]; Executive Order No. 11477 of August 7, 1969 [set out as a note under section 2187 of this title]; Executive Order No. 11752 of December 17, 1973 [set out as a note under section 4331 of this title]; and Executive Order No. 11761 of January 17, 1974 [set out as a note under section 1221 of Title 20, Education]; are modified to provide that all such functions shall be exercised by (1) the Secretary of Energy to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Administrator of Energy Research and Development pursuant to the Energy Organization Act of 1974 (Public Law 93-438; 88 Stat. 1233) [section 5801 et seq. of this title], and (2) the Nuclear Regulatory Commission to the extent consistent with the functions of the Atomic Energy Commission that were transferred to the Commission by the Energy Reorganization Act of 1974 [section 5801 et seq. of this title].

(2) Executive Order No. 11652, as amended [set out as a note under section 401 of Title 50], relating to the classification of national security matters, is further amended by substituting "Department of Energy" for "Energy Research and Development Administration" in Sections 2(A), 7(A) and 8 and by deleting "Federal Power Commission" in Section 2(B)(3).

(3) Executive Order No. 11902 of February 2, 1976 [set out as a note under section 5841 of this title], relating to export licensing policy for nuclear materials and equipment, is amended by substituting "the Secretary of Energy" for "the Administrator of the United States Energy Research and Development Administration, hereinafter referred to as the Administrator" in Section 1(b) and for the "Administrator" in Sections 2 and 3.

(4) Executive Order No. 11905, as amended, [set out as a note under section 401 of Title 50], relating to foreign intelligence activities, is further amended by deleting "Energy Research and Development Administration", "Administrator or the Energy Research and Development Administration", and "ERDA" wherever those terms appear and substituting "Department of Energy", "Secretary of Energy", and "DOE" respectively.

(5) Section 3(2) of each of the following Executive Orders is amended by substituting "Department of Energy" for "Energy Research and Development Administration":

(i) Executive Order No. 11345, as amended [set out as a note under section 1962b of this title], establishing the Great Lakes River Basin Commission.

(ii) Executive Order No. 11371, as amended [set out as a note under section 1962b of this title], establishing the New England River Basin Commission.

(iii) Executive Order No. 11578, as amended [set out as a note under section 1962b of this title], establishing the Ohio River Basin Commission.

(iv) Executive Order No. 11658, as amended [set out as a note under section 1962b of this title], establishing the Missouri River Basin Commission.

(v) Executive Order No. 11659, as amended [set out as a note under section 1962b of this title], establishing the Mississippi River Basin Commission.

SEC. 5. *Special Provisions Relating to Emergency Preparedness and Mobilization Functions.*

(a) Executive Order No. 10480, as amended [set out as a note under section 2153 of the Appendix to Title 50], is further amended by adding thereto the following new Sections:

"Sec. 609. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Atomic Energy Commission, and (b) with respect to petroleum, gas, solid fuels and electric power, upon the Secretary of the Interior.

"Sec. 610. Whenever the Administrator of General Services believes that the functions of an Executive agency have been modified pursuant to law in such manner as to require the amendment of any Executive order which relates to the assignment of emergency preparedness functions or the administration of mobilization programs, he shall promptly submit any proposals for the amendment of such Executive orders to the Director of the Office of Management and Budget in accordance with the provisions of Executive Order No. 11030, as amended [set out as a note under section 1505 of Title 44, Public Printing and Documents].

(b) Executive Order No. 11490, as amended [set out as a note under section 2251 of the Appendix to Title 50], is further amended by adding thereto the following new section:

"Sec. 3016. Effective October 1, 1977, the Secretary of Energy shall exercise all authority and discharge all responsibility herein delegated to or conferred upon (a) the Federal Power Commission, (b) the Energy Research and Development Administration, and (c) with respect to electric power, petroleum, gas and solid fuels, upon the Department of the Interior.".

Sec. 6. This Order shall be effective as of October 1, 1977, the effective date of the Department of Energy Organization Act [this chapter] pursuant to the provisions of Section 901 [Section 7341 of this title] thereof and Executive Order No. 12009 of September 13, 1977 [set out as a note under section 7341 of this title], and all actions taken by the Secretary of Energy on or after October 1, 1977, which are consistent with the foregoing provisions are entitled to full force and effect.

JIMMY CARTER.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7159, 7174 of this title; title 15 section 3418; title 16 section 824a-4.

§ 7151a. Jurisdiction over matters transferred from Energy Research and Development Administration

Notwithstanding any other provision of law, jurisdiction over matters transferred to the Department of Energy from the Energy Research and Development Administration which on the effective date of such transfer were required by law, regulation, or administrative order to be made on the record after an opportunity for an agency hearing may be assigned to the Federal Energy Regulatory Commission or retained by the Secretary at his discretion.

(Pub. L. 95-238, title I, § 104(a), Feb. 25, 1978, 92 Stat. 53.)

CODIFICATION

Section was enacted as part of the Department of Energy Act of 1978—Civilian Applications, and not as part of the Department of Energy Organization Act which comprises this chapter.

§ 7152. Transfers from Department of the Interior

(a) Functions relating to electric power

(1) There are transferred to, and vested in, the Secretary all functions of the Secretary of the Interior under section 825s of title 16, and all other functions of the Secretary of the Interior, and officers and components of the Department of the Interior, with respect to—

(A) the Southeastern Power Administration;

(B) the Southwestern Power Administration;

(C) the Alaska Power Administration;

(D) the Bonneville Power Administration including but not limited to the authority contained in the Bonneville Project Act of 1937 [16 U.S.C. 832 et seq.] and the Federal Columbia River Transmission System Act [16 U.S.C. 838 et seq.];

(E) the power marketing functions of the Bureau of Reclamation, including the construction, operation, and maintenance of transmission lines and attendant facilities; and

(F) the transmission and disposition of the electric power and energy generated at Falcon Dam and Amistad Dam, international storage reservoir projects on the Rio Grande, pursuant to the Act of June 18, 1954, as amended by the Act of December 23, 1963.

(2) The Southeastern Power Administration, the Southwestern Power Administration, the Bonneville Power Administration, and the Alaska Power Administration shall be preserved as separate and distinct organizational entities within the Department. Each such entity shall be headed by an Administrator appointed by the Secretary. The functions transferred to the Secretary in paragraphs (1)(A), (1)(B), (1)(C), and (1)(D) shall be exercised by the Secretary, acting by and through such Administrators. Each such Administrator shall maintain his principal office at a place located in the region served by his respective Federal power marketing entity.

(3) The functions transferred in paragraphs (1)(E) and (1)(F) of this subsection shall be exercised by the Secretary, acting by and through a separate and distinct Administration within the Department which shall be headed by an Administrator appointed by the Secretary. The Administrator shall establish and shall maintain such regional offices as necessary to facilitate the performance of such functions. Neither the transfer of functions effected by paragraph (1)(E) of this subsection nor any changes in cost allocation or project evaluation standards shall be deemed to authorize the reallocation of joint costs of multipurpose facilities theretofore allocated unless and to the extent that such change is hereafter approved by Congress.

(b) Functions of Secretary of the Interior to promulgate regulations under certain acts

There are transferred to, and vested in, the Secretary the functions of the Secretary of the Interior to promulgate regulations under the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.], the Mineral Lands Leasing Act [30 U.S.C. 181 et seq.], the Mineral Leasing Act for Acquired Lands [30 U.S.C. 351 et seq.], the Geothermal Steam Act of 1970 [30 U.S.C. 1001 et seq.], and the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.], which relate to the—

(1) fostering of competition for Federal leases (including, but not limited to, prohibition on bidding for development rights by certain types of joint ventures);

(2) implementation of alternative bidding systems authorized for the award of Federal leases;

(3) establishment of diligence requirements for operations conducted on Federal leases (including, but not limited to, procedures relating to the granting or ordering by the Secretary of the Interior of suspension of operations or production as they relate to such requirements);

(4) setting rates of production for Federal leases; and

(5) specifying the procedures, terms, and conditions for the acquisition and disposition of Federal royalty interests taken in kind.

(c) Functions relating to establishment of production rates for all Federal leases

There are transferred to, and vested in, the Secretary all the functions of the Secretary of the Interior to establish production rates for all Federal leases.

(d) Functions of Bureau of Mines

There are transferred to, and vested in, the Secretary those functions of the Secretary of the Interior, the Department of the Interior, and officers and components of that Department under the Act of May 15, 1910, and other authorities, exercised by the Bureau of Mines, but limited to—

(1) fuel supply and demand analysis and data gathering;

(2) research and development relating to increased efficiency of production technology of solid fuel minerals, other than research relating to mine health and safety and research relating to the environmental and leasing consequences of solid fuel mining (which shall remain in the Department of the Interior); and

(3) coal preparation and analysis.

(Pub. L. 95-91, title III, § 302, Aug. 4, 1977, 91 Stat. 578.)

References in Text

The Bonneville Project Act of 1937, referred to in subsec. (a)(1)(D), is act Aug. 20, 1937, ch. 720, 50 Stat. 731, as amended, which is classified generally to chapter 12B (§ 832 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Tables.

The Federal Columbia River Transmission System Act, referred to in subsec. (a)(1)(D), is Pub. L. 93-454, Oct. 18, 1974, 88 Stat. 1376, which is classified generally to chapter 12G (§ 838 et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see Short Title note set out under section 838 of Title 16 and Tables.

The Act of June 18, 1954, as amended by the Act of December 23, 1963, referred to in subsec. (a)(1)(F), is act June 18, 1954, ch. 310, 68 Stat. 255, which was not classified to the Code.

The Outer Continental Shelf Lands Act, referred to in subsec. (b), is act Aug. 7, 1953, ch. 345, 67 Stat. 462, as amended, which is classified generally to subchapter III (§ 1331 et seq.) of chapter 29 of Title 43, Public Lands. For complete classification of this Act to the Code, see Short Title note set out under section 1331 of Title 43 and Tables.

The Mineral Lands Leasing Act, referred to in subsec. (b), is act Feb. 25, 1920, ch. 85, 41 Stat. 437, as amended, which is classified generally to subchapters I to VII (§ 181 et seq.) of chapter 3A of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 181 of Title 30 and Tables.

The Mineral Leasing Act for Acquired Lands, referred to in subsec. (b), is act Aug. 7, 1947, ch. 513, 61 Stat. 913, as amended, which is classified generally to chapter 7 (§ 351 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 351 of Title 30 and Tables.

The Geothermal Steam Act of 1970, referred to in subsec. (b), is Pub. L. 91-581, Dec. 24, 1970, 84 Stat. 1566, which is classified principally to chapter 23 (§ 1001 et seq.) of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Short Title note set out under section 1001 of Title 30 and Tables.

The Energy Policy and Conservation Act, referred to in subsec. (b), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of This Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

The Act of May 15, 1910, referred to in subsec. (d), probably means act May 16, 1910, ch. 240, 36 Stat. 369, which is classified to sections 1, 3, and 5 to 7 of Title 30, Mineral Lands and Mining. For complete classification of this Act to the Code, see Tables.

Change of Name

The Bureau of Reclamation in the Department of the Interior was redesignated the Water and Power Resources Service pursuant to Secretarial Order No. 3042, eff. Nov. 6, 1979. See 44 F.R. 71828.

Section Referred to in Other Sections

This section is referred to in section 7153 of this title.

§ 7153. Administration of leasing transfers

(a) Authority retained by Secretary of the Interior

The Secretary of the Interior shall retain any authorities not transferred under section 7152(b) of this title and shall be solely responsible for the issuance and supervision of Federal leases and the enforcement of all regulations applicable to the leasing of mineral resources, including but not limited to lease terms and conditions and production rates. No regulation promulgated by the Secretary shall restrict or limit any authority retained by the Secretary of the Interior under section 7152(b) of this title with respect to the issuance or supervision of Federal leases. Nothing in section 7152(b) of this title shall be construed to affect Indian lands and resources or to transfer any functions of the Secretary of the Interior concerning such lands and resources.

(b) Consultation with Secretary of the Interior with respect to promulgation of regulations

In exercising the authority under section 7152(b) of this title to promulgate regulations, the Secretary shall consult with the Secretary of the Interior during the preparation of such regulations and shall afford the Secretary of the Interior not less than thirty days, prior to the date on which the Department first publishes or otherwise prescribes regulations, to comment on the content and effect of such regulations.

(c) Disapproval of terms and conditions on issuance of Federal leases

(1) The Secretary of the Interior shall afford the Secretary not less than thirty days, prior to the date on which the Department of the Interior first publishes or otherwise prescribes the

terms and conditions on which a Federal lease will be issued, to disapprove any term or condition of such lease which relates to any matter with respect to which the Secretary has authority to promulgate regulations under section 7152(b) of this title. No such term or condition may be included in such a lease if it is disapproved by the Secretary. The Secretary and the Secretary of the Interior may by agreement define circumstances under which a reasonable opportunity of less than thirty days may be afforded the Secretary to disapprove such terms and conditions.

(2) Where the Secretary disapproves any lease, term, or condition under paragraph (1) of this subsection he shall furnish the Secretary of the Interior with a detailed written statement of the reasons for his disapproval, and of the alternatives which would be acceptable to him.

(d) Preparation of environmental impact statement

The Department of the Interior shall be the lead agency for the purpose of preparation of an environmental impact statement required by section 4332(2)(C) of this title for any action with respect to the Federal leases taken under the authority of this section, unless the action involves only matters within the exclusive authority of the Secretary.

(Pub. L. 95-91, title III, § 303, Aug. 4, 1977, 91 Stat. 579.)

§ 7154. Transfers from Department of Housing and Urban Development

(a) There is transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 304 of the Energy Conservation Standards for New Buildings Act of 1976 [42 U.S.C. 6833], to develop and promulgate energy conservation standards for new buildings. The Secretary of Housing and Urban Development shall provide the Secretary with any necessary technical assistance in the development of such standards. All other responsibilities, pursuant to title III of the Energy Conservation and Production Act [42 U.S.C. 6831 et seq.], shall remain with the Secretary of Housing and Urban Development, except that the Secretary shall be kept fully and currently informed of the implementation of the promulgated standards.

(b) There is hereby transferred to, and vested in, the Secretary the functions vested in the Secretary of Housing and Urban Development pursuant to section 1701z-8 of title 12.

(Pub. L. 95-91, title III, § 304, Aug. 4, 1977, 91 Stat. 580.)

REFERENCES IN TEXT

The Energy Conservation and Production Act, referred to in subsec. (a), is Pub. L. 94-385, Aug. 14, 1976, 90 Stat. 1125, as amended. Title III of the Energy Conservation and Production Act, known as the Energy Conservation Standards for New Buildings Act of 1976, is classified generally to subchapter II (§ 6831 et seq.) of chapter 81 of this title. For complete classification of the Energy Conservation and Production Act and the Energy Standards for New Buildings Act of 1976, see Short Title notes set out under section 6801 of this title and Tables.

§ 7155. Transfer from Interstate Commerce Commission

Except as provided in subchapter IV of this chapter, there are transferred to the Secretary such functions set forth in the Interstate Commerce Act and vested by law in the Interstate Commerce Commission or the Chairman and members thereof as relate to transportation of oil by pipeline.

(Pub. L. 95-91, title III, § 306, Aug. 4, 1977, 91 Stat. 581.)

REFERENCES IN TEXT

The Interstate Commerce Act, referred to in text, is act Feb. 4, 1887, ch. 104, 24 Stat. 379, as amended, which was classified generally to chapters 1, 8, 12, 13, and 19 (§§ 1 et seq., 301 et seq., 901 et seq., 1001 et seq., and 1231 et seq., respectively) of Title 49, Transportation. The Act was repealed (subject to an exception) by Pub. L. 95-473, § 4(b), Oct. 17, 1978, 92 Stat. 1466, the first section of which enacted subtitle IV (§ 10101 et seq.) of Title 49. Section 4(c) of Pub. L. 95-473 excepted from repeal those provisions of the Interstate Commerce Act that vested functions in the Interstate Commerce Commission, or the chairman or members of the Commission, related to transportation of oil by pipeline and that were transferred to the Secretary of Energy by section 7155 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7174 of this title.

§ 7156. Transfers from Department of the Navy

There are transferred to and vested in the Secretary all functions vested by chapter 641 of title 10, in the Secretary of the Navy as they relate to the administration of and jurisdiction over—

(1) Naval Petroleum Reserve Numbered 1 (Elk Hills), located in Kern County, California, established by Executive order of the President, dated September 2, 1912;

(2) Naval Petroleum Reserve Numbered 2 (Buena Vista), located in Kern County, California, established by Executive order of the President, dated December 13, 1912;

(3) Naval Petroleum Reserve Numbered 3 (Teapot Dome), located in Wyoming, established by Executive order of the President, dated April 30, 1915;

(4) Oil Shale Reserve Numbered 1, located in Colorado, established by Executive order of the President, dated December 6, 1916, as amended by Executive order dated June 12, 1919;

(5) Oil Shale Reserve Numbered 2, located in Utah, established by Executive order of the President, dated December 6, 1916; and

(6) Oil Shale Reserve Numbered 3, located in Colorado, established by Executive order of the President, dated September 27, 1924.

In the administration of any of the functions transferred to, and vested in, the Secretary by this section the Secretary shall take into consideration the requirements of national security.

(Pub. L. 95-91, title III, § 307, Aug. 4, 1977, 91 Stat. 581.)

§ 7156a. Assignment of naval officers to key management positions within Office of Naval Petroleum and Oil Shale Reserves in Department of Energy; Director

The Secretary of the Navy, in coordination with the Secretary of Energy, shall insure that commissioned officers of the Navy on active duty continue to be assigned to key management positions within the Office of Naval Petroleum and Oil Shale Reserves in the Department of Energy. The position of Director of such Office shall continue to be filled by a qualified officer of the Navy on active duty in the grade of captain.

(Pub. L. 96-137, § 2, Dec. 12, 1979, 93 Stat. 1061.)

CODIFICATION

Section was not enacted as a part of the Department of Energy Organization Act, which comprises this chapter.

§ 7157. Transfers from Department of Commerce

There are transferred to, and vested in, the Secretary all functions of the Secretary of Commerce, the Department of Commerce, and officers and components of that Department, as relate to or are utilized by the Office of Energy Programs, but limited to industrial energy conservation programs.

(Pub. L. 95-91, title III, § 308, Aug. 4, 1977, 91 Stat. 581.)

§ 7158. Naval reactor and military application programs

(a) The Division of Naval Reactors established pursuant to section 2035 of this title, and responsible for research, design, development, health, and safety matters pertaining to naval nuclear propulsion plants and assigned civilian power reactor programs is transferred to the Department under the Assistant Secretary to whom the Secretary has assigned the function listed in section 7133(a)(2)(E) of this title, and such organizational unit shall be deemed to be an organizational unit established by this chapter.

(b) The Division of Military Application, established by section 2035 of this title, and the functions of the Energy Research and Development Administration with respect to the Military Liaison Committee, established by section 2037 of this title, are transferred to the Department under the Assistant Secretary to whom the Secretary has assigned those functions listed in section 7133(a)(5) of this title, and such organizational units shall be deemed to be organizational units established by this chapter.

(Pub. L. 95-91, title III, § 309, Aug. 4, 1977, 91 Stat. 581.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7159. Transfer to Department of Transportation

Notwithstanding section 7151(a) of this title, there are transferred to, and vested in, the Secretary of Transportation all of the functions vested in the Administrator of the Federal Energy Administration by section 6361(b)(1)(B) of this title.

(Pub. L. 95-91, title III, § 310, Aug. 4, 1977, 91 Stat. 582.)

SUBCHAPTER IV—FEDERAL ENERGY REGULATORY COMMISSION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 6306, 7134, 7136, 7151, 7155, 7298, 7301, 7341 of this title.

§ 7171. Appointment and administration

(a) Federal Energy Regulatory Commission; establishment

There is established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

(b) Composition; term of office; conflict of interest

The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of four years and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years. Not more than three members of the Commission shall be members of the same political party. Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve for more than one year after the date on which his term would otherwise expire under this subsection. Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

(c) Duties and responsibilities of Chairman

The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, (2) the selection, appointment, and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commission may select and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5. The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.

(d) Supervision and direction of members, employees, or other personnel of Commission

In the performance of their functions, the members, employees, or other personnel of the Commission shall not be responsible to or subject to the supervision or direction of any officer, employee, or agent of any other part of the Department.

(e) Designation of acting Chairman; quorum; seal

The Chairman of the Commission may designate any other member of the Commission as Acting Chairman to act in the place and stead of the Chairman during his absence. The Chairman (or the Acting Chairman in the absence of the Chairman) shall preside at all sessions of the Commission and a quorum for the transaction of business shall consist of at least three members present. Each member of the Commission, including the Chairman, shall have one vote. Actions of the Commission shall be determined by a majority vote of the members present. The Commission shall have an official seal which shall be judicially noticed.

(f) Rules

The Commission is authorized to establish such procedural and administrative rules as are necessary to the exercise of its functions. Until changed by the Commission, any procedural and administrative rules applicable to particular functions over which the Commission has jurisdiction shall continue in effect with respect to such particular functions.

(g) Powers of Commission

In carrying out any of its functions, the Commission shall have the powers authorized by the law under which such function is exercised to hold hearings, sign and issue subpenas, administer oaths, examine witnesses, and receive evidence at any place in the United States it may designate. The Commission may, by one or more of its members or by such agents as it may designate, conduct any hearing or other inquiry necessary or appropriate to its functions, except that nothing in this subsection shall be deemed to supersede the provisions of section 556 of title 5 relating to hearing examiners.

(h) Principal office of Commission

The principal office of the Commission shall be in or near the District of Columbia, where its general sessions shall be held, but the Commission may sit anywhere in the United States.

(i) Commission deemed agency; attorney for Commission

For the purpose of section 552b of title 5, the Commission shall be deemed to be an agency. Except as provided in section 518 of title 28, relating to litigation before the Supreme Court, attorneys designated by the Chairman of the Commission may appear for, and represent the Commission in, any civil action brought in connection with any function carried out by the Commission pursuant to this chapter or as otherwise authorized by law.

(j) Annual authorization and appropriation request

In each annual authorization and appropriation request under this chapter, the Secretary shall identify the portion thereof intended for the support of the Commission and include a statement by the Commission (1) showing the amount requested by the Commission in its budgetary presentation to the Secretary and the Office of Management and Budget and (2) an assessment of the budgetary needs of the Commission. Whenever the Commission submits to the Secretary, the President, or the Office of Management and Budget, any legislative recommendation or testimony, or comments on legislation, prepared for submission to Congress, the Commission shall concurrently transmit a copy thereof to the appropriate committees of Congress.

(Pub. L. 95-91, title IV, § 401, Aug. 4, 1977, 91 Stat. 582.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (i) and (j), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7192 of this title.

§ 7172. Jurisdiction of Commission

(a) Transfer of functions from Federal Power Commission

(1) There are transferred to, and vested in, the Commission the following functions of the Federal Power Commission or of any member of the Commission or any officer or component of the Commission:

(A) the investigation, issuance, transfer, renewal, revocation, and enforcement of licenses and permits for the construction, operation, and maintenance of dams, water conduits, reservoirs, powerhouses, transmission lines, or other works for the development and improvement of navigation and for the development and utilization of power across, along, from, or in navigable waters under part I of the Federal Power Act [16 U.S.C. 791a et seq.];

(B) the establishment, review, and enforcement of rates and charges for the transmission or sale of electric energy, including determinations on construction work in progress, under part II of the Federal Power Act [16 U.S.C. 824 et seq.], and the interconnection, under section 202(b), of such Act [16 U.S.C. 824a(b)], of facilities for the generation, transmission, and sale of electric energy (other than emergency interconnection);

(C) the establishment, review, and enforcement of rates and charges for the transportation and sale of natural gas by a producer or gatherer or by a natural gas pipeline or natural gas company under sections 1, 4, 5, and 6 of the Natural Gas Act [15 U.S.C. 717, 717c to 717e];

(D) the issuance of a certificate of public convenience and necessity, including abandonment of facilities or services, and the establishment of physical connections under section 7 of the Natural Gas Act [15 U.S.C. 717f];

(E) the establishment, review, and enforcement of curtailments, other than the establishment and review of priorities for such curtailments, under the Natural Gas Act [15 U.S.C. 717 et seq.]; and

(F) the regulation of mergers and securities acquisition under the Federal Power Act [16 U.S.C. 791a et seq.] and Natural Gas Act [15 U.S.C. 717 et seq.].

(2) The Commission may exercise any power under the following sections to the extent the Commission determines such power to be necessary to the exercise of any function within the jurisdiction of the Commission:

(A) sections 4, 301, 302, 306 through 309, and 312 through 316 of the Federal Power Act [16 U.S.C. 797, 825, 825a, 825e to 825h, 825k to 825o]; and

(B) sections 8, 9, 13 through 17, 20, and 21 of the Natural Gas Act [15 U.S.C. 717g, 717h, 717l to 717p, 717s, 717t].

(b) Transfer of functions from Interstate Commerce Commission

There are transferred to, and vested in, the Commission all functions and authority of the Interstate Commerce Commission or any officer or component of such Commission where the regulatory function establishes rates or charges for the transportation of oil by pipeline or establishes the valuation of any such pipeline.

(c) Consideration of proposals made by Secretary to amend regulations issued under section 753 of title 15; exception

(1) Pursuant to the procedures specified in section 7174 of this title and except as provided in paragraph (2), the Commission shall have jurisdiction to consider any proposal by the Secretary to amend the regulation required to be issued under section 753(a) of title 15 which is required by section 757 or 760a of title 15 to be transmitted by the President to, and reviewed by, each House of Congress, under section 6421 of this title.

(2) In the event that the President determines that an emergency situation of overriding national importance exists and requires the expeditious promulgation of a rule described in paragraph (1), the President may direct the Secretary to assume sole jurisdiction over the promulgation of such rule, and such rule shall be transmitted by the President to, and reviewed by, each House of Congress under section 757 or 760a of title 15, and section 6421 of this title.

(d) Matters involving agency determinations to be made on record after agency hearing

The Commission shall have jurisdiction to hear and determine any other matter arising under any other function of the Secretary—

(1) involving any agency determination required by law to be made on the record after an opportunity for an agency hearing; or

(2) involving any other agency determination which the Secretary determines shall be made on the record after an opportunity for an agency hearing,

except that nothing in this subsection shall require that functions under sections 6213 and 6214 of this title shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(e) Matters assigned by Secretary after public notice and matters referred under section 7174 of this title

In addition to the other provisions of this section, the Commission shall have jurisdiction over any other matter which the Secretary may assign to the Commission after public notice, or which are required to be referred to the Commission pursuant to section 7174 of this title.

(f) Limitation

No function described in this section which regulates the exports or imports of natural gas or electricity shall be within the jurisdiction of the Commission unless the Secretary assigns such a function to the Commission.

(g) Final agency action

The decision of the Commission involving any function within its jurisdiction, other than action by it on a matter referred to it pursuant to section 7174 of this title, shall be final agency action within the meaning of section 704 of title 5 and shall not be subject to further review by the Secretary or any officer or employee of the Department.

(h) Rules, regulations, and statements of policy

The Commission is authorized to prescribe rules, regulations, and statements of policy of general applicability with respect to any function under the jurisdiction of the Commission pursuant to this section.

(Pub. L. 95-91, title IV, § 402, Aug. 4, 1977, 91 Stat. 583.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsecs. (a)(1)(A), (B), (F), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. Parts I and II of the Federal Power Act are classified generally to subchapters I (§ 791a et seq.) and II (§ 824 et seq.), respectively, of chapter 12 of Title 16. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsecs. (a)(1)(E), (F), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2077, 2160, 6303, 7151, 7173, 7174, 7191, 7920, 8220, 8433 of this title.

§ 7173. Initiation of rulemaking procedures before Commission

(a) Proposal of rules, regulations, and statements of policy of general applicability by Secretary and Commission

The Secretary and the Commission are authorized to propose rules, regulations, and statements of policy of general applicability with respect to any function within the jurisdiction of the Commission under section 7172 of this title.

(b) Consideration and final action on proposals of Secretary

The Commission shall have exclusive jurisdiction with respect to any proposal made under subsection (a) of this section, and shall consider and take final action on any proposal made by the Secretary under such subsection in an expeditious manner in accordance with such reasonable time limits as may be set by the Secretary for the completion of action by the Commission on any such proposal.

(c) Utilization of rulemaking procedures for establishment of rates and charges under Federal Power Act and Natural Gas Act

Any function described in section 7172 of this title which relates to the establishment of rates and charges under the Federal Power Act [16 U.S.C. 791a et seq.] or the Natural Gas Act [15 U.S.C. 717 et seq.], may be conducted by rulemaking procedures. Except as provided in subsection (d) of this section, the procedures in such a rulemaking proceeding shall assure full consideration of the issues and an opportunity for interested persons to present their views.

(d) Submission of written questions by interested persons

With respect to any rule or regulation promulgated by the Commission to establish rates and charges for the first sale of natural gas by a producer or gatherer to a natural gas pipeline under the Natural Gas Act [15 U.S.C. 717 et seq.], the Commission may afford any interested person a reasonable opportunity to submit written questions with respect to disputed issues of fact to other interested persons participating in the rulemaking proceedings. The Commission may establish a reasonable time for both the submission of questions and responses thereto.

(Pub. L. 95-91, title IV, § 403, Aug. 4, 1977, 91 Stat. 585.)

References in Text

The Federal Power Act, referred to in subsec. (c), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

The Natural Gas Act, referred to in subsecs. (c) and (d), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

Section Referred to in Other Sections

This section is referred to in section 7174 of this title.

§ 7174. Referral of other rulemaking proceedings to Commission

(a) Notification of Commission of proposed action; public comment

Except as provided in section 7173 of this title, whenever the Secretary proposes to prescribe rules, regulations, and statements of policy of general applicability in the exercise of any function which is transferred to the Secretary under section 7151 or 7155 of this title, he shall notify the Commission of the proposed action. If the Commission, in its discretion, determines within such period as the Secretary may prescribe, that the proposed action may significantly affect any function within the jurisdiction of the Commission pursuant to section 7172(a)(1), (b), and (c)(1) of this title, the Secretary shall immediately refer the matter to the Commission, which shall provide an opportunity for public comment.

(b) Recommendations of Commission; publication

Following such opportunity for public comment the Commission, after consultation with the Secretary, shall either—

(1) concur in adoption of the rule or statement as proposed by the Secretary;

(2) concur in adoption of the rule or statement only with such changes as it may recommend; or

(3) recommend that the rule or statement not be adopted.

The Commission shall promptly publish its recommendations, adopted under this subsection, along with an explanation of the reason for its actions and an analysis of the major comments, criticisms, and alternatives offered during the comment period.

(c) Options of Secretary; final agency action

Following publication of the Commission's recommendations the Secretary shall have the option of—

(1) issuing a final rule or statement in the form initially proposed by the Secretary if the Commission has concurred in such rule pursuant to subsection (b)(1) of this section;

(2) issuing a final rule or statement in amended form so that the rule conforms in all respects with the changes proposed by the Commission if the Commission has concurred in such rule or statement pursuant to subsection (b)(2) of this section; or

(3) ordering that the rule shall not be issued.

The action taken by the Secretary pursuant to this subsection shall constitute a final agency action for purposes of section 704 of title 5.

(Pub. L. 95-91, title IV, § 404, Aug. 4, 1977, 91 Stat. 586.)

Section Referred to in Other Sections

This section is referred to in sections 6263, 7172 of this title.

§ 7175. Right of Secretary to intervene in Commission proceedings

The Secretary may as a matter of right intervene or otherwise participate in any proceeding before the Commission. The Secretary shall comply with rules of procedure of general applicability governing the timing of intervention or participation in such proceeding or activity and, upon intervening or participating therein, shall comply with rules of procedure of general applicability governing the conduct thereof. The intervention or participation of the Secretary in any proceeding or activity shall not affect the obligation of the Commission to assure procedure fairness to all participants.

(Pub. L. 95-91, title IV, § 405, Aug. 4, 1977, 91 Stat. 586.)

§ 7176. Reorganization

For the purposes of chapter 9 of title 5 the Commission shall be deemed to be an independent regulatory agency.

(Pub. L. 95-91, title IV, § 406, Aug. 4, 1977, 91 Stat. 586.)

§ 7177. Access to information

(a) The Secretary, each officer of the Department, and each Federal agency shall provide to the Commission, upon request, such existing information in the possession of the Department or other Federal agency as the Commission determines is necessary to carry out its responsibilities under this chapter.

(b) The Secretary, in formulating the information to be requested in the reports or investigations under section 825c and section 825j of title 16 and section 717i and section 717j of title 15 shall include in such reports and investigations such specific information as requested by the Federal Energy Regulatory Commission and copies of all reports, information, results of investigations and data under said sections shall be furnished by the Secretary to the Federal Energy Regulatory Commission.

(Pub. L. 95-91, title IV, § 407, Aug. 4, 1977, 91 Stat. 587.)

References in Text

This chapter, referred to in subsec. (a), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SUBCHAPTER V—ADMINISTRATIVE PROCEDURES AND JUDICIAL REVIEW

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 6306, 7919, 8411 of this title.

§ 7191. Procedures for issuance of rules, regulations, or orders

(a) Applicability of subchapter II of chapter 5 of title 5

(1) Subject to the other requirements of this subchapter, the provisions of subchapter II of chapter 5 of title 5 shall apply in accordance with its terms to any rule or regulation, or any order having the applicability and effect of a rule (as defined in section 551(4) of title 5), issued pursuant to authority vested by law in, or transferred or delegated to, the Secretary, or required by this chapter or any other Act to be carried out by any other officer, employee, or component of the Department, other than the Commission, including any such rule, regulation, or order of a State, or local government agency or officer thereof, issued pursuant to authority delegated by the Secretary in accordance with this subchapter. If any provision of any Act, the functions of which are transferred, vested, or delegated pursuant to this chapter, provides administrative procedure requirements in addition to the requirements provided in this subchapter, such additional requirements shall also apply to actions under that provision.

(2) Notwithstanding paragraph (1), this subchapter shall apply to the Commission to the same extent this subchapter applies to the Secretary in the exercise of any of the Commission's functions under section 7172(c)(1) of this title or which the Secretary has assigned under section 7172(e) of this title.

(b) Publication of proposed rules, regulations, or orders in Federal Register; statement; minimum comment period; additional notice requirement; availability of exception

(1) In addition to the requirements of subsection (a) of this section, notice of any proposed rule, regulation, or order described in subsection (a) of this section shall be given by publication of such proposed rule, regulation, or order in the Federal Register. Such publication shall be accompanied by a statement of the research, analysis, and other available information in support of, the need for, and the probable effect of, any such proposed rule, regulation, or order. Other effective means of publicity shall be utilized as may be reasonably calculated to notify concerned or affected persons of the nature and probable effect of any such proposed rule, regulation, or order. In each case, a minimum of thirty days following such publication shall be provided for an opportunity to comment prior to promulgation of any such rule, regulation, or order.

(2) Public notice of all rules, regulations, or orders described in subsection (a) of this section which are promulgated by officers of a State or local government agency pursuant to a delegation under this chapter shall be provided by publication of such proposed rules, regulations, or orders in at least two newspapers of statewide circulation. If such publication is not practicable, notice of any such rule, regulation, or order shall be given by such other means as the officer promulgating such rule, regulation, or order determines will reasonably assure wide public notice.

(3) For the purposes of this subchapter; the exception from the requirements of section 553 of title 5 provided by subsection (a)(2) of such section with respect to public property, loans, grants, or contracts shall not be available.

(c) Substantial issue of fact or law or likelihood of substantial impact on Nation's economy, etc.; oral presentation

(1) If the Secretary determines, on his own initiative or in response to any showing made pursuant to paragraph (2) (with respect to a proposed rule, regulation, or order described in subsection (a) of this section) that no substan-

tial issue of fact or law exists and that such rule, regulation, or order is unlikely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, such proposed rule, regulation, or order may be promulgated in accordance with section 553 of title 5. If the Secretary determines that a substantial issue of fact or law exists or that such rule, regulation, or order is likely to have a substantial impact on the Nation's economy or large numbers of individuals or businesses, an opportunity for oral presentation of views, data, and arguments shall be provided.

(2) Any person, who would be adversely affected by the implementation of any proposed rule, regulation, or order who desires an opportunity for oral presentation of views, data, and arguments, may submit material supporting the existence of such substantial issues or such impact.

(3) A transcript shall be kept of any oral presentation with respect to a rule, regulation, or order described in subsection (a) of this section.

(d) Promulgation of rule if accompanied by explanation

Following the notice and comment period, including any oral presentation required by this subsection, the Secretary may promulgate a rule if the rule is accompanied by an explanation responding to the major comments, criticisms, and alternatives offered during the comment period.

(e) Waiver of requirements

The requirements of subsections (b), (c), and (d) of this section may be waived where strict compliance is found by the Secretary to be likely to cause serious harm or injury to the public health, safety, or welfare, and such finding is set out in detail in such rule, regulation, or order. In the event the requirements of this section are waived, the requirements shall be satisfied within a reasonable period of time subsequent to the promulgation of such rule, regulation, or order.

(f) Effects confined to single unit of local government, geographic area within State, or State; hearing or oral presentation

(1) With respect to any rule, regulation, or order described in subsection (a) of this section, the effects of which, except for indirect effects of an inconsequential nature, are confined to—

(A) a single unit of local government or the residents thereof;

(B) a single geographic area within a State or the residents thereof; or

(C) a single State or the residents thereof;

the Secretary shall, in any case where appropriate, afford an opportunity for a hearing or the oral presentation of views, and provide procedures for the holding of such hearing or oral presentation within the boundaries of the unit of local government, geographic area, or State described in paragraphs (A) through (C) of this paragraph as the case may be.

(2) For the purposes of this subsection—

(A) the term "unit of local government" means a county, municipality, town, township, village, or other unit of general government below the State level; and

(B) the term "geographic area within a State" means a special purpose district or other region recognized for governmental purposes within such State which is not a unit of local government.

(3) Nothing in this subsection shall be construed as requiring a hearing or an oral presentation of views where none is required by this section or other provision of law.

(g) Prescription of procedures for State and local government agencies

Where authorized by any law vested, transferred, or delegated pursuant to this chapter, the Secretary may, by rule, prescribe procedures for State or local government agencies authorized by the Secretary to carry out such functions as may be permitted under applicable law. Such procedures shall apply to such agencies in lieu of this section, and shall require that prior to taking any action, such agencies shall take steps reasonably calculated to provide notice to persons who may be affected by the action, and shall afford an opportunity for presentation of views (including oral presentation of views where practicable) within a reasonable time before taking the action.

(Pub. L. 95-91, title V, § 501, Aug. 4, 1977, 91 Stat. 587.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a), (b)(2), (g), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7193, 7194, 8513 of this title.

§ 7192. Judicial review

(a) Agency action

Judicial review of agency action taken under any law the functions of which are vested by law in, or transferred or delegated to the Secretary, the Commission or any officer, employee, or component of the Department shall, notwithstanding such vesting, transfer, or delegation, be made in the manner specified in or for such law.

(b) Review by district court of United States; removal

Notwithstanding the amount in controversy, the district courts of the United States shall have exclusive original jurisdiction of all other cases or controversies arising exclusively under this chapter, or under rules, regulations, or orders issued exclusively thereunder, other than any actions taken to implement or enforce any rule, regulation, or order by any officer of a State or local government agency under this chapter, except that nothing in this section affects the power of any court of competent jurisdiction to consider, hear, and determine in any proceeding before it any issue raised by way of defense (other than a defense based on the unconstitutionality of this chapter or the validity of action taken by any agency under this chapter). If in any such proceeding an issue by way of defense is raised based on the unconstitutionality of this chapter or the validity of agency action under this chapter, the case shall be subject to removal by either party to a district court of the United States in accordance with the applicable provisions of chapter 89 of title 28. Cases or controversies arising under any rule, regulation, or order of any officer of a State or local government agency may be heard in either (A) any appropriate State court, or (B) without regard to the amount in controversy, the district courts of the United States.

(c) Litigation supervision by Attorney General

Subject to the provisions of section 7171(i) of this title and notwithstanding any other law, the litigation of the Department shall be subject to the supervision of the Attorney General pursuant to chapter 31 of title 28. The Attorney General may authorize any attorney of the Department to conduct any civil litigation of the Department in any Federal court except the Supreme Court.

(Pub. L. 95-91, title V, § 502, Aug. 4, 1977, 91 Stat. 589.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6303, 8220, 8412, 8433, 8434 of this title.

§ 7193. Remedial orders

(a) Violations of rules, regulations, or orders promulgated pursuant to Emergency Petroleum Allocation Act of 1973

If upon investigation the Secretary or his authorized representative believes that a person has violated any regulation, rule, or order described in section 7191(a) of this title promulgated pursuant to the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.], he may issue a remedial order to the person. Each remedial order shall be in writing and shall describe with particularity the nature of the violation, including a reference to the provision of such rule, regulation, or order alleged to have been violated. For purposes of this section "person" includes any individual, association, company, corporation, partnership, or other entity however organized.

(b) Notice of intent to contest; final order not subject to review

If within thirty days after the receipt of the remedial order issued by the Secretary, the person fails to notify the Secretary that he intends to contest the remedial order, the remedial order shall become effective and shall be deemed a final order of the Secretary and not subject to review by any court or agency.

(c) Notice of contestation to Commission; stay; hearing; cross examination; final order; enforcement and review

If within thirty days after the receipt of the remedial order issued by the Secretary, the person notifies the Secretary that he intends to contest a remedial order issued under subsection (a) of this section, the Secretary shall immediately advise the Commission of such notification. Upon such notice, the Commission shall stay the effect of the remedial order, unless the Commission finds the public interest requires immediate compliance with such remedial order. The Commission shall, upon request, afford an opportunity for a hearing, including, at a minimum, the submission of briefs, oral or documentary evidence, and oral arguments. To the extent that the Commission in its discretion determines that such is required for a full and true disclosure of the facts, the Commission shall afford the right of cross examination. The Commission shall thereafter issue an order, based on findings of fact, affirming, modifying, or vacating the Secretary's remedial order, or directing other appropriate relief, and such order shall, for the purpose of judicial review, constitute a final agency action, except that enforcement and other judicial review of such action shall be the responsibility of the Secretary.

(d) Time limits

The Secretary may set reasonable time limits for the Commission to complete action on a proceeding referred to it pursuant to this section.

(e) Effect on procedural action taken by Secretary prior to issuance of initial remedial order

Nothing in preceding provisions of this section shall be construed to affect any procedural action taken by the Secretary prior to or incident to initial issuance of a remedial order which is the subject of the hearing provided in preceding provisions of this section, but such procedures shall be reviewable in the hearing.

(f) Savings provision

The provisions of preceding provisions of this section shall be applicable only with respect to proceedings initiated by a notice of probable violation issued after October 1, 1977.

(g) Retroactive application; marketing of petroleum products

With respect to any person whose sole petroleum industry operation relates to the marketing of petroleum products, the Secretary or any person acting on his behalf may not exercise discretion to maintain a civil action (other than an action for injunctive relief) or issue a remedial order against such person for any violation of any rule or regulation if—

(1) such civil action or order is based on a retroactive application of such rule or regulation or is based upon a retroactive interpretation of such rule or regulation; and

(2) such person relied in good faith upon rules, regulations, or ruling in effect on the date of the violation interpreting such rules or regulations.

(Pub. L. 95-91, title V, § 503, Aug. 4, 1977, 91 Stat. 590, amended Pub. L. 95-620, title VIII, § 805, Nov. 9, 1978, 92 Stat. 3348.)

References in Text

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which is classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 751 of Title 15 and Tables.

Amendments

1978—Subsecs. (e) and (f). Pub. L. 95-620, § 805(b), inserted "preceding provisions of" preceding "this section".

Subsec. (g). Pub. L. 95-620, § 805(a), added subsec. (g).

Effective Date of 1978 Amendment

Amendment by Pub. L. 95-620 effective 180 days after Nov. 9, 1978, see section 901 of Pub. L. 95-620, set out as an Effective Date note under section 8301 of this title.

§ 7194. Requests for adjustments

(a) The Secretary or any officer designated by him shall provide for the making of such adjustments to any rule, regulation or order described in section 7191(a) of this title issued under the Federal Energy Administration Act [15 U.S.C. 761 et seq.], the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.], the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 791 et seq.], or the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.], consistent with the other purposes of the relevant Act, as may be necessary to prevent special hardship, inequity, or unfair distribution of burdens, and shall by rule, establish procedures which are available to any person for the purpose of seeking an interpretation, modification, or recission of, exception to, or exemption from, such rule, regulation or order. The Secretary or any such officer shall additionally insure that each decision on any application or petition requesting an adjustment shall specify the standards of hardship, inequity, or unfair distribution of burden by which any disposition was made, and the specific application of such standards to the facts contained in any such application or petition.

(b)(1) If any person is aggrieved or adversely affected by a denial of a request for adjustment under subsection (a) of this section such person may request a review of such denial by the Commission and may obtain judicial review in accordance with this subchapter when such a denial becomes final.

(2) The Commission shall, by rule, establish appropriate procedures, including a hearing when requested, for review of a denial. Action by the Commission under this section shall be considered final agency action within the meaning of section 704 of title 5 and shall not be subject to further review by the Secretary or any officer or employee of the Department. Litigation involving judicial review of such action shall be the responsibility of the Secretary.

(Pub. L. 95-91, title V, § 504, Aug. 4, 1977, 91 Stat. 590.)

References in Text

The Federal Energy Administration Act, referred to in subsec. (a), is Pub. L. 93-275, May 7, 1974, 88 Stat. 96, as amended, which is classified generally to chapter 16B (§ 761 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 761 of Title 15 and Tables.

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (a), is Pub. L. 93-159, Nov. 27, 1973, 87 Stat. 628, as amended, which is classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 751 of Title 15 and Tables.

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a), is Pub. L. 93-319, June 22, 1974, 88 Stat. 246, as amended, which is classified principally to chapter 16C (§ 791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

The Energy Policy and Conservation Act, referred to in subsec. (a), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

§ 7195. Omitted

Codification

Section, Pub. L. 95-91, title V, § 505, Aug. 4, 1977, 91 Stat. 591, which required the Secretary to submit a report to Congress within 1 year after Oct. 1, 1977, concerning the actions taken to implement section 7191 of this title, was omitted from the Code as executed.

SUBCHAPTER VI—ADMINISTRATIVE PROVISIONS

Part A—Conflict of Interest Provisions

§ 7211. Definitions

(a) Supervisory employees

For the purposes of this subchapter, the following officers or employees of the Department are supervisory employees:

(1) an individual holding a position in the Department at GS-16, GS-17, or GS-18 of the General Schedule or at level I, II, III, IV, or V of the Executive Schedule, or who is in a position at a comparable or higher level on any other Federal pay scale, or who holds a position pursuant to subsection (b) or (d) of section 7231 of this title, or who is an expert or consultant employed pursuant to section 3109 of title 5 for more than ninety days in any calendar year and receives compensation at an annual rate equal to or in excess of the minimum rate prescribed for individuals at GS-16 of the General Schedule;

(2) the Director or Deputy Director of any State, regional, district, local, or other field office maintained pursuant to section 7260 of this title;

(3) an employee or officer who has primary responsibility for the award, review, modification, or termination of any grant, contract, award, or fund transfer within the authority of the Secretary; and

(4) any other employee or officer who, in the judgment of the Secretary, exercises suf-

ficient decisionmaking or regulatory authority so that the provisions of this subchapter should apply to such individual.

(b) Energy concern

For purposes of this subchapter the term "energy concern" includes—

(1) any person significantly engaged in the business of developing, extracting, producing, refining, transporting by pipeline, converting into synthetic fuel, distributing, or selling minerals for use as an energy source, or in the generation or transmission of energy from such minerals or from wastes or renewable resources;

(2) any person holding an interest in property from which coal, natural gas, crude oil, nuclear material or a renewable resource is commercially produced or obtained;

(3) any person significantly engaged in the business of producing, generating, transmitting, distributing, or selling electric power;

(4) any person significantly engaged in development, production, processing, sale, or distribution of nuclear materials, facilities, or technology;

(5) any person—

(A) significantly engaged in the business of conducting research, development, or demonstration related to an activity described in paragraph (1), (2), (3), or (4); or

(B) significantly engaged in conducting such research, development or demonstration with financial assistance under any Act the functions of which are vested in or delegated or transferred to the Secretary or the Department.

(c) Publication of list of energy concerns

(1) The Secretary shall prepare and periodically publish a list of persons which the Secretary has determined to be energy concerns as defined by subsection (b) of this section. The absence of any particular energy concern from such list shall not exempt any officer or employee from the requirements of sections 7212 through 7216 of this title.

(2) At the request of any officer or employee of the Department the Secretary shall determine whether any person is an energy concern as defined by subsection (b) of this section.

(d) Knowledge of interest, status, or position

For the purposes of sections 7212(a), 7213(a), 7215(a), and 7216 of this title an individual shall be deemed to have known of or knowingly committed a described act or to have known of or knowingly held a described interest, status, or position if the employee knew or should have known of such act, interest, status, or position. For the purposes of section 7212(a) of this title an officer or employee shall be deemed to have known of or knowingly held an interest in an energy concern if such interest is sold or otherwise transferred to his spouse or dependent while such officer or employee is, or within six months prior to the date on which such officer or employee becomes, an officer or employee of the Department. The placing of an interest under a trust by an individual shall not satisfy the requirement of section 7212 of this title or waive the requirements of section 7213 of this title as to such interest unless none of the interests placed under such trust by such individual consists of known financial interests in any energy concern.

(Pub. L. 95-91, title VI, § 601, Aug. 4, 1977, 91 Stat. 591.)

REFERENCES IN TEXT

The General and Executive Schedules, referred to in subsec. (a)(1), are set out under section 5332 and in subchapter II (§ 5311 et seq.) of chapter 53 of Title 5, Government Organization and Employees, respectively.

§ 7212. Divestiture of energy holdings by supervisory employees

(a) Prohibitions with respect to energy holdings

No supervisory employee shall knowingly receive compensation from, or hold any official relation with, any energy concern, or own stocks or bonds of any energy concern, or have any pecuniary interest therein.

(b) Compliance by transferred personnel; notice

Personnel transferred to the Department pursuant to section 7291 of this title shall have six months to comply with the provisions of subsection (a) of this section with respect to prohibited property holdings. Any person transferred pursuant to section 7291 of this title shall notify the Secretary or his designee of all known circumstances which would be violative of the restrictions set forth in subsection (a) of this section not later than thirty days after the date of such transfer, as determined by the Director of the Office of Personnel Management.

(c) Waiver requirements

Where exceptional hardship would result, or where the interest is a pension, insurance or other similarly vested interest, the Secretary is authorized to waive the requirements of this section for such period as he may prescribe with respect to any supervisory employee covered. Such waiver shall:

(1) be published in the Federal Register;

(2) contain a finding by the Secretary that exceptional hardship would result or that there is such a vested interest; and

(3) state the period of the waiver and indicate the actions taken to minimize or eliminate the conflict of interest during such period.

(d) Disclosure

Any supervisory employee who continues to receive income from any energy concern, or continues to own property directly or indirectly in any such concern shall disclose such income or ownership pursuant to section 7213 of this title.

(Pub. L. 95-91, title VI, § 602, Aug. 4, 1977, 91 Stat. 592; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784.)

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" was substituted for "United States Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7211, 7217, 7218 of this title.

§ 7213. Disclosure of energy assets

(a) Report; contents; time to file; form and manner

Each individual who at any time during the calendar year serves as an officer or employee of the Department shall disclose to the Secretary—

(1) the amount of income and the identity of the source of income knowingly received by such individual, his spouse, or dependent from any energy concern, and

(2) the identity and value of interest knowingly held in any such concern

during such calendar year. Such report shall be filed not later than thirty days after commencing service in the Department and on May 15 following each such calendar year. Each report under this subsection shall be in such form and manner as the Secretary shall, by rule, prescribe.

(b) Duties of Secretary

The Secretary shall—

(1) act, within ninety days after October 1, 1977, by rule to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers and employees of such statements, for the recording by the reviewing official of any action taken to eliminate any potential conflict, and for the signing of such statement by the reviewing official; and

(2) include, as part of the report made pursuant to section 7267 of this title, a report with respect to such disclosures and the actions taken in regard thereto during the preceding calendar year.

(c) Identification of exempt positions

In the rules prescribed in subsection (b) of this section, the Secretary shall identify specific positions, or classes thereof, within the Department which are of a nonregulatory or nonpolicymaking nature at or below GS-12 of the General Schedule and shall exempt such positions and the individuals occupying those positions from the requirements of this section.

(d) Report of employee or officer whose employment ceased during any calendar year; time to file

Each individual required to file a report under this section who during any calendar year ceases to be an officer or employee of the Department shall file a report covering that portion of such year beginning on January 1 and ending on the date on which he ceases to be such an officer or employee, and such report shall be filed with the Secretary not later than thirty days after such date.

(e) Extensions of time for filing

The Secretary may grant one or more reasonable extensions of time for filing any such report under this section but the total of such extensions shall not exceed ninety days.

(Pub. L. 95-91, title VI, § 603, Aug. 4, 1977, 91 Stat. 593.)

REFERENCES IN TEXT

The General Schedule, referred to in subsec. (c), is set out under section 5332 of Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7211, 7212, 7217, 7218 of this title.

§ 7214. Report on prior employment; contents; exceptions

(a) Within sixty days of becoming a supervisory employee of the department, each supervisory employee shall file with the Secretary, in such form and manner as the Secretary shall prescribe, a report identifying any energy concern which paid the reporting individual compensation in excess of $2,500 in any of the previous five calendar years. The individual shall include in the report—

(1) the name and address of each source of such compensation;

(2) the period during which the reporting individual was receiving such compensation from each such source;

(3) the title of each position or relationship the reporting individual held with each compensating source; and

(4) a brief description of the duties performed or services rendered by the reporting individual in each such position.

(b) Subsection (a) of this section shall not require any individual to include in such report any information which is considered confidential as a result of a privileged relationship, recognized by law, between such individual and any person; nor shall it require an individual to report any information with respect to any person for whom services were provided by any firm or association of which such individual was a member, partner, or employee unless such individual was directly involved in the provision of such services.

(Pub. L. 95-91, title VI, § 604, Aug. 4, 1977, 91 Stat. 594.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7211, 7217, 7218 of this title.

§ 7215. Postemployment prohibitions and reporting requirements

(a)(1) Except as provided in paragraph (2) or (3), no supervisory employee shall, within one year after his employment with the Department has ceased, knowingly—

(A) make any appearance or attendance before, or

(B) make any written or oral communication to, and with the intent to influence the action of;

the Department if such appearance or communication relates to any particular matter which is pending before the Department.

(2) Paragraph (1) shall not apply to any appearance, attendance, or communication made, during any part of such year that such individual is employed by, and is on behalf of, the United States; nor shall it apply to an appearance or communication by the former supervisory employee where such appearance or communication is made in response to a subpena, or concerns any matter of an exclusively personal and individual nature such as pension benefits.

(3) Paragraph (1) shall not prohibit a former supervisory employee with outstanding scientific or technological qualifications from making any appearance, attendance, or written or oral communication in connection with a particular matter in a scientific or technological field if the Secretary or the Commission, as the case may be, makes a certification in writing, published in the Federal Register, that the national interest would be served by such action or appearance by such former supervisory employee.

(b)(1) Each former supervisory employee of the Department shall file with the Secretary, in such form and manner as the Secretary shall prescribe, not later than May 15 of the first and second calendar years following the first full year in which such person ceased to be an officer or employee of the Department, a report describing any employment with any energy concern during the period to which such report relates, including any employment as a consultant, agent, attorney, or otherwise, except that the requirements of this subsection shall not apply to any former supervisory employee who, at the time such employment with the Department ceases, has any contract, promise, or other agreement with respect to future employment with any energy concern, if (A) the former supervisory employee describes such agreement in any report filed within thirty days after the individual ceases to be an employee of the Department, and (B) the former supervisory employee amends the report by May 15 of either of the next two years during which he has accepted employment with another energy concern.

(2) Each report filed pursuant to paragraph (1) of this subsection shall contain the name and address of the person filing the report, the name and address of the energy concern with which he holds or will hold employment during any portion of the period covered by the report, a brief description of his responsibilities for the energy concern, the dates of his employment, and such other pertinent information as the Secretary may require.

(Pub. L. 95-91, title VI, § 605, Aug. 4, 1977, 91 Stat. 594.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7211, 7217, 7218 of this title.

§ 7216. Participation prohibitions of former supervisory employees

(a) Department proceedings in which former employer is substantially, directly, or materially involved

For a period of one year after terminating any employment with any energy concern, no supervisory employee shall knowingly participate in any Department proceeding in which his former employer is substantially, directly, or materially involved, other than in a rulemaking proceeding which has a substantial effect on numerous energy concerns.

(b) Department proceedings for which former employee had direct responsibility or in which former employee participated substantially or personally

For a period of one year after commencing service in the Department, no supervisory employee shall knowingly participate in any Department proceeding for which, within the previous five years, he had direct responsibility, or in which he participated substantially or personally, while in the employment of any energy concern.

(c) Waiver

Whenever the Secretary makes a written finding as to a particular supervisory employee that the application of a particular restriction or requirement imposed by subsection (a) or (b) of this section in a particular circumstance would work an exceptional hardship upon such supervisory employee or would be contrary to the national interest, the Secretary may waive in writing such restriction or requirement as to such supervisory employee. Any waiver made by the Secretary of a restriction imposed under subsection (b) of this section shall also be filed with any record of the Department proceeding as to which the waiver for purposes of participation is granted. No such waiver shall in any instance constitute a waiver of the requirements of section 207 of title 18.

(Pub. L. 95-91, title VI, § 606, Aug. 4, 1977, 91 Stat. 595.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7211, 7217, 7218 of this title.

§ 7217. Procedures applicable to reports

(a) Availability of reports to public; fee; time

(1) Except as provided in this section, the Secretary shall make each report filed with him under section 7213, 7214, or 7215 of this title available to the public within thirty days after the receipt of such report, and shall provide a copy of any such report to any person upon written request.

(2) The Secretary may require any person receiving a copy of any report to pay a reasonable fee in any amount which the Secretary finds necessary to recover the cost of reproduction or mailing of such report excluding any salary of any employee involved in such reproduction or mailing. The Secretary may furnish a copy of any such report without charge, or at a reduced charge, if he determines that waiver or reduc-

tion of the fee is in the public interest because furnishing the information primarily benefits the public.

(3) Any report received by the Secretary shall be held in his custody and made available to the public for a period of six years after receipt by the Secretary of such report. After such six-year period, the Secretary shall destroy any such report.

(b) Director of Office of Personnel Management audit of reports

The Director of the Office of Personnel Management shall, under such regulations as are prescribed by the Director of the Office of Personnel Management, conduct, on a random basis, a sufficient number of audits of the reports filed pursuant to sections 7213, 7214, and 7215 of this title, as deemed necessary and appropriate in order to monitor the accuracy and completeness of such reports.

(c) Findings and waivers file; availability to public

The Secretary shall maintain a file containing all findings and waivers made by him pursuant to section 7212(c), 7213(c), 7215(a), or 7216(c) of this title and all such findings and waivers shall be available for public inspection and copying at all times during regular working hours in accordance with the procedures of this section.

(Pub. L. 95-91, title VI, § 607, Aug. 4, 1977, 91 Stat. 596; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784.)

TRANSFER OF FUNCTIONS

"Director of the Office of Personnel Management" was substituted for "Civil Service Commission" and "Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

§ 7218. Sanctions

(a) Criminal penalty

Any individual who is subject to, and knowingly violates, section 7213 of this title shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(b) Civil penalty

Any individual who violates section 7212, 7213, 7214, 7215, or 7216 of this title shall be subject to a civil penalty, assessed by the Secretary in accordance with applicable law or by any district court of the United States, not to exceed $10,000 for each violation.

(c) Violations of postemployment prohibitions and reporting requirements considered in deciding outcome of Department proceedings

Notwithstanding any penalty imposed under subsection (a) of this section, any violation of section 7215(a) of this title shall be taken into consideration in deciding the outcome of any Department proceeding in connection with which the prohibited appearance, attendance, communication, or submission was made.

(d) Effect on operation of sections 207 and 208 of title 18

Nothing in this title shall be deemed to limit the operation of section 207 or section 208 of title 18. Nor shall any waiver issued pursuant to section 7212(c) of this title constitute a waiver of the requirements of such provision.

(Pub. L. 95-91, title VI, § 608, Aug. 4, 1977, 91 Stat. 596.)

PART B—PERSONNEL PROVISIONS

§ 7231. Officers and employees

(a) Authority of Secretary to appoint and fix compensation

In the performance of his functions the Secretary is authorized to appoint and fix the compensation of such officers and employees, including attorneys, as may be necessary to carry out such functions. Except as otherwise provided in this section, such officers and employees shall be appointed in accordance with the civil service laws and their compensation fixed in accordance with title 5.

(b) Appointment of scientific, engineering, etc., personnel without regard to civil service laws; compensation; termination of authority

(1) Subject to the limitations provided in paragraph (2) and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than three hundred eleven of the scientific, engineering, professional, and administrative personnel of the department without regard to the civil service laws, and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5.

(2) The Secretary's authority under this subsection to appoint an individual to such a position without regard to the civil service laws shall cease—

(A) when a person appointed, within four years after October 1, 1977, to fill such position under paragraph (1) leaves such position, or

(B) on the day which is four years after such date,

whichever is later.

(c) Placement of GS-16, GS-17, and GS-18 positions without regard to section 3324 of title 5; termination of authority

(1) Subject to the provisions of chapter 51 of title 5 but notwithstanding the last two sentences of section 5108(a) of such title, the Secretary may place at GS-16, GS-17, and GS-18, not to exceed one hundred seventy-eight positions of the positions subject to the limitation of the first sentence of section 5108(a) of such title.

(2) Appointments under this subsection may be made without regard to the provisions of sections 3324 of title 5, relating to the approval by the Director of the Office of Personnel Management of appointments under GS-16, GS-17, and GS-18 if the individual placed in such position is an individual who is transferred in connection with a transfer of functions under this

chapter and who, immediately before October 1, 1977, held a position and duties comparable to those of such position.

(3) The Secretary's authority under this subsection with respect to any position shall cease when the person first appointed to fill such position leaves such position.

(d) Appointment of additional scientific, engineering, etc., personnel without regard to civil service laws; compensation

In addition to the number of positions which may be placed at GS-16, GS-17, and GS-18 under section 5108 of title 5, under existing law, or under this chapter, and to the extent the Secretary deems such action necessary to the discharge of his functions, he may appoint not more than two hundred of the scientific, engineering, professional, and administrative personnel without regard to the civil service laws and may fix the compensation of such personnel not in excess of the maximum rate payable for GS-18 of the General Schedule under section 5332 of title 5.

(e) Determination of maximum aggregate number of positions

For the purposes of determining the maximum aggregate number of positions which may be placed at GS-16, GS-17, or GS-18 under section 5108(a) of title 5, 63 percent of the positions established under subsections (b) and (c) of this section shall be deemed GS-16 positions, 25 percent of such positions shall be deemed GS-17 positions, and 12 percent of such positions shall be deemed GS-18.

(Pub. L. 95-91, title VI, § 621, Aug. 4, 1977, 91 Stat. 596; 1978 Reorg. Plan No. 2, § 102, eff. Jan. 1, 1979, 43 F.R. 36037, 92 Stat. 3784.)

References in Text

The civil service laws, referred to in subsecs. (a), (b)(1), (2), (d), are set out in Title 5, Government Organization and Employees. See, particularly, section 3301 et seq. of that title.

GS-16, GS-17, and GS-18, referred to in subsecs. (b)(1), (c)(1), (2), (d), and (e), are contained in the General Schedule which is set out under section 5332 of Title 5, Government Organization and Employees.

This chapter, referred to in subsecs. (c)(2), (d), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

Transfer of Functions

"Director of the Office of Personnel Managment" was substituted for "Civil Service Commission" pursuant to Reorg. Plan No. 2 of 1978, § 102, 43 F.R. 36037, 92 Stat. 3783, set out under section 1101 of Title 5, Government Organization and Employees, which transferred all functions vested by statute in the United States Civil Service Commission to the Director of the Office of Personnel Management (except as otherwise specified), effective Jan. 1, 1979, as provided by section 1-102 of Ex. Ord. No. 12107, Dec. 28, 1978, 44 F.R. 1055, set out under section 1101 of Title 5.

Section Referred to in Other Sections

This section is referred to in section 7211 of this title.

§ 7232. Senior positions

In addition to those positions created by subchapter II of this chapter, there shall be within the Department fourteen additional officers in positions authorized by section 5316 of title 5 who shall be appointed by the Secretary and who shall perform such functions as the Secretary shall prescribe from time to time.

(Pub. L. 95-91, title VI, § 622, Aug. 4, 1977, 91 Stat. 597.)

§ 7233. Experts and consultants

The Secretary may obtain services as authorized by section 3109 of title 5, at rates not to exceed the daily rate prescribed for grade GS-18 of the General Schedule under section 5332 of title 5 for persons in Government service employed intermittently.

(Pub. L. 95-91, title VI, § 623, Aug. 4, 1977, 91 Stat. 598.)

§ 7234. Advisory committees

(a) The Secretary is authorized to establish in accordance with the Federal Advisory Committee Act such advisory committees as he may deem appropriate to assist in the performance of his functions. Members of such advisory committees, other than full-time employees of the Federal Government, while attending meetings of such committees or while otherwise serving at the request of the Secretary while serving away from their homes or regular places of business, may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for individuals in the Government serving without pay.

(b) Section 776 of title 15 shall be applicable to advisory committees chartered by the Secretary, or transferred to the Secretary or the Department under this chapter, except that where an advisory committee advises the Secretary on matters pertaining to research and development, the Secretary may determine that such meeting shall be closed because it involves research and development matters and comes within the exemption of section 552b(c)(4) of title 5.

(Pub. L. 95-91, title VI, § 624, Aug. 4, 1977, 91 Stat. 598.)

References in Text

The Federal Advisory Committee Act, referred to in subsec. (a), is Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in the Appendix to Title 5, Government Organization and Employees.

This chapter, referred to in subsec. (b), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

Terminaton of Advisory Committees

Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5588 of this title.

§ 7235. Armed services personnel

(a) The Secretary is authorized to provide for participation of Armed Forces personnel in carrying out functions authorized to be performed, on August 4, 1977, in the Energy Research and Development Administration and under chapter 641 of title 10. Members of the Armed Forces may be detailed for service in the Department by the Secretary concerned (as such term is defined in section 101 of such title) pursuant to cooperative agreements with the Secretary.

(b) The detail of any personnel to the Department under this section shall in no way affect status, office, rank, or grade which officers or enlisted men may occupy or hold or any emolument, perquisite, right, privilege, or benefit incident to, or arising out of, such status, office, rank, or grade. A member so detailed shall not be subject to direction or control by his armed force, or any officer thereof, directly or indirectly, with respect to the responsibilities exercised in the position to which detailed.

(Pub. L. 95-91, title VI, § 625, Aug. 4, 1977, 91 Stat. 598, amended Pub. L. 95-509, title II, § 210, Oct. 24, 1978, 92 Stat. 1779.)

AMENDMENTS

1978—Subsec. (b). Pub. L. 95-509 deleted requirement that a detailed member be charged to the limitations applicable to the Department and prohibition of such member from being charged to any statutory or other limitation or strengths applicable to the Armed Forces.

PART C—GENERAL ADMINISTRATIVE PROVISIONS

§ 7251. General authority

To the extent necessary or appropriate to perform any function transferred by this chapter, the Secretary or any officer or employee of the Department may exercise, in carrying out the function so transferred, any authority or part thereof available by law, including appropriation Acts, to the official or agency from which such function was transferred.

(Pub. L. 95-91, title VI, § 641, Aug. 4, 1977, 91 Stat. 598.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7252. Delegation

Except as otherwise expressly prohibited by law, and except as otherwise provided in this chapter, the Secretary may delegate any of his functions to such officers and employees of the Department as he may designate, and may authorize such successive redelegations of such functions within the Department as he may deem to be necessary or appropriate.

(Pub. L. 95-91, title VI, § 642, Aug. 4, 1977, 91 Stat. 599.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7253. Reorganization

The Secretary is authorized to establish, alter, consolidate or discontinue such organizational units or components within the Department as he may deem to be necessary or appropriate. Such authority shall not extend to the abolition of organizational units or components established by this chapter, or to the transfer of functions vested by this chapter in any organizational unit or component.

(Pub. L. 95-91, title VI, § 643, Aug. 4, 1977, 91 Stat. 599.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7254. Rules and regulations

The Secretary is authorized to prescribe such procedural and administrative rules and regulations as he may deem necessary or appropriate to administer and manage the functions now or hereafter vested in him.

(Pub. L. 95-91, title VI, § 644, Aug. 4, 1977, 91 Stat. 599.)

§ 7255. Subpoena

For the purpose of carrying out the provisions of this chapter, the Secretary, or his duly authorized agent or agents, shall have the same powers and authorities as the Federal Trade Commission under section 49 of title 15 with respect to all functions vested in, or transferred or delegated to, the Secretary or such agents by this chapter. For purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978 [15 U.S.C. 3301 et seq.], the Commission shall have the same powers and authority as the Secretary has under this section.

(Pub. L. 95-91, title VI, § 645, Aug. 4, 1977, 91 Stat. 599, amended Pub. L. 95-621, title V, § 508(a), Nov. 9, 1978, 92 Stat. 3408.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

The Natural Gas Policy Act of 1978, referred to in text, is Pub. L. 95-621, Nov. 9, 1978, 92 Stat. 3350, which is classified generally to chapter 60 (§ 3301 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of Title 15 and Tables.

AMENDMENTS

1978—Pub. L. 95-621 added provision giving the Commission the same powers and authority as the Secretary under this section for purposes of carrying out its responsibilities under the Natural Gas Policy Act of 1978.

§ 7256. Contracts, leases, etc., with public agencies and private organizations and persons

(a) The Secretary is authorized to enter into and perform such contracts, leases, cooperative agreements, or other similar transactions with public agencies and private organizations and persons, and to make such payments (in lump sum or installments, and by way of advance or reimbursement) as he may deem to be necessary or appropriate to carry out functions now or hereafter vested in the Secretary.

(b) Notwithstanding any other provision of this subchapter, no authority to enter into contracts or to make payments under this subchapter shall be effective except to such extent or in such amounts as are provided in advance in appropriation Acts.

(Pub. L. 95-91, title VI, § 646, Aug. 4, 1977, 91 Stat. 599.)

SMALL BUSINESS CONCERNS PARTICIPATION IN PROGRAMS FUNDED BY DEPARTMENT OF ENERGY ACT OF 1978—CIVILIAN APPLICATIONS; REPORT TO CONGRESSIONAL COMMITTEES

Pub. L. 95-238, title II, § 204, Feb. 25, 1978, 92 Stat. 59, provided that:

"(a) In carrying out the programs for which funds are authorized by this Act [see Tables Volume for classification of this Act to the Code], the Secretary of Energy shall provide a realistic and adequate opportunity for small business concerns to participate in such programs to the optimum extent feasible consistent with the size and nature of the projects and activities involved.

"(b) At least once every six months, or upon request, the Secretary of Energy shall submit to the appropriate committees of the House of Representatives and the Senate a full report on the actions taken in carrying out subsection (a) during the preceding six months, including the extent to which small business concerns are participating in the programs involved and in projects and activities of various types and sizes within each such program, and indicating the steps currently being taken to assure such participation in the future."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7141 of this title.

§ 7257. Acquisition, construction, etc., of laboratories, research and testing sites, etc.

The Secretary is authorized to acquire (by purchase, lease, condemnation, or otherwise), construct, improve, repair, operate, and maintain laboratories, research and testing sites and facilities, quarters and related accommodations for employees and dependents of employees of the Department, personal property (including patents), or any interest therein, as the Secretary deems necessary; and to provide by contract or otherwise for eating facilities and other necessary facilities for the health and welfare of employees of the Department at its installations and purchase and maintain equipment therefor.

(Pub. L. 95-91, title VI, § 647, Aug. 4, 1977, 91 Stat. 599.)

TERMINATION OR CHANGES IN ACTIVITIES OF GOVERNMENT-OWNED AND CONTRACTOR-OPERATED FACILITIES, NATIONAL LABORATORIES, ETC.; REPORTS BY SECRETARY OF ENERGY CONCERNING PROPOSALS PRIOR TO IMPLEMENTATION; CONTENTS; SUBMISSION DATE

Pub. L. 95-238, title I, § 104(c), Feb. 25, 1978, 92 Stat. 53, provided that:

"As part of the Department of Energy's responsibility to keep the Congress fully and currently informed, the Secretary shall make the following reports:

"(i) any proposal by the Secretary of the Department of Energy to terminate or make major changes in activities of the Government-owned and contractor-operated facilities, the national laboratories, energy research centers and the operations offices managing such laboratories, shall not be implemented until the Secretary transmits the proposal, together with all pertinent data, to the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate, and waits a period of thirty calendar days (not including any day on which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain) from the date on which such report is received by such committees; and

"(ii) by January 31, 1978, the Secretary shall file a full and complete report on each such proposal which he has implemented, as described in the preceding paragraph, and any major program structure change with the Committee on Science and Technology of the House of Representatives and the Committee on Energy and Natural Resources of the Senate."

§ 7258. Facilities construction

(a) Employees and dependents stationed at remote locations

As necessary and when not otherwise available, the Secretary is authorized to provide for, construct, or maintain the following for employees and their dependents stationed at remote locations:

(1) Emergency medical services and supplies;

(2) Food and other subsistence supplies;

(3) Messing facilities;

(4) Audio-visual equipment, accessories, and supplies for recreation and training;

(5) Reimbursement for food, clothing, medicine, and other supplies furnished by such employees in emergencies for the temporary relief of distressed persons;

(6) Living and working quarters and facilities; and

(7) Transportation of schoolage dependents of employees to the nearest appropriate educational facilities.

(b) Medical treatment at reasonable prices

The furnishing of medical treatment under paragraph (1) of subsection (a) of this section and the furnishing of services and supplies under paragraphs (2) and (3) of subsection (a) of this section shall be at prices reflecting reasonable value as determined by the Secretary.

(c) Use of reimbursement proceeds

Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary to pay directly the cost of such work or services, to repay or make advances to appropriations of funds which will initially bear all or a part of such cost, or to refund excess sums when necessary. Such payments may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 7263 of this title, and used under the law governing such fund, if the fund is available for use by the Department for performing the work or services for which payment is received.

(Pub. L. 95-91, title VI, § 648, Aug. 4, 1977, 91 Stat. 600.)

§ 7259. Use of facilities

(a) Facilities of United States and foreign governments

With their consent, the Secretary and the Federal Energy Regulatory Commission may, with or without reimbursement, use the research, equipment, and facilities of any agency or instrumentality of the United States or of any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, or of any political subdivision thereof, or of any foreign government, in carrying out any function now or hereafter vested in the Secretary or the Commission.

(b) Facilities under custody of Secretary

In carrying out his functions, the Secretary, under such terms, at such rates, and for such periods not exceeding five years, as he may deem to be in the public interest, is authorized to permit the use by public and private agencies, corporations, associations, or other organizations or by individuals of any real property, or any facility, structure, or other improvement thereon, under the custody of the Secretary for Department purposes. The Secretary may require permittees under this section to recondition and maintain, at their own expense, the real property, facilities, structures, and improvements involved to a satisfactory standard. This section shall not apply to excess property as defined in section 472(e) of title 40.

(c) Use of reimbursement proceeds

Proceeds from reimbursements under this section shall be deposited in the Treasury and may be withdrawn by the Secretary or the head of the agency or instrumentality of the United States involved, as the case may be, to pay directly the costs of the equipment, or facilities provided, to repay or make advances to appropriations or funds which do or will initially bear all or a part of such costs, or to refund excess sums when necessary, except that such proceeds may be credited to a working capital fund otherwise established by law, including the fund established pursuant to section 7263 of this title, and used under the law governing such fund, if the fund is available for use for providing the equipment or facilities involved.

(Pub. L. 95-91, title VI, § 649, Aug. 4, 1977, 91 Stat. 600.)

§ 7260. Field offices

The Secretary is authorized to establish, alter, consolidate or discontinue and to maintain such State, regional, district, local or other field offices as he may deem to be necessary to carry out functions vested in him.

(Pub. L. 95-91, title VI, § 650, Aug. 4, 1977, 91 Stat. 601.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7211 of this title.

§ 7261. Acquisition of copyrights, patents, etc.

The Secretary is authorized to acquire any of the following described rights if the property acquired thereby is for use by or for, or useful to, the Department:

(1) copyrights, patents, and applications for patents, designs, processes, and manufacturing data;

(2) licenses under copyrights, patents, and applications for patents; and

(3) releases, before suit is brought, for past infringement of patents or copyrights.

(Pub. L. 95-91, title VI, § 651, Aug. 4, 1977, 91 Stat. 601.)

§ 7262. Gifts, bequests, and devises

The Secretary is authorized to accept, hold, administer, and utilize gifts, bequests, and devises of property, both real and personal, for the purpose of aiding or facilitating the work of the Department. Gifts, bequests, and devises of money and proceeds from sales of other property received as gifts, bequests, or devises shall be deposited in the Treasury and shall be disbursed upon the order of the Secretary. Property accepted lursuant to this section, and the proceeds thereof, shall be used as nearly as possible in accordance with the terms of the gift, bequest, or devise. For the purposes of Federal income, estate, and gift taxes, property accepted under this section shall be considered as a gift, bequest, or devise to the United States.

(Pub. L. 95-91, title VI, § 652, Aug. 4, 1977, 91 Stat. 601.)

§ 7263. Capital fund

The Secretary is authorized to establish a working capital fund, to be available without fiscal year limitation, for expenses necessary for the maintenance and operation of such common administrative services as he shall find to be desirable in the interests of economy and efficiency, including such services as a central supply service for stationery and other supplies and equipment for which adequate stocks may be maintained to meet in whole or in part the requirements of the Department and its agencies; central messenger, mail, telephone, and other communications services; office space, central services for document reproduction, and for graphics and visual aids; and a central library service. The capital of the fund shall consist of any appropriations made for the purpose of providing capital (which appropriations are hereby authorized) and the fair and reasonable value of such stocks of supplies, equipment, and other assets and inventories on order as the Secretary may transfer to the fund, less the related liabilities and unpaid obligations. Such funds shall be reimbursed in advance from available funds of agencies and offices in the Department, or from other sources, for supplies and services at rates which will approximate the expense of operation, including the accrual of annual leave and the depreciation of equipment. The fund shall also be credited with receipts from sale or exchange of property and receipts in payment for loss or damage to property owned by the fund. There shall be covered into the United States Treasury as miscellaneous receipts any surplus found in the fund (all assets, liabilities, and prior losses considered) above the amounts transferred or appropriated to establish and maintain said fund. There shall be transferred to the fund the stocks of supplies, equipment, other assets, liabilities, and unpaid obligations relating to the services which he determines will be performed through the fund. Appropriations to the fund, in such amounts as may be necessary to provide additional working capital, are authorized.

(Pub. L. 95-91, title VI, § 653, Aug. 4, 1977, 91 Stat. 601.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7258, 7259 of this title.

§ 7264. Seal of Department

The Secretary shall cause a seal of office to be made for the Department of such design as he shall approve and judicial notice shall be taken of such seal.

(Pub. L. 95-91, title VI, § 654, Aug. 4, 1977, 91 Stat. 602.)

§ 7265. Regional Energy Advisory Boards

(a) Establishment; membership

The Governors of the various States may establish Regional Energy Advisory Boards for their regions with such membership as they may determine.

(b) Observers

Representatives of the Secretary, the Secretary of Commerce, the Secretary of the Interior, the Chairman of the Council on Environmental Quality, the Commandant of the Coast Guard and the Administrator of the Environmental Protection Agency shall be entitled to participate as observers in the deliberations of any Board established pursuant to subsection (a) of this section. The Federal Cochairman of the Appalachian Regional Commission or any regional commission under title V of the Public Works and Economic Development Act [42 U.S.C. 3181 et seq.] shall be entitled to participate as an observer in the deliberations of any such Board which contains one or more States which are members of such Commission.

(c) Recommendations of Board

Each Board established pursuant to subsection (a) of this section may make such recommendations as it determines to be appropriate to programs of the Department having a direct effect on the region.

(d) Notice of reasons not to adopt recommendations

If any Regional Advisory Board makes specific recommendations pursuant to subsection (c) of this section, the Secretary shall, if such recommendations are not adopted in the implementation of the program, notify the Board in writing of his reasons for not adopting such recommendations.

(Pub. L. 95-91, title VI, § 655, Aug. 4, 1977, 91 Stat. 602.)

REFERENCES IN TEXT

The Public Works and Economic Development Act, referred to in subsec. (b), is Pub. L. 89-136, Aug. 26, 1965, 79 Stat. 552, as amended. Title V of the Public Works and Economic Development Act is classified generally to subchapter V (§ 3181 et seq.) of chapter 38 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3121 of this title and Tables.

§ 7266. Designation of conservation officers

The Secretary of Defense, the Secretary of Commerce, the Secretary of Housing and Urban Development, the Secretary of Transportation, the Secretary of Agriculture, the Secretary of the Interior, the United States Postal Service, and the Administrator of General Services shall each designate one Assistant Secretary or Assistant Administrator, as the case may be, as the principal conservation officer of such Department or of the Administration. Such designated principal conservation officer shall be principally responsible for planning and implementation of energy conservation programs by such Department or Administration and principally responsible for coordination with the Department of Energy with respect to energy matters. Each agency, Department or Administration required to designate a principal conservation officer pursuant to this section shall periodically inform the Secretary of the identity of such conservation officer, and the Secretary shall periodically publish a list identifying such officers.

(Pub. L. 95-91, title VI, § 656, Aug. 4, 1977, 91 Stat. 602.)

§ 7267. Annual report

The Secretary shall, as soon as practicable after the end of each fiscal year, commencing with the first complete fiscal year following October 1, 1977, make a report to the President for submission to the Congress on the activities of the Department during the preceding fiscal year. Such report shall include a statement of the Secretary's goals, priorities, and plans for the Department, together with an assessment of the progress made toward the attainment of those goals, the effective and efficient management of the Department and progress made in coordination of its functions with other departments and agencies of the Federal Government.

In addition, such report shall include the information required by section 774 of title 15, section 5877 of this title, and section 5914 of this title, and shall include:

(1) projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, including a comprehensive summary of data pertaining to all fuel and energy needs of residents of the United States residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within such areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas;

(2) an estimate of (A) the domestic and foreign energy supply on which the United States will be expected to rely to meet such needs in an economic manner with due regard for the protection of the environment, the conservation of natural resources, and the implementation of foreign policy objectives, and (B) the quantities of energy expected to be provided by different sources (including petroleum, natural and synthetic gases, coal, uranium, hydroelectric, solar, and other means) and the expected means of obtaining such quantities;

(3) current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to develop new technologies, to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to increase efficiency; and further such summary shall include a description of the activities the Department is performing in support of environmental, social, economic and institutional, biomedical, physical and safety research, development, demonstration, and monitoring activities necessary to guarantee that technological programs, funded by the Department, are undertaken in a manner consistent with and capable of maintaining or improving the quality of the environment and of mitigating any undesirable environmental and safety impacts;

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal/State, and local governments and nongovernmental entities to achieve the purposes of this chapter;

(6) a summary of cooperative and voluntary efforts that have been mobilized to promote conservation and recycling, together with plans for such efforts in the succeeding fiscal year, and recommendations for changes in laws and regulations needed to encourage more conservation and recycling by all segments of the Nation's populace;

(7) a summary of substantive measures taken by the Department to stimulate and encourage the development of new manpower resources through the Nation's colleges and universities and to involve these institutions in the execution of the Department's research and development programs; and

(8) to the extent practicable, a summary of activities in the United States by companies or persons which are foreign owned or controlled and which own or control United States energy sources and supplies, including the magnitude of annual foreign direct investment in the energy sector in the United States and exports of energy resources from the United States by foreign owned or controlled business entities or persons, and such other related matters as the Secretary may deem appropriate.

(Pub. L. 95-91, title VI, § 657, Aug. 4, 1977, 91 Stat. 603.)

REFERENCES IN TEXT

This chapter, referred to in par. (5), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7135, 7213 of this title.

§ 7268. Omitted

CODIFICATION

Section, Pub. L. 95-91, title VI, § 658, Aug. 4, 1977, 91 Stat. 604, which provided that the Secretary of the Interior submit to the Congress not later than one year after Aug. 4, 1977, a report on the organization of the leasing operations of the Federal government, was omitted from the Code as executed.

§ 7269. Transfer of funds

The Secretary, when authorized in an appropriation Act, in any fiscal year, may transfer funds from one appropriation to another within the Department, except that no appropriation shall be either increased or decreased pursuant to this section by more than 5 per centum of the appropriation for such fiscal year.

(Pub. L. 95-91, title VI, § 659, Aug. 4, 1977, 91 Stat. 604.)

§ 7270. Authorization of appropriations

Appropriations to carry out the provisions of this chapter shall be subject to annual authorization.

(Pub. L. 95-91, title VI, § 660, Aug. 4, 1977, 91 Stat. 604.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7351 of this title.

§ 7271. Common defense and security program requests of single authorization of appropriations

The Secretary shall submit to the Congress for fiscal year 1980, and for each subsequent fiscal year, a single request for authorizations for appropriations for all programs of the Department of Energy involving scientific research and development in support of the armed forces, military applications of nuclear energy, strategic and critical materials necessary for the common defense, and other programs which involve the common defense and security of the United States.

(Pub. L. 95-509, title II, § 208, Oct. 24, 1978, 92 Stat. 1779.)

Codification

Section was enacted as part of Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1979, and not as part of Department of Energy Organization Act which comprises this chapter.

Nuclear Weapons Capital Investment Requirements Study; Submittal to Congress

Section 209 of Pub. L. 95-509 provided that:

"(a) The Secretary shall conduct a study of the status of all Government-owned, contractor-operated, plant, capital equipment, facilities, and utilities which support the United States nuclear weapons program and submit the results of such study to the Congress at the same time that the Department of Energy authorization request for fiscal year 1980 is submitted to the Congress.

"(b) The Secretary shall include in such report—

"(1) an analysis of the measures required to restore the nuclear weapons complex of the United States to a satisfactory condition, and

"(2) a plan containing proposed schedules for carrying out and funding any restoration found to be necessary."

§ 7272. Restriction on licensing requirement for certain defense activities and facilities

None of the funds authorized to be appropriated by this or any other Act may be used for any purpose related to licensing of any defense activity or facility of the Department of Energy by the Nuclear Regulatory Commission.

(Pub. L. 96-164, title II, § 210, Dec. 29, 1979, 93 Stat. 1264.)

References in Text

This Act, referred to in text, is Pub. L. 96-164, Dec. 29, 1979, 93 Stat. 1259, known as the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980, which insofar as classified to the Code, enacted this section and section 7273 of this title.

Codification

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980, and not as part of the Department of Energy Organization Act which comprises this chapter.

Section Referred to in Other Sections

This section is referred to in section 7273 of this title.

§ 7273. Restriction on use of funds to pay penalties under Clean Air Act

None of the funds authorized to be appropriated by this or any other Act may be used to pay any penalty, fine, forfeiture, or settlement resulting from a failure to comply with the Clean Air Act (42 U.S.C. 7401 et seq.) with respect to any defense activity of the Department of Energy if (1) the Secretary finds that compliance is physically impossible within the time prescribed for compliance, or (2) the President has specifically requested appropriations for compliance and the Congress has failed to appropriate funds for such purpose.

(Pub. L. 96-164, title II, § 211, Dec. 29, 1979, 93 Stat. 1264.)

References in Text

This Act, referred to in text, is Pub. L. 96-164, Dec. 29, 1979, 93 Stat. 1259, known as the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980, which insofar as classified to the Code, enacted this section and section 7272 of this title.

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

Codification

Section was enacted as part of the Department of Energy National Security and Military Applications of Nuclear Energy Authorization Act of 1980, and not as part of the Department of Energy Organization Act which comprises this chapter.

Section Referred to in Other Sections

This section is referred to in section 7272 of this title.

SUBCHAPTER VII—TRANSITIONAL, SAVINGS, AND CONFORMING PROVISIONS

§ 7291. Transfer and allocations of appropriations and personnel

(a) Except as otherwise provided in this chapter, the personnel employed in connection with, and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations authorizations, allocations, and other funds employed, held, used, arising from, available to or to be made available in connection with the functions transferred by this chapter, subject to section 581c of title 31, are hereby transferred to the Secretary for appropriate allocation. Unexpended funds transferred pursuant to this subsection shall only be used for the purposes for which the funds were originally authorized and appropriated.

(b) Positions expressly specified by statute or reorganization plan to carry out function transferred by this chapter personnel occupying those positions on October 1, 1977, and personnel authorized to receive compensation in such positions at the rate prescribed for offices and positions at level I, II, III, IV, or V of the executive schedule (5 U.S.C. 5312-5316) on October 1, 1977 shall be subject to the provisions of section 7293 of this title.

(Pub. L. 95-91, title VII, § 701, Aug. 4, 1977, 91 Stat. 605.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a) and (b), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7212 of this title.

§ 7292. Effect on personnel

(a) Full-time and part-time personnel holding permanent positions

Except as otherwise provided in this chapter, the transfer pursuant to this subchapter of full-time personnel (except special Government employees) and part-time personnel holding permanent positions pursuant to this subchapter shall not cause any such employee to be separated or reduced in grade or compensation for one year after August 4, 1977, except that full-time temporary personnel employed at the Energy Research Centers of the Energy Research and Development Administration upon the establishment of the Department who are determined by the Department to be performing continuing functions may at the employee's option be converted to permanent full-time status within one hundred and twenty days following their transfer to the Department. The employment levels of full-time permanent personnel authorized for the Department by other law or administrative action shall be increased by the number of employees who exercise the option to be so converted.

(b) Person who held position compensated in accordance with chapter 53 of title 5

Any person who, on October 1, 1977, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, and who, without a break in service, is appointed in the Department to a position having duties comparable to those performed immediately preceding his appointment shall continue to be compensated in his new position at not less than the rate provided for his previous position, for the duration of his service in the new position.

(c) Employees holding reemployment rights acquired under section 786 of title 15

Employees transferred to the Department holding reemployment rights acquired under section 786 of title 15 or any other provision of law or regulation may exercise such rights only within one hundred twenty days from October 1, 1977, or within two years of acquiring such rights, whichever is later. Reemployment rights may only be exercised at the request of the employee.

(Pub. L. 95-91, title VII, § 702, Aug. 4, 1977, 91 Stat. 605.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (a), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

This subchapter, referred to in subsec. (a), was, in the original, "this title" meaning title VII of Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 605, which enacted this subchapter and section 916 of Title 7, Agriculture, amended sections 6833 and 6839 of this title, section 19 of Title 3, The President, sections 101, 5108, and 5312 to 5316 of Title 5, Government Organization and Employees, section 1701z-8 of Title 12, Banks and Banking, and sections 766, 790a, and 790d of Title 15, Commerce and Trade, repealed sections 2036 and 5818 of this title and sections 763, 768 and 786 of Title 15, enacted provisions set out as a note under 2201 of this title, and repealed provisions set out as a note under section 761 of Title 15. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

Section 786 of title 15, referred to in subsec. (c), was repealed by Pub. L. 95-91, title VII, § 709(a)(1), Aug. 4, 1977, 91 Stat. 607.

EX. ORD. NO. 12026. REINSTATEMENT RIGHTS OF CERTAIN EMPLOYEES OF DEPARTMENT OF ENERGY

Ex. Ord. No. 12026, Dec. 5, 1977, 42 F.R. 61849, provided:

By virtue of the authority vested in me by Sections 3301 and 3302 of Title 5 of the United States Code, and as President of the United States of America, the service of an employee of the Atomic Energy Commission or of the Energy Research and Development Administration pursuant to a Regular or Regular (Conditional) appointment, other than such service in an attorney position, who was transferred to the Department of Energy pursuant to the Department of Energy Organization Act (91 Stat. 565; 42 U.S.C. 7101 et seq.) shall be considered as Career or Career-Conditional service, respectively, for purposes of eligibility for reinstatement in the competitive Civil Service.

JIMMY CARTER.

§ 7293. Agency terminations

Except as otherwise provided in this chapter, whenever all of the functions vested by law in any agency, commission, or other body, or any component thereof, have been terminated or transferred from that agency, commission, or other body, or component by this chapter, the agency, commission, or other body, or component, shall terminate. If an agency, commission, or other body, or any component thereof, terminates pursuant to the preceding sentence, each position and office therein which was expressly authorized by law, or the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V of the Executive Schedule (5 U.S.C. 5313-5316), shall terminate.

(Pub. L. 95-91, title VII, § 703, Aug. 4, 1977, 91 Stat. 606.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7291 of this title.

§ 7294. Incidental transfers

The Director of the Office of Management and Budget, in consultation with the Secretary and the Commission, is authorized and directed to make such determinations as may be necessary with regard to the transfer of functions which relate to or are utilized by an agency, commission or other body, or component thereof affected by this chapter, to make such additional incidental dispositions of personnel, assets, liabilities, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to or to be made available in connection with the functions transferred by this chapter, as he may deem necessary to accomplish the purposes of this chapter.

(Pub. L. 95-91, title VII, § 704, Aug. 4, 1977, 91 Stat. 606.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7295. Savings provisions

(a) Orders, determinations, rules, etc., in effect prior to the effective date of this chapter

All orders, determinations, rules, regulations, permits, contracts, certificates, licenses, and privileges—

(1) which have been issued, made, granted, or allowed to become effective by the President, any Federal department or agency or official thereof, or by a court of competent jurisdiction, in the performance of functions which are transferred under this chapter to the Department or the Commission after August 4, 1977, and

(2) which are in effect on October 1, 1977,

shall continue in effect according to their terms until modified, terminated, superseded, set aside, or revoked in accordance with law by the President, the Secretary, the Federal Energy Regulatory Commission, or other authorized officials, a court of competent jurisdiction, or by operation of law.

(b) Proceedings or applications for licenses, permits, etc., pending at the effective date of this chapter; regulations

(1) The provisions of this chapter shall not affect any proceedings or any application for any license, permit, certificate, or financial assistance pending on October 1, 1977, before any department, agency, commission, or component thereof, functions of which are transferred by this chapter; but such proceedings and applications, to the extent that they relate to functions so transferred, shall be continued. Orders shall be issued in such proceedings, appeals shall be taken therefrom, and payments shall be made pursuant to such orders, as if this chapter had not been enacted; and orders issued in any such proceedings shall continue in effect until modified, terminated, superseded, or revoked by a duly authorized official, by a court of competent jurisdiction, or by operation of law. Nothing in this subsection shall be deemed to prohibit the discontinuance or modification of any such proceeding under the same terms and conditions and to the same extent that such proceeding could have been discontinued or modified if this chapter had not been enacted.

(2) The Secretary and the Commission are authorized to promulgate regulations providing for the orderly transfer of such proceedings to the Department or the Commission.

(c) Suits commenced prior to effective date of this chapter

Except as provided in subsection (e) of this section—

(1) the provisions of this chapter shall not affect suits commenced prior to October 1, 1977, and

(2) in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and effect as if this chapter had not been enacted.

(d) Suits, actions, etc., commenced by or against any officer or agency or cause of action by or against any department or agency

No suit, action, or other proceeding commenced by or against any officer in his official capacity as an officer of any department or agency, functions of which are transferred by this chapter, shall abate by reason of the enactment of this chapter. No cause of action by or against any department or agency, functions of which are transferred by this chapter, or by or against any officer thereof in his official capacity shall abate by reason of the enactment of this chapter.

(e) Suits with officers, departments, or agencies as parties

If, before October 1, 1977, any department or agency, or officer thereof in his official capacity, is a party to a suit, and under this chapter any function of such department, agency, or officer is transferred to the Secretary or any other official, then such suit shall be continued with the Secretary or other official, as the case may be, substituted.

(Pub. L. 95-91, title VIII, § 705, Aug. 4, 1977, 91 Stat. 606.)

REFERENCES IN TEXT

This chapter, referred to in subsecs. (a)(1), (b)(1), (c) to (e), in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7341 of this title.

§ 7296. Separability of provisions

If any provision of this chapter or the application thereof to any person or circumstance is held invalid, neither the remainder of this chapter nor the application of such provision to other persons or circumstances shall be affected thereby.

(Pub. L. 95-91, title VII, § 706, Aug. 4, 1977, 91 Stat. 607.)

REFERENCES IN TEXT

This chapter, referred to in text in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7297. Cross references

With respect to any functions transferred by this chapter and exercised after October 1, 1977, reference in any other Federal law to any department, commission, or agency or any officer or office the functions of which are so transferred shall be deemed to refer to the Secretary, the Federal Energy Regulatory Commission, or other official or component of the Department in which this chapter vests such functions.

(Pub. L. 95-91, title VII, § 707, Aug. 4, 1977, 91 Stat. 607.)

REFERENCES IN TEXT

This chapter, referred to in text in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7298. Presidential authority

Except as provided in subchapter IV of this chapter, nothing contained in this chapter shall be construed to limit, curtail, abolish, or terminate any function of, or authority available to, the President which he had immediately before October 1, 1977; or to limit, curtail, abolish, or terminate his authority to delegate, redelegate, or terminate any delegation of functions.

(Pub. L. 95-91, title VII, § 708, Aug. 4, 1977, 91 Stat. 607.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7299. Transition

With the consent of the appropriate department or agency head concerned, the Secretary is authorized to utilize the services of such officers, employees, and other personnel of the departments and agencies from which functions have been transferred to the Secretary for such period of time as may reasonably be needed to facilitate the orderly transfer of functions under this chapter.

(Pub. L. 95-91, title VII, § 711, Aug. 4, 1977, 91 Stat. 609.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7300. Omitted

CODIFICATION

Section, Pub. L. 95-91, title VII, § 712, Aug. 4, 1977, 91 Stat. 609, which related to the preparation and transmittal to Congress by the Civil Service Commission of a report on the effects on employees of the reorganization under this chapter not later than Oct. 1, 1978, was omitted from the Code as executed.

§ 7301. Environmental impact statements

The transfer of functions under subchapters III and IV of this chapter shall not affect the validity of any draft environmental impact statement published before October 1, 1977.

(Pub. L. 95-91, title VII, § 713, Aug. 4, 1977, 91 Stat. 610.)

SUBCHAPTER VIII—ENERGY PLANNING

§ 7321. National Energy Policy Plan

(a) Preparation by President and submission to Congress; formulation and review

The President shall—

(1) prepare and submit to the Congress a proposed National Energy Policy Plan (hereinafter in this subchapter referred to as a "proposed Plan") as provided in subsection (b) of this section;

(2) seek the active participation by regional, State, and local agencies and instrumentalities and the private sector through public hearings in cities and rural communities and other appropriate means to insure that the views and proposals of all segments of the economy are taken into account in the formulation and review of such proposed Plan;

(3) include within the proposed Plan a comprehensive summary of data pertaining to all fuel and energy needs of persons residing in—

(A) areas outside standard metropolitan statistical areas; and

(B) areas within standard metropolitan statistical areas which are unincorporated or are specified by the Bureau of the Census, Department of Commerce, as rural areas.

(b) Biennial transmittal to Congress; contents

Not later than April 1, 1979, and biennially thereafter, the President shall transmit to the Congress the proposed Plan. Such proposed Plan shall—

(1) consider and establish energy production, utilization, and conservation objectives, for periods of five and ten years, necessary to

satisfy projected energy needs of the United States to meet the requirements of the general welfare of the people of the United States and the commercial and industrial life of the Nation, paying particular attention to the needs for full employment, price stability, energy security, economic growth, environmental protection, nuclear non-proliferation, special regional needs, and the efficient utilization of public and private resources;

(2) identify the strategies that should be followed and the resources that should be committed to achieve such objectives, forecasting the level of production and investment necessary in each of the significant energy supply sectors and the level of conservation and investment necessary in each consuming sector, and outlining the appropriate policies and actions of the Federal Government that will maximize the private production and investment necessary in each of the significant energy supply sectors consistent with applicable Federal, State, and local environmental laws, standards, and requirements; and

(3) recommend legislative and administrative actions necessary and desirable to achieve the objectives of such proposed Plan, including legislative recommendations with respect to taxes or tax incentives, Federal funding, regulatory actions, antitrust policy, foreign policy, and international trade.

(c) Submission of report to Congress; contents

The President shall submit to the Congress with the proposed Plan a report which shall include—

(1) whatever data and analysis are necessary to support the objectives, resource needs, and policy recommendations contained in such proposed Plan;

(2) an estimate of the domestic and foreign energy supplies on which the United States will be expected to rely to meet projected energy needs in an economic manner consistent with the need to protect the environment, conserve natural resources, and implement foreign policy objectives;

(3) an evaluation of current and foreseeable trends in the price, quality, management, and utilization of energy resources and the effects of those trends on the social, environmental, economic, and other requirements of the Nation;

(4) a summary of research and development efforts funded by the Federal Government to forestall energy shortages, to reduce waste, to foster recycling, to encourage conservation practices, and to otherwise protect environmental quality, including recommendations for developing technologies to accomplish such purposes; and

(5) a review and appraisal of the adequacy and appropriateness of technologies, procedures, and practices (including competitive and regulatory practices) employed by Federal, State, and local governments and nongovernmental entities to achieve the purposes of the Plan.

(d) Consultation with consumers, small businesses, etc.

The President shall insure that consumers, small businesses, and a wide range of other interests, including those of individual citizens who have no financial interest in the energy industry, are consulted in the development of the Plan.

(Pub. L. 95-91, title VIII, § 801, Aug. 4, 1977, 91 Stat. 610.)

§ 7322. Congressional review

(a) Each proposed Plan shall be referred to the appropriate committees in the Senate and the House of Representatives.

(b) Each such committee shall review the proposed Plan and, if it deems appropriate and necessary, report to the Senate or the House of Representatives legislation regarding such Plan which may contain such alternatives to, modifications of, or additions to the proposed Plan submitted by the President as the committee deems appropriate.

(Pub. L. 95-91, title VIII, § 802, Aug. 4, 1977, 91 Stat. 611.)

SUBCHAPTER IX—EFFECTIVE DATE AND INTERIM APPOINTMENTS

§ 7341. Effective date

The provisions of this chapter shall take effect one hundred and twenty days after the Secretary first takes office, or on such earlier date as the President may prescribe and publish in the Federal Register, except that at any time after August 4, 1977, (1) any of the officers provided for in subchapters II and IV of this chapter may be nominated and appointed, as provided in those subchapters, and (2) the Secretary and the Commission may promulgate regulations pursuant to section 7295(b)(2) of this title at any time after August 4, 1977. Funds available to any department or agency (or any official or component thereof), functions of which are transferred to the Secretary or the Commission by this chapter, may with the approval of the Director of the Office of Management and Budget, be used to pay the compensation and expenses of any officer appointed pursuant to this subsection until such time as funds for that purpose are otherwise available.

(Pub. L. 95-91, title IX, § 901, Aug. 4, 1977, 91 Stat. 612.)

References in Text

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

Ex. Ord. No. 12009. Effectuation of Department of Energy Organization Act

Ex. Ord. No. 12009, Sept. 13, 1977, 42 F.R. 46267, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Department of Energy Organization Act (Public Law 95-91; 91 Stat. 565) [this chapter], and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. Pursuant to Section 901 of the Department of Energy Organization Act [this section], I hereby prescribe October 1, 1977, as the effective date of that Act.

SEC. 2. The Director of the Office of Management and Budget, in consultation with the Secretary of Energy and the Federal Energy Regulatory Commission, as appropriate, shall take all steps necessary or appropriate to ensure or effectuate the transfer of functions provided for in the Department of Energy Organization Act, to the extent required or permitted by law, including transfer of funds, personnel and positions, assets, liabilities, contracts, property, records and other items related to the transfer of functions, programs, or authorities.

SEC. 3. As required by Section 901 of the Department of Energy Organization Act [this section], this Order shall be published in the FEDERAL REGISTER.

JIMMY CARTER.

§ 7342. Interim appointments

In the event that one or more officers required by this chapter to be appointed by and with the advice and consent of the Senate shall not have entered upon office on October 1, 1977, the President may designate any officer, whose appointment was required to be made, by and with the advice and consent of the Senate, and who was such an officer immediately prior to October 1, 1977, to act in such office until the office is filled as provided in this chapter. While so acting such persons shall receive compensation at the rates provided by this chapter for the respective offices in which they act.

(Pub. L. 95-91, title IX, § 902, Aug. 4, 1977, 91 Stat. 612.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, known as the Department of Energy Act, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

SUBCHAPTER X—SUNSET PROVISIONS

§ 7351. Submission of comprehensive review

Not later than January 15, 1982, the President shall prepare and submit to the Congress a comprehensive review of each program of the Department. Each such review shall be made available to the committee or committees of the Senate and House of Representatives having jurisdiction with respect to the annual authorization of funds, pursuant to section 7270 of this title, for such programs for the fiscal year beginning October 1, 1982.

(Pub. L. 95-91, title X, § 1001, Aug. 4, 1977, 91 Stat. 612.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7352 of this title.

§ 7352. Contents of review

Each comprehensive review prepared for submission under section 7351 of this title shall include—

(1) the name of the component of the Department responsible for administering the program;

(2) an identification of the objectives intended for the program and the problem or need which the program was intended to address;

(3) an identification of any other programs having similar or potentially conflicting or duplicative objectives;

(4) an assessment of alternative methods of achieving the purposes of the program;

(5) a justification for the authorization of new budget authority, and an explanation of the manner in which it conforms to and integrates with other efforts;

(6) an assessment of the degree to which the original objectives of the program have been achieved, expressed in terms of the performance, impact, or accomplishments of the program and of the problem or need which it was intended to address, and employing the procedures or methods of analysis appropriate to the type or character of the program;

(7) a statement of the performance and accomplishments of the program in each of the previous four completed fiscal years and of the budgetary costs incurred in the operation of the program;

(8) a statement of the number and types of beneficiaries or persons served by the program;

(9) an assessment of the effect of the program on the national economy, including, but not limited to, the effects on competition, economic stability, employment, unemployment, productivity, and price inflation, including costs to consumers and to businesses;

(10) an assessment of the impact of the program on the Nation's health and safety;

(11) an assessment of the degree to which the overall administration of the program, as expressed in the rules, regulations, orders, standards, criteria, and decisions of the officers executing the program, are believed to meet the objectives of the Congress in establishing the program;

(12) a projection of the anticipated needs for accomplishing the objectives of the program, including an estimate if applicable of the date on which, and the conditions under which, the program may fulfill such objectives;

(13) an analysis of the services which could be provided and performance which could be achieved if the program were continued at a level less than, equal to, or greater than the existing level; and

(14) recommendations for necessary transitional requirements in the event that funding for such program is discontinued, including proposals for such executives or legislative action as may be necessary to prevent such discontinuation from being unduly disruptive.

(Pub. L. 95-91, title X, § 1002, Aug. 4, 1977, 91 Stat. 612.)

CHAPTER 85—AIR POLLUTION PREVENTION AND CONTROL [NEW]

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SUBCHAPTER IV—NOISE POLLUTION

7641. Noise abatement.
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CODIFICATION

Act July 14, 1955, ch. 360, 69 Stat. 322, as amended, known as the Clean Air Act, which was formerly classified to chapter 15B (§ 1857 et seq.) of this title, was completely revised by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685, and was reclassified to this chapter.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2022, 4363a, 4365, 4905, 6211, 6901, 6905, 6907, 6949, 7273, 8302, 8375, 8402, 8411, 8455 of this title; title 15 sections 793, 798, 2080, 2617, 2706; title 16 section 1456; title 23 section 109; title 26 section 169; title 30 sections 201, 1251, 1253, 1292, 1303; title 33 sections 1502, 1503; title 43 section 1334; title 49 section 1604.

SUBCHAPTER I—PROGRAMS AND ACTIVITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 7607 of this title.

PART A—AIR QUALITY AND EMISSION LIMITATIONS

AMENDMENTS

1977—Pub. L. 95-95, title I, § 117(a), Aug. 7, 1977, 91 Stat. 712, designated sections 7401 to 7428 of this title as Part A.

§ 7401. Congressional findings and declaration of purpose

(a) The Congress finds—

(1) that the predominant part of the Nation's population is located in its rapidly expanding metropolitan and other urban areas, which generally cross the boundary lines of local jurisdictions and often extend into two or more States;

(2) that the growth in the amount and complexity of air pollution brought about by urbanization, industrial development, and the increasing use of motor vehicles, has resulted in mounting dangers to the public health and welfare, including injury to agricultural crops and livestock, damage to and the deterioration of property, and hazards to air and ground transportation;

(3) that the prevention and control of air pollution at its source is the primary responsibility of States and local governments; and

(4) that Federal financial assistance and leadership is essential for the development of cooperative Federal, State, regional, and local programs to prevent and control air pollution.

(b) The purposes of this subchapter are—

(1) to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population;

(2) to initiate and accelerate a national research and development program to achieve the prevention and control of air pollution;

(3) to provide technical and financial assistance to State and local governments in connection with the development and execution of their air pollution prevention and control programs; and

(4) to encourage and assist the development and operation of regional air pollution control programs.

(July 14, 1955, ch. 360, title I, § 101, formerly § 1, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 392, and amended and renumbered Oct. 20, 1965, Pub. L. 89-272, title I, § 101(2), (3), 79 Stat. 992; Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 485.)

CODIFICATION

Section was formerly classified to section 1857 of this title.

PRIOR PROVISIONS

Provisions similar to those comprising this section were contained in a prior section 1857 of this title, act of July 14, 1955, ch. 360, § 1, 69 Stat. 322, prior to the general amendment of this chapter by Pub. L. 88-206.

AMENDMENTS

1967—Subsec. (b)(1). Pub. L. 90-148 inserted "and enhance the quality of" following "to protect".

1965—Subsec. (b). Pub. L. 89-272 substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter".

EFFECTIVE DATE OF 1977 AMENDMENT; PENDING ACTIONS; CONTINUATION OF RULES, CONTRACTS, AUTHORIZATIONS, ETC.; IMPLEMENTATION PLANS

Section 406 of Pub. L. 95-95, as amended by Pub. L. 95-190, § 14(b)(6), Nov. 16, 1977, 91 Stat. 1405, provided that:

"(a) No suit, action, or other proceeding lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977] shall abate by reason of the taking effect of the amendments made by this Act [see Short Title of 1977 Amendment note below]. The court may, on its own motion or that of any party made at any time within twelve months after such taking effect, allow the same to be maintained by or against the Administrator or such officer or employee.

"(b) All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to the Clean Air Act [this chapter], as in effect immediately prior to the date of enactment of this Act [Aug. 7, 1977], and pertaining to any functions, powers, requirements, and duties under the Clean Air Act, as in effect immediately prior to the date of enactment of this Act, and not suspended by the Administrator or the courts, shall continue in full force and effect after the date of enactment of this Act until modified or rescinded in accordance with the Clean Air Act as amended by this Act [see Short Title of 1977 Amendment note below].

"(c) Nothing in this Act [see Short Title of 1977 Amendment note below] nor any action taken pursuant to this Act shall in any way affect any requirement of an approved implementation plan in effect under section 110 of the Clean Air Act [section 7410 of this title] or any other provision of the Act in effect under the Clean Air Act before the date of enactment of this section [Aug. 7, 1977] until modified or rescinded in accordance with the Clean Air Act [this chapter] as amended by this Act [see Short Title of 1977 Amendment note below].

"(d)(1) Except as otherwise expressly provided, the amendments made by this Act [see Short Title of 1977 Amendment note below] shall be effective on date of enactment [Aug. 7, 1977].

"(2) Except as otherwise expressly provided, each State required to revise its applicable implementation plan by reason of any amendment made by this Act [see Short Title of 1977 Amendment note below] shall adopt and submit to the Administrator of the Environmental Protection Administration such plan revision before the later of the date—

"(A) one year after the date of enactment of this Act [Aug. 7, 1977], or

"(B) nine months after the date of promulgation by the Administrator of the Environmental Protection Administration of any regulations under an amendment made by this Act [see Short Title of 1977 Amendment note below] which are necessary for the approval of such plan revision."

SHORT TITLE OF 1977 AMENDMENT

Pub. L. 95-95, § 1, Aug. 7, 1977, 91 Stat. 685, provided that: "This Act [enacting sections 4362, 7419 to 7428, 7450 to 7459, 7470 to 7479, 7491, 7501 to 7508, 7548, 7549, 7551, 7617 to 7625, and 7626 of this title, amending sections 7403, 7405, 7407 to 7415, 7417, 7418, 7521 to 7525, 7541, 7543, 7544, 7545, 7550, 7571, 7601 to 7605, 7607, 7612, 7613, and 7616 of this title, repealing section 1857c-10 of this title, and enacting provisions set out as notes under sections 7401, 7403, 7422, 7470, 7479, 7502, 7521, 7548, and 7621 of this title and section 792 of Title 15, Commerce and Trade] may be cited as the 'Clean Air Act Amendments of 1977'."

SHORT TITLE OF 1970 AMENDMENTS

Pub. L. 91-604, § 1, Dec. 31, 1970, 84 Stat. 1676, provided: "That this Act [amending this chapter generally] may be cited as the 'Clean Air Amendments of 1970'."

Section 401 of act July 14, 1955, as added Dec. 31, 1970, Pub. L. 91-604, § 14, 84 Stat. 1709, provided that: "This title [subchapter IV of this chapter] may be cited as the 'Noise Pollution and Abatement Act of 1970'."

SHORT TITLE OF 1967 AMENDMENT

Section 1 of Pub. L. 90-148 provided: "That this Act [amending this chapter generally] may be cited as the 'Air Quality Act of 1967'."

SHORT TITLE OF 1966 AMENDMENT

Pub. L. 89-675, § 1, Oct. 15, 1966, 80 Stat. 954, provided: "That this Act [amending sections 7405 and 7616 of this title and repealing section 1857f-8 of this title] may be cited as the 'Clean Air Act Amendments of 1966'."

SHORT TITLE OF 1965 AMENDMENT

Section 201 of act July 14, 1955, as added by Pub. L. 89-272, title I, § 101(8), Oct. 20, 1965, 79 Stat. 992, and amended by Pub. L. 90-148, § 2, Nov. 2, 1967, 81 Stat. 499, provided that: "This title [subchapter II of this chapter] may be cited as the 'National Emission Standards Act'." Prior to its amendment by Pub. L. 90-148, title II of act June 14, 1955, was known as the "Motor Vehicle Air Pollution Control Act".

Short Title

Section 317, formerly section 14, of Act July 14, 1955, as added by section 1 of Pub. L. 88-206, renumbered section 307 by section 101(4) of Pub. L. 89-272, renumbered section 310 by section 2 of Pub. L. 90-148, and renumbered section 317 by Pub. L. 91-604, § 12(a), Dec. 31, 1970, 84 Stat. 1705, provided that: "This Act [this chapter] may be cited as the 'Clean Air Act'."

Transfer of Functions

Reorg. Plan No. 3 of 1970, § 2(a)(3), eff. Dec. 2, 1970, 35 F.R. 15623, 84 Stat. 2086, transferred to the Administrator of the Environmental Protection Agency the functions vested by law in the Secretary of Health, Education, and Welfare or in the Department of Health, Education, and Welfare which are administered through the Environmental Health Service, including the functions exercised by the National Air Pollution Control Administration, and the Environmental Control Administration's Bureau of Solid Waste Management, Bureau of Water Hygiene, and Bureau of Radiological Health, except insofar as the functions carried out by the Bureau of Radiological Health pertain to regulation of radiation from consumer products, including electronic product radiation, radiation as used in the healing arts, occupational exposure to radiation, and research, technical assistance, and training related to radiation from consumer products, radiation as used in the healing arts, and occupational exposure to radiation.

Study of Odors and Odorous Emissions

Pub. L. 95-95, title IV, § 403(b), Aug. 7, 1977, 91 Stat. 792, which provided that the Administrator of the Environmental Protection Agency conduct a study and report to the Congress not later than Jan. 1, 1979, on the effects on public health and welfare of odors and odorous emissions, the source of such emissions, the technology or other measures available for control of such emissions and the costs of such technology or measures, and the costs and benefits of alternative measures or strategies to abate such emissions, was omitted from the Code as executed.

List of Chemical Contaminants From Environmental Pollution Found in Human Tissue

Pub. L. 95-95, title IV, § 403(c), Aug. 7, 1977, 91 Stat. 792, provided that:

"(1) Not later than twelve months after the date of enactment of this Act [Aug. 7, 1977] the Administrator of the Environmental Protection Agency shall publish throughout the United States a list of all known chemical contaminants resulting from environmental pollution which have been found in human tissue including blood, urine, breast milk, and all other human tissue. Such list shall be prepared for the United States and shall indicate the approximate number of cases, the range of levels found, and the mean levels found.

"(2) Not later than eighteen months after the date of enactment of this Act [Aug. 7, 1977] the Administrator shall publish in the same manner an explanation of what is known about the manner in which the chemicals described in paragraph (1) entered the environment and thereafter human tissue.

"(3) The Administrator, in consultation with National Institutes of Health, the National Center for Health Statistics, and the National Center for Health Services Research and Development, shall, if feasible, conduct an epidemiological study to demonstrate the relationship between levels of chemicals in the environment and in human tissue. Such study shall be made in appropriate regions or areas of the United States in order to determine any different results in such regions or areas. The results of such study shall, as soon as practicable, be reported to the appropriate committee of the Congress."

Study on Regional Air Quality

Pub. L. 95-95, title IV, § 403(d), Aug. 7, 1977, 91 Stat. 793, provided that: "The Administrator of the Environmental Protection Agency shall conduct a study of air quality in various areas throughout the country including the gulf coast region. Such study shall include analysis of liquid and solid aerosols and other fine particulate matter and the contribution of such substances to visibility and public health problems in such areas. For the purposes of this study, the Administrator shall use environmental health experts from the National Institutes of Health and other outside agencies and organizations."

Railroad Emission Study

Pub. L. 95-95, title IV, § 404, Aug. 7, 1977, 91 Stat. 793, provided that:

"(a) The Administrator of the Environmental Protection Agency shall conduct a study and investigation of emissions of air pollutants from railroad locomotives, locomotive engines, and secondary power sources on railroad rolling stock, in order to determine—

"(1) the extent to which such emissions affect air quality in air quality control regions throughout the United States,

"(2) the technological feasibility and the current state of technology for controlling such emissions, and

"(3) the status and effect of current and proposed State and local regulations affecting such emissions.

"(b) Within one hundred and eighty days after commencing such study and investigation, the Administrator shall submit a report of such study and investigation, together with recommendations for appropriate legislation, to the Senate Committee on Environment and Public Works and the House Committee on Interstate and Foreign Commerce."

Study and Report Concerning Economic Approaches to Controlling Air Pollution

Pub. L. 95-95, title IV, § 405, Aug. 7, 1977, 91 Stat. 794, which provided that the Administrator, in conjunction with the Council of Economic Advisors, undertake a study and assessment of economic measures for the control of air pollution which could strengthen the effectiveness of existing methods of controlling air pollution, provide incentives to abate air pollution greater than that required by the Clean Air Act, and serve as the primary incentive for controlling air pollution problems not addressed by the Clean Air Act, and that not later than 2 years after Aug. 7, 1977, the Administrator and the Council conclude the study and submit a report to the President and Congress, was omitted from the Code as executed.

Federal Compliance With Pollution Control Standards

For provisions relating to the responsibility of the head of each Executive agency for compliance with applicable pollution control standards, see Ex. Ord. No. 12088, Oct. 13, 1978, 43 F.R. 47707, set out as a note under section 4321 of this title.

Executive Order No. 10779

Ex. Ord. No. 10779, Aug. 21, 1958, 23 F.R. 6487, which related to cooperation of Federal agencies with State and local authorities, was superseded by Ex. Ord. No. 11282, May 26, 1966, 31 F.R. 7663.

Executive Order No. 11507

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for the prevention, control, and abatement of air pollution at federal facilities was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, set out as a note under section 4331 of this title.

EXECUTIVE ORDER No. 11523

For provisions relating to the establishment of the National Industrial Pollution Control Council, see Ex. Ord. No. 11523, Apr. 9, 1970, 35 F.R. 5993, set out as a note under section 4321 of this title.

EXECUTIVE ORDER No. 11752

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, set out as a note under section 4331 of this title, provided for the prevention, control, and abatement of environmental pollution at federal facilities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7471, 7476 of this title.

§ 7402. Cooperative activities

(a) Interstate cooperation; uniform State laws; State compacts

The Administrator shall encourage cooperative activities by the States and local governments for the prevention and control of air pollution; encourage the enactment of improved and, so far as practicable in the light of varying conditions and needs, uniform State and local laws relating to the prevention and control of air pollution; and encourage the making of agreements and compacts between States for the prevention and control of air pollution.

(b) Federal cooperation.

The Administrator shall cooperate with and encourage cooperative activities by all Federal departments and agencies having functions relating to the prevention and control of air pollution, so as to assure the utilization in the Federal air pollution control program of all appropriate and available facilities and resources within the Federal Government.

(c) Consent of Congress to compacts

The consent of the Congress is hereby given to two or more States to negotiate and enter into agreements or compacts, not in conflict with any law or treaty of the United States, for (1) cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (2) the establishment of such agencies, joint or otherwise, as they may deem desirable for making effective such agreements or compacts. No such agreement or compact shall be binding or obligatory upon any State a party thereto unless and until it has been approved by Congress. It is the intent of Congress that no agreement or compact entered into between States after November 21, 1967, which relates to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

(July 14, 1955, ch. 360, title I, § 102, formerly § 2, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 393, renumbered Oct. 20, 1965, Pub. L. 89-272, title I, § 101(3), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 485; Dec. 31, 1970, Pub. L. 91-604, § 15(c)(2), 84 Stat. 1713.)

CODIFICATION

Section was formerly classified to section 1857a of this title.

PRIOR PROVISIONS

Provisions similar to those comprising the first clause of subsec. (a) of this section were contained in subsec. (b)(1) of a prior section 1857a, of this title, act July 14, 1955, ch. 360, § 2, 69 Stat. 322, prior to the general amendment of this chapter by Pub. L. 88-206.

AMENDMENTS

1970—Subsecs. (a), (b). Pub. L. 91-604 substituted "Administrator" for "Secretary" wherever appearing therein.

1967—Subsec. (c). Pub. L. 90-148 added declaration that it is the intent of Congress that no agreement or compact entered into between States after the date of enactment of the Air Quality Act of 1967, which for purposes of codification was changed to November 21, 1967, the date of approval of such Act, relating to the control and abatement of air pollution in an air quality control region, shall provide for participation by a State which is not included (in whole or in part) in such air quality control region.

§ 7403. Research, investigation, training, and other activities

(a) Research and development program for prevention and control of air pollution

The Administrator shall establish a national research and development program for the prevention and control of air pollution and as part of such program shall—

(1) conduct, and promote the coordination and acceleration of, research, investigations, experiments, demonstrations, surveys, and studies relating to the causes, effects, extent, prevention, and control of air pollution;

(2) encourage, cooperate with, and render technical services and provide financial assistance to air pollution control agencies and other appropriate public or private agencies, institutions, and organizations, and individuals in the conduct of such activities;

(3) conduct investigations and research and make surveys concerning any specific problem of air pollution in cooperation with any air pollution control agency with a view to recommending a solution of such problem, if he is requested to do so by such agency or if, in his judgment, such problem may affect any community or communities in a State other than that in which the source of the matter causing or contributing to the pollution is located;

(4) establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research, and

(5) conduct and promote coordination and acceleration of training for individuals relating to the causes, effects, extent, prevention, and control of air pollution.

(b) Authorized activities of Administrator in establishing research and development program

In carrying out the provisions of the preceding subsection the Administrator is authorized to—

(1) collect and make available, through publications and other appropriate means, the results of and other information, including appropriate recommendations by him in connec-

tion therewith, pertaining to such research and other activities;

(2) cooperate with other Federal departments and agencies, with air pollution control agencies, with other public and private agencies, institutions, and organizations, and with any industries involved, in the preparation and conduct of such research and other activities;

(3) make grants to air pollution control agencies, to other public or nonprofit private agencies, institutions, and organizations, and to individuals, for purposes stated in subsection (a)(1) of this section;

(4) contract with public or private agencies, institutions, and organizations, and with individuals, without regard to section 529 of title 31 and section 5 of title 41;

(5) establish and maintain research fellowships, in the Environmental Protection Agency and at public or nonprofit private educational institutions or research organizations;

(6) collect and disseminate, in cooperation with other Federal departments and agencies, and with other public or private agencies, institutions, and organizations having related responsibilities, basic data on chemical, physical, and biological effects of varying air quality and other information pertaining to air pollution and the prevention and control thereof; and

(7) develop effective and practical processes, methods, and prototype devices for the prevention or control of air pollution.

In carrying out the provisions of subsection (a) of this section, the Administrator shall provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsection (a)(5) of this section. Reasonable fees may be charged for such training provided to persons other than personnel of air pollution control agencies but such training shall be provided to such personnel of air pollution control agencies without charge.

(c) Results of other scientific studies

In carrying out the provisions of subsection (a) of this section the Administrator shall conduct research on, and survey the results of other scientific studies on, the harmful effects on the health or welfare of persons by the various known air pollutants.

(d) Construction of facilities

The Administrator is authorized to construct such facilities and staff and equip them as he determines to be necessary to carry out his functions under this chapter.

(e) Potential air pollution problems; conferences; findings and recommendations of Administrator

If in the judgment of the Administrator, an air pollution problem of substantial significance may result from discharge or discharges into the atmosphere, he may call a conference concerning this potential air pollution problem to be held in or near one or more of the places where such discharge or discharges are occurring or will occur. All interested persons shall be given an opportunity to be heard at such conference, either orally or in writing, and shall be permitted to appear in person or by representative in accordance with procedures prescribed by the Administrator. If the Administrator finds, on the basis of the evidence presented at such conference, that the discharge or discharges if permitted to take place or continue are likely to cause or contribute to air pollution subject to abatement under section 7415 of this title, he shall send such findings, together with recommendations concerning the measures which he finds reasonable and suitable to prevent such pollution, to the person or persons whose actions will result in the discharge or discharges involved; to air pollution agencies of the State or States and of the municipality or municipalities where such discharge or discharges will originate; and to the interstate air pollution control agency, if any, in the jurisdictional area of which any such municipality is located. Such findings and recommendations shall be advisory only, but shall be admitted together with the record of the conference, as part of the proceedings under subsections (b), (c), (d), (e), and (f) of section 7415 of this title.

(f) Accelerated research programs

(1) In carrying out research pursuant to this chapter, the Administrator shall give special emphasis to research on the short- and long-term effects of air pollutants on public health and welfare. In the furtherance of such research, he shall conduct an accelerated research program—

(A) to improve knowledge of the contribution of air pollutants to the occurrence of adverse effects on health, including, but not limited to, behavioral, physiological, toxicological, and biochemical effects; and

(B) to improve knowledge of the short- and long-term effects of air pollutants on welfare.

(2) In carrying out the provisions of this subsection the Administrator may—

(A) conduct epidemiological studies of the effects of air pollutants on mortality and morbidity;

(B) conduct clinical and laboratory studies on the immunologic, biochemical, physiological, and the toxicological effects including carcinogenic, teratogenic, and mutagenic effects of air pollutants;

(C) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories and research centers;

(D) utilize the authority contained in paragraphs (1) through (4) of subsection (b) of this section; and

(E) consult with other appropriate Federal agencies to assure that research or studies conducted pursuant to this subsection will be coordinated with research and studies of such other Federal agencies.

(3) In entering into contracts under this subsection, the Administrator is authorized to contract for a term not to exceed 10 years in duration. For the purposes of this paragraph, there

are authorized to be appropriated $15,000,000. Such amounts as are appropriated shall remain available until expended and shall be in addition to any other appropriations under this chapter.

(July 14, 1955, ch. 360, title I, § 103, formerly § 3, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 394, and amended and renumbered Oct. 20, 1965, Pub. L. 89-272, title I, §§ 101(3), 103, 79 Stat. 992, 996; Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 486; Dec. 31, 1970, Pub. L. 91-604, §§ 2(a), 4(2), 15(a)(2), (c)(2), 84 Stat. 1676, 1689, 1710, 1713; Aug. 7, 1977, Pub. L. 95-95, title I, § 101(a), (b), 91 Stat. 686, 687.)

Codification

Section was formerly classified to section 1857b of this title.

Prior Provisions

Provisions similar to those comprising subsec. (a)(3) of this section were contained in subsec. (a) of a prior section 1857b of this title, act July 14, 1955, ch. 360, § 3, 69 Stat. 322, as amended Oct. 9, 1962, Pub. L. 87-761, § 2, 76 Stat. 760, prior to the general amendment of this chapter by Pub. L. 88-206.

Provisions similar to those comprising this section were contained in prior sections 1857a to 1857d of this title, act July 14, 1955, ch. 360, §§ 2 to 5, 69 Stat. 322 (section 1857b as amended Oct. 9, 1962, Pub. L. 87-761, § 2, 76 Stat. 760; section 1857d as amended Sept. 22, 1959, Pub. L. 86-365, § 1, 73 Stat. 646 and Oct. 9, 1962, Pub. L. 87-761, § 1, 76 Stat. 760), prior to the general amendment of this chapter by Pub. L. 88-206.

Amendments

1977—Subsec. (a). Pub. L. 95-95, § 101(b), struck out reference to "training" in par. (1) and added par. (5).

Subsec. (b). Pub. L. 95-95, § 101(a), struck out par. (5), which provided for training and training grants to personnel of air pollution control agencies and other persons with suitable qualifications, redesignated pars. (6), (7), and (8) as (5), (6), and (7), respectively, and, following par. (7) as so redesignated, added provisions directing the Administrator, in carrying out subsec. (a), to provide training for, and make training grants to, personnel of air pollution control agencies and other persons with suitable qualifications and to make grants to such agencies, to other public or nonprofit private agencies, institutions, and organizations for the purposes stated in subsec. (a)(5) and allowing reasonable fees to be charged for such training provided to persons other than personnel of air pollution control agencies but requiring that such training be provided to such personnel of air pollution control agencies without charge.

1970—Subsec. (a). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (b). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary" and "Environmental Protection Agency" for "Department of Health, Education, and Welfare".

Subsec. (c). Pub. L. 91-604, § 15(a)(2), (c)(2), substituted "Administrator" for "Secretary" and "air pollutants" for "air pollution agents (or combinations of agents)".

Subsec. (d). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (e). Pub. L. 91-604, §§ 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein, substituted "7415" for "7415(a)", and added references to subsecs. (b) and (c) of section 7415 of this title.

Subsec. (f). Pub. L. 91-604, § 2(a), added subsec. (f).

1967—Subsec. (a). Pub. L. 90-148 substituted "establish technical advisory committees composed of recognized experts in various aspects of air pollution to assist in the examination and evaluation of research progress and proposals and to avoid duplication of research" for "initiate and conduct a program of research directed toward the development of improved, low-cost techniques for extracting sulfur from fuels" as clause (4) and struck out clause (5) which related to research programs relating to the control of hydrocarbon emissions from evaporation of gasoline and nitrogen and aldehyde oxide emission from gasoline and diesel powered vehicles and relating to the development of improved low cost techniques to reduce emissions of oxides of sulfur produced by the combustion of sulfur-containing fuels.

Subsec. (c). Pub. L. 90-148 struck out provision for the promulgation of criteria in the case of particular air pollution agents present in the air in certain quantities reflecting the latest scientific knowledge and allowing for availability and revision and provided for the recommendation by the Secretary of air quality criteria.

Subsec. (e). Pub. L. 90-148 substituted references to subsections (d), (e), and (f) of section 7415 of this title for references to subsections (c), (d), and (e) of section 7415 of this title in the provision for the admission of advisory findings and recommendations together with the record of the conference and made such findings and recommendations part of the proceedings of the conference, not merely part of the record of proceedings.

1965—Subsec. (a)(5). Pub. L. 89-272, § 103(3), added par. (5).

Subsecs. (d), (e). Pub. L. 89-272, § 103(4), added subsecs. (d) and (e).

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Consultation With Committee on Science and Technology of House of Representatives

Section 101(c) of Pub. L. 95-95 provided that: "The Administrator of the Environmental Protection Agency shall consult with the House Committee on Science and Technology on the environmental and atmospheric research, development, and demonstration aspects of this Act [See Short Title of 1977 Amendment note under section 7401 of this title]. In addition, the reports and studies required by this Act that relate to research, development, and demonstration issues shall be transmitted to the Committee on Science and Technology at the same time they are made available to other committees of the Congress."

Study of Substances Discharged From Exhausts of Motor Vehicles

Pub. L. 86-493, June 8, 1960, 74 Stat. 162, directed the Surgeon General of the Public Health Service to conduct a thorough study for the purposes of determining, with respect to the various substances discharged from the exhausts of motor vehicles, the amounts and kinds of such substances which, from the standpoint of human health, it is safe for motor vehicles to discharge into the atmosphere under the various conditions under which such vehicles may operate. Not later than two years after June 8, 1960, the Surgeon General was required to submit to Congress a report on the results of the study, together with such recommendations, if any, based upon the findings made in such study, as he deemed necessary for the protection of the public health.

Termination of Advisory Committees

Advisory Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Section Referred to in Other Sections

This section is referred to in section 7626 of this title.

§ 7404. Research relating to fuels and vehicles

(a) Research programs; grants; contracts; pilot and demonstration plants; byproducts research

The Administrator shall give special emphasis to research and development into new and improved methods, having industry-wide application, for the prevention and control of air pollution resulting from the combustion of fuels. In furtherance of such research and development he shall—

(1) conduct and accelerate research programs directed toward development of improved, low-cost techniques for—

(A) control of combustion byproducts of fuels,

(B) removal of potential air pollutants from fuels prior to combustion,

(C) control of emissions from the evaporation of fuels,

(D) improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and

(E) producing synthetic or new fuels which, when used, result in decreased atmospheric emissions.

(2) provide for Federal grants to public or nonprofit agencies, institutions, and organizations and to individuals, and contracts with public or private agencies, institutions, or persons, for payment of (A) part of the cost of acquiring, constructing, or otherwise securing for research and development purposes, new or improved devices or methods having industrywide application of preventing or controlling discharges into the air of various types of pollutants; (B) part of the cost of programs to develop low emission alternatives to the present internal combustion engine; (C) the cost to purchase vehicles and vehicle engines, or portions thereof, for research, development, and testing purposes; and (D) carrying out the other provisions of this section, without regard to section 529 of title 31 and section 5 of title 41: *Provided*, That research or demonstration contracts awarded pursuant to this subsection (including contracts for construction) may be made in accordance with, and subject to the limitations provided with respect to research contracts of the military departments in, section 2353 of title 10, except that the determination, approval, and certification required thereby shall be made by the Secretary: *Provided further*, That no grant may be made under this paragraph in excess of $1,500,000;

(3) determine, by laboratory and pilot plant testing, the results of air pollution research and studies in order to develop new or improved processes and plant designs to the point where they can be demonstrated on a large and practical scale;

(4) construct, operate, and maintain, or assist in meeting the cost of the construction, operation, and maintenance of new or improved demonstration plants or processes which have promise of accomplishing the purposes of this chapter;

(5) study new or improved methods for the recovery and marketing of commercially valuable byproducts resulting from the removal of pollutants.

(b) Powers of Administrator in establishing research and development programs

In carrying out the provisions of this section, the Administrator may—

(1) conduct and accelerate research and development of low-cost instrumentation techniques to facilitate determination of quantity and quality of air pollutant emissions, including, but not limited to, automotive emissions;

(2) utilize, on a reimbursable basis, the facilities of existing Federal scientific laboratories;

(3) establish and operate necessary facilities and test sites at which to carry on the research, testing, development, and programming necessary to effectuate the purposes of this section;

(4) acquire secret processes, technical data, inventions, patent applications, patents, licenses, and an interest in lands, plants, and facilities, and other property or rights by purchase, license, lease, or donation; and

(5) cause on-site inspections to be made of promising domestic and foreign projects, and cooperate and participate in their development in instances in which the purposes of the chapter will be served thereby.

(c) Authorization of appropriations

For the purposes of this section there are authorized to be appropriated $75,000,000 for the fiscal year ending June 30, 1971, $125,000,000 for the fiscal year ending June 30, 1972, $150,000,000 for the fiscal year ending June 30, 1973, and $150,000,000 for the fiscal year ending June 30, 1974, and $150,000,000 for the fiscal year ending June 30, 1975. Amounts appropriated pursuant to this subsection shall remain available until expended.

(July 14, 1955, ch. 360, title I, § 104, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 487, and amended Dec. 5, 1979, Pub. L. 91-137, 83 Stat. 283; Dec. 31, 1970, Pub. L. 91-604, §§ 2(b), (c), 13(a), 15(c)(2), 84 Stat. 1676, 1677, 1709, 1713; Apr. 9, 1973, Pub. L. 93-15, § 1(a), 87 Stat. 11; June 22, 1974, Pub. L. 93-319, § 13(a), 88 Stat. 265.)

CODIFICATION

Section was formerly classified to section 1857b-1 of this title.

PRIOR PROVISIONS

A prior section 104 of act July 14, 1955, was renumbered section 105 by Pub. L. 90-148 and is set out as section 7405 of this title.

AMENDMENTS

1974—Subsec. (c). Pub. L. 93-319 authorized appropriation of $150,000,000 for the fiscal year ending June 30, 1975.

1973—Subsec. (c). Pub. L. 93-15 authorized appropriation of $150,000,000 for fiscal year ending June 30, 1974.

1970—Subsec. (a). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (a)(1). Pub. L. 91-604, § 2(b), added provisions authorizing research programs directed toward development of techniques for improving the efficiency of fuels combustion so as to decrease atmospheric emissions, and producing synthetic or new fuels which result in decreased atmospheric emissions.

Subsec. (a)(2). Pub. L. 91-604, § 2(c), added cls. (B) and (C). Former cl. (B) was redesignated as (D).

Subsec. (b). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (c). Pub. L. 91-604, § 13(a), substituted provisions authorizing appropriations for fiscal years ending June 30, 1971, 1972, and 1973, for provisions authorizing appropriations for the fiscal years ending June 30, 1968 and 1969.

1969—Subsec. (c). Pub. L. 91-137 authorized appropriation of $45,000,000 for the fiscal year ending June 30, 1970.

EXTENSION TO AUG. 31, 1970 OF AUTHORIZATION PERIOD FOR FISCAL YEAR 1970

Pub. L. 91-316, July 10, 1970, 84 Stat. 416, provided in part that the authorization contained in section 104(c) of the Clean Air Act [subsec. (c) of this section] for the fiscal year ending June 30, 1970, should remain available through Aug. 31, 1970, notwithstanding any provisions of this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7491, 7626 of this title.

§ 7405. Grants for support of air pollution planning and control programs

(a) Amounts; limitations; assurances of plan development capability

(1)(A) The Administrator may make grants to air pollution control agencies in an amount up to two-thirds of the cost of planning, developing, establishing, or improving, and up to one-half of the cost of maintaining, programs for the prevention and control of air pollution or implementation of national primary and secondry [1] ambient air quality standards.

(B) Subject to subparagraph (C), the Administrator may make grants to air pollution control agencies within the meaning of paragraph (1), (2), or (4) of section 7602(b) of this title in an amount up to three-fourths of the cost of planning, developing, establishing, or improving, and up to three-fifths of the cost of maintaining, any program for the prevention and control of air pollution or implementation of national primary and secondary ambient air quality standards in an area that includes two or more municipalities, whether in the same or different States.

(C) With respect to any air quality control region or portion thereof for which there is an applicable implementation plan under section 7410 of this title, grants under subparagraph (B) may be made only to air pollution control agencies which have substantial responsibilities for carrying out such applicable implementation plan.

(2) Before approving any grant under this subsection to any air pollution control agency within the meaning of sections 7602(b)(2) and 7602(b)(4) of this title, the Administrator shall receive assurances that such agency provides for adequate representation of appropriate State, interstate, local, and (when appropriate) international, interests in the air quality control region.

(3) Before approving any planning grant under this subsection to any air pollution control agency within the meaning of sections 7602(b)(2) and 7602(b)(4) of this title, the Administrator shall receive assurances that such agency has the capability of developing a comprehensive air quality plan for the air quality control region, which plan shall include (when appropriate) a recommended system of alerts to avert and reduce the risk of situations in which there may be imminent and serious danger to the public health or welfare from air pollutants and the various aspects relevant to the establishment of air quality standards for such air quality control region, including the concentration of industries, other commercial establishments, population and naturally occurring factors which shall affect such standards.

(b) Terms and conditions; regulations; factors for consideration; maintenance of effort; waiver of maintenance of effort requirement; consultation requirement

From the sums available for the purposes of subsection (a) of this section for any fiscal year, the Administrator shall from time to time make grants to air pollution control agencies upon such terms and conditions as the Administrator may find necessary to carry out the purpose of this section. In establishing regulations for the granting of such funds the Administrator shall, so far as practicable, give due consideration to (1) the population, (2) the extent of the actual or potential air pollution problem, and (3) the financial need of the respective agencies. No agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for other than nonrecurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year, unless the Administrator, after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government; and no agency shall receive any grant under this section with respect to the maintenance of a program for the prevention and control of air pollution unless the Administrator is satisfied that such grant will be so used to supplement and, to the extent practicable, increase the level of State, local, or other non-Federal funds that would in the absence of such grant be made available for the maintenance of such program, and will in no event supplant such State, local, or other non-Federal funds. No grant shall be made under this section until the Administrator has consulted with the appropriate official as designated by the Governor or Governors of the State or States affected.

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[1] So in original. Probably should be "secondary".

(c) State expenditure limitation

Not more than 10 per centum of the total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs in any one State. In the case of a grant for a program in an area crossing State boundaries, the Administrator shall determine the portion of such grant that is chargeable to the percentage limitation under this subsection for each State into which such area extends. In fiscal year 1978 and subsequent fiscal years, subject to the provisions of subsection (b) of this section, no State shall receive less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.

(d) Reduction of payments; availability of reduced amounts; reduced amount as deemed paid to agency for purpose of determining amount of grant

The Administrator, with the concurrence of any recipient of a grant under this section, may reduce the payments to such recipient by the amount of the pay, allowances, traveling expenses, and any other costs in connection with the detail of any officer or employee to the recipient under section 7601 of this title, when such detail is for the convenience of, and at the request of, such recipient and for the purpose of carrying out the provisions of this chapter. The amount by which such payments have been reduced shall be available for payment of such costs by the Administrator, but shall, for the purpose of determining the amount of any grant to a recipient under subsection (a) of this section, be deemed to have been paid to such agency.

(e) Notice and opportunity for hearing when affected by adverse action

No application by a State for a grant under this section may be disapproved by the Administrator without prior notice and opportunity for a public hearing in the affected State, and no commitment or obligation of any funds under any such grant may be revoked or reduced without prior notice and opportunity for a public hearing in the affected State (or in one of the affected States if more than one State is affected).

(July 14, 1955, ch. 360, title I, § 105, formerly § 4, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 395, renumbered § 104 and amended Oct. 20, 1965, Pub. L. 89-272, title I, § 101(2)-(4), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89-675, § 3, 80 Stat. 954, and renumbered § 105 and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 489; Dec. 31, 1970, Pub. L. 91-604, §§ 3(a), (b)(1), 15(c)(2), 84 Stat. 1677, 1713; Aug. 7, 1977, Pub. L. 95-95, title I, § 102, title III, § 305(b), 91 Stat. 687, 776.)

CODIFICATION

Section was formerly classified to section 1857c of this title.

PRIOR PROVISIONS

A prior section 105 of act July 14, 1955, was renumbered section 108 by Pub. L. 90-148 and is set out as section 7415 of this title.

A prior section 4 of act July 14, 1955, ch. 360, 69 Stat. 322, which was classified to a prior section 1857c of this title, related to the preparation of reports and recommendations prior to the general amendment by Pub. L. 88-206. See section 7403 of this title.

Provisions similar to those comprising subsecs. (a) and (b) of this section were contained in a prior section 1857d of this title, act July 14, 1955, ch. 360, § 5, 69 Stat. 322, as amended Sept. 22, 1959, Pub. L. 86-365, § 1, 73 Stat. 646; Oct. 9, 1962, Pub. L. 87-761, § 1, 76 Stat. 760, prior to the general amendment by Pub. L. 88-206.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-95, § 102(a), added ", unless the Administrator, after notice and opportunity for hearing, determines that a reduction in expenditures is attributable to a nonselective reduction in expenditures in the programs of all executive branch agencies of the applicable unit of Government" following "will be less than its expenditures were for such programs during the preceding fiscal year".

Subsec. (c). Pub. L. 95-95, § 102(b), provided that in fiscal year 1978 and subsequent fiscal years, subject to the provisions of subsec. (b) of this section, no State shall receive less than one-half of 1 per centum of the annual appropriation for grants under this section for grants to agencies within such State.

Subsec. (e). Pub. L. 95-95, § 305(b), added subsec. (e).

1970—Subsec. (a)(1). Pub. L. 91-604, § 3(a), substituted provisions authorizing the Administrator to make grants, for provisions authorizing the Secretary to make grants, and provisions authorizing grants for programs implementing national primary and secondary ambient air quality standards, for provisions authorizing grants for programs implementing air quality standards authorized by this subchapter, and added the provision requiring grants to air pollution control agencies be made to agencies having substantial responsibilities for carrying out the applicable implementation plan with respect to the air quality control region or portion thereof.

Subsecs. (a)(2), (3), (b), (c). Pub. L. 91-604, § 15(c)(2) substituted "Administrator" for "Secretary" wherever appearing therein.

Subsec. (d). Pub. L. 91-604, § 3(b)(1), added subsec. (d).

1967—Subsec. (a). Pub. L. 90-148 designated existing provisions as par. (1), added pars. (2) and (3), and, in par. (1) as so designated, substituted "regional air quality control program" for "regional air pollution control program," added planning to the list of authorized activities, and added programs for the implementation of air quality standards authorized by this chapter to the list of authorized programs.

Subsec. (b). Pub. L. 90-148 made minor changes in the order of the provisions.

Subsec. (c). Pub. L. 90-148 reduced the percentage limitation on the portion of the total funds which might be granted for air pollution control programs in any one State from 12½ per centum to 10 per centum.

1966—Subsec. (a). Pub. L. 89-675, § 3(a)(1), struck out provisions limiting the available funds to 20 per centum of the sums appropriated annually for the purpose of this subchapter, inserted provisions allowing grants to air pollution control agencies up to one-half of the cost of maintaining programs for prevention and control of air pollution, and authorized the Secretary to make grants of up to three-fifths of the cost of maintaining regional air pollution control programs.

Subsec. (b). Pub. L. 89-675, § 3(a)(2), substituted reference to sums available "for the purpose of" subsection (a) of this section for reference to sums available "under" subsection (a) of this section, permitted grantees to reduce annual expenditures to the extent that nonrecurrent costs are involved for purposes of application of the provision that no agency may receive grants during any fiscal year when its expenditures of non-Federal funds for air pollution control programs are less than its expenditures for such programs during the preceding year, and added provisions insuring that Federal funds will in no event be used to supplant State or local government funds in maintaining air pollution control programs.

Subsec. (c). Pub. L. 89-675, § 3(b), substituted "total of funds appropriated or allocated for the purposes of subsection (a) of this section shall be granted for air pollution control programs" for "grant funds available under subsection (a) of this section shall be expended" and authorized the Secretary to determine the portion of grants to interstate agencies to be charged against the twelve and one-half percent limitation of grant funds to any one State.

1965—Subsec. (a). Pub. L. 89-272 substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter", and "section 302(b)(2) and (4)" for "section 9(b)(2) and (4)", which for purposes of codification has been changed to "section 7602(b)(2) and (4) of this title".

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7406. Interstate air quality agencies; program cost limitations

For the purpose of developing implementation plans for any interstate air quality control region designated pursuant to section 7407 of this title, the Administrator is authorized to pay, for two years, up to 100 per centum of the air quality planning program costs of any agency designated by the Governors of the affected States, which agency shall be capable of recommending to the Governors plans for implementation of national primary and secondary ambient air quality standards and shall include representation from the States and appropriate political subdivisions within the air quality control region. After the initial two-year period the Administrator is authorized to make grants to such agency in an amount up to three-fourths of the air quality planning program costs of any agency.

(July 14, 1955, ch. 360, title I, § 106, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 490, and amended Dec. 31, 1970, Pub. L. 91-604, § 3(c), 84 Stat. 1677.)

Codification

Section was formerly classified to section 1857c-1 of this title.

Prior Provisions

A prior section 106 of act July 14, 1955, was renumbered section 117 by Pub. L. 91-604 and is set out as section 7417 of this title.

Amendments

1970—Pub. L. 91-604 struck out lettered designation "(a)", as so redesignated, substituted provisions authorizing Federal grants for the purpose of developing implementation plans and provisions requiring the designated State agency to be capable of recommending plans for implementation of national primary and secondary ambient air quality standards, for provisions authorizing Federal grants for the purpose of expediting the establishment of air quality standards and provisions requiring the designated State agency to be capable of recommending standards of air quality and plans for implementation thereof, respectively, and struck out subsec. (b) which authorized the establishment of air quality planning commissions.

§ 7407. Air quality control regions

(a) Responsibility of each State for air quality; submission of implementation plan

Each State shall have the primary responsibility for assuring air quality within the entire geographic area comprising such State by submitting an implementation plan for such State which will specify the manner in which national primary and secondary ambient air quality standards will be achieved and maintained within each air quality control region in such State.

(b) Designated regions

For purposes of developing and carrying out implementation plans under section 7410 of this title—

(1) an air quality control region designated under this section before December 31, 1970, or a region designated after such date under subsection (c) of this section, shall be an air quality control region; and

(2) the portion of such State which is not part of any such designated region shall be an air quality control region, but such portion may be subdivided by the State into two or more air quality control regions with the approval of the Administrator.

(c) Authority of Administrator to designate regions; notification of Governors of affected States

The Administrator shall, within 90 days after December 31, 1970, after consultation with appropriate State and local authorities, designate as an air quality control region any interstate area or major intrastate area which he deems necessary or appropriate for the attainment and maintenance of ambient air quality standards. The Administrator shall immediately notify the Governors of the affected States of any designation made under this subsection.

(d) List of noncomplying regions

(1) For the purpose of transportation control planning, part D (relating to nonattainment), part C (relating to prevention of significant deterioration of air quality), and for other purposes, each State, within one hundred and twenty days after August 7, 1977, shall submit to the Administrator a list, together with a summary of the available information, identifying those air quality control regions, or portions thereof, established pursuant to this section in such State which on August 7, 1977—

(A) do not meet a national primary ambient air quality standard for any air pollutant other than sulfur dioxide or particulate matter;

(B) do not meet, or in the judgment of the State may not in the time period required by an applicable implementation plan attain or maintain, any national primary ambient air quality standard for sulfur dioxide or particulate matter;

(C) do not meet a national secondary ambient air quality standard;

(D) cannot be classified under subparagraph (B) or (C) of this paragraph on the basis of available information, for ambient air quality levels for sulfur oxides or particulate matter; or

(E) have ambient air quality levels better than any national primary or secondary air quality standard other than for sulfur dioxide or particulate matter, or for which there is not sufficient data to be classified under subparagraph (A) or (C) of this paragraph.

(2) Not later than sixty days after submittal of the list under paragraph (1) of this subsection the Administrator shall promulgate each such list with such modifications as he deems necessary. Whenever the Administrator proposes to modify a list submitted by a State, he shall notify the State and request all available data relating to such region or portion, and provide such State with an opportunity to demonstrate why any proposed modification is inappropriate.

(4)[1] Any region or portion thereof which is not classified under subparagraph (B) or (C) of paragraph (1) of this subsection for sulfur dioxide or particulate matter within one hundred and eighty days after August 7, 1977, shall be deemed to be a region classified under subparagraph (D) of paragraph (1) of this subsection.

(5) A State may from time to time review, and as appropriate revise and resubmit, the list required under this subsection. The Administrator shall consider and promulgate such revised list in accordance with this subsection.

(e) Redesignation of air quality control regions

(1) Except as otherwise provided in paragraph (2), the Governor of each State is authorized, with the approval of the Administrator, to redesignate from time to time the air quality control regions within such State for purposes of efficient and effective air quality management. Upon such redesignation, the list under subsection (d) of this section shall be modified accordingly.

(2) In the case of an air quality control region in a State, or part of such region, which the Administrator finds may significantly affect air pollution concentrations in another State, the Governor of the State in which such region, or part of a region, is located may redesignate from time to time the boundaries of so much of such air quality control region as is located within such State only with the approval of the Administrator and with the consent of all Governors of all States which the Administrator determines may be significantly affected.

(3) No compliance date extension granted under section 7413(d)(5) of this title (relating to coal conversion) shall cease to be effective by reason of the regional limitation provided in section 7413(d)(5) of this title if the violation of such limitation is due solely to a redesignation of a region under this subsection.

(July 14, 1955, ch. 360, title I, § 107, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1678, and amended Aug. 7, 1977, Pub. L. 95-95, title I, § 103, 91 Stat. 687.)

CODIFICATION

Section was formerly classified to section 1857c-2 of this title.

PRIOR PROVISIONS

A prior section 107 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 490, which was classified to section 1857c-2 of this title, related to air quality control regions and was repealed by Pub. L. 91-604. The section 107 of act July 14, 1955, which formed part of that Act as originally enacted, was renumbered section 111 by Pub. L. 90-148 and again renumbered section 118 by Pub. L. 91-604, and is set out as section 7418 of this title.

AMENDMENTS

1977—Subsecs. (d), (e). Pub. L. 95-95 added subsecs. (d) and (e).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

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[1] So in original. Subsec. (d) enacted without a par. (3).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7406, 7471, 7472, 7477, 7501 of this title.

§ 7408. Air quality criteria and control techniques

(a) Air pollutant list; publication and revision by Administrator; issuance of air quality criteria for air pollutants

(1) For the purpose of establishing national primary and secondary ambient air quality standards, the Administrator shall within 30 days after December 31, 1970, publish, and shall from time to time thereafter revise, a list which includes each air pollutant—

(A) emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare;

(B) the presence of which in the ambient air results from numerous or diverse mobile or stationary sources; and

(C) for which air quality criteria had not been issued before December 31, 1970 but for which he plans to issue air quality criteria under this section.

(2) The Administrator shall issue air quality criteria for an air pollutant within 12 months after he has included such pollutant in a list under paragraph (1). Air quality criteria for an air pollutant shall accurately reflect the latest scientific knowledge useful in indicating the kind and extent of all identifiable effects on public health or welfare which may be expected from the presence of such pollutant in the ambient air, in varying quantities. The criteria for an air pollutant, to the extent practicable, shall include information on—

(A) those variable factors (including atmospheric conditions) which of themselves or in combination with other factors may alter the effects on public health or welfare of such air pollutant;

(B) the types of air pollutants which, when present in the atmosphere, may interact with such pollutant to produce an adverse effect on public health or welfare; and

(C) any known or anticipated adverse effects on welfare.

(b) Issuance by Administrator of information on air pollution control techniques; standing consulting committees for air pollutants; establishment; membership

(1) Simultaneously with the issuance of criteria under subsection (a) of this section, the Administrator shall, after consultation with appropriate advisory committees and Federal departments and agencies, issue to the States and appropriate air pollution control agencies information on air pollution control techniques, which information shall include data relating to the cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology. Such information shall include such data as are available on available technology and alternative methods of prevention and control of air pollution. Such information shall also include data on alternative fuels, processes, and operating methods which will result in elimination or significant reduction of emissions.

(2) In order to assist in the development of information on pollution control techniques, the Administrator may establish a standing consulting committee for each air pollutant included in a list published pursuant to subsection (a)(1) of this section, which shall be comprised of technically qualified individuals representative of State and local governments, industry, and the academic community. Each such committee shall submit, as appropriate, to the Administrator information related to that required by paragraph (1).

(c) Review, modification, and reissuance of criteria or information

The Administrator shall from time to time review, and, as appropriate, modify, and reissue any criteria or information on control techniques issued pursuant to this section. Not later than six months after August 7, 1977, the Administrator shall revise and reissue criteria relating to concentrations of NO_2 over such period (not more than three hours) as he deems appropriate. Such criteria shall include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

(d) Publication in Federal Register; availability of copies for general public

The issuance of air quality criteria and information on air pollution control techniques shall be announced in the Federal Register and copies shall be made available to the general public.

(e) Transportation planning and guidelines

The Administrator shall, after consultation with the Secretary of Transportation and the Secretary of Housing and Urban Development and State and local officials and within 180 days after August 7, 1977, and from time to time thereafter, publish guidelines on the basic program elements for the planning process assisted under section 7505 of this title. Such guidelines shall include information on—

(1) methods to identify and evaluate alternative planning and control activities;

(2) methods of reviewing plans on a regular basis as conditions change or new information is presented;

(3) identification of funds and other resources necessary to implement the plan, including interagency agreements on providing such funds and resources;

(4) methods to assure participation by the public in all phases of the planning process; and

(5) such other methods as the Administrator determines necessary to carry out a continuous planning process.

(f) Information regarding processes, procedures, and methods to reduce or control pollutants in transportation; reduction of mobile source related pollutants; reduction of impact on public health

(1) The Administrator shall publish and make available to appropriate Federal agencies, States, and air pollution control agencies, in-

cluding agencies assisted under section 7505 of this title within 6 months after August 7, 1977, for clauses (i), (ii), (iii), and (iv) of subparagraph (A) and within one year after August 7, 1977, for the balance of this subsection (and from time to time thereafter),

(A) information, prepared, as appropriate, in cooperation with the Secretary of Transportation, regarding processes, procedures, and methods to reduce or control each such pollutant, including but not limited to—

(i) motor vehicle emission inspection and maintenance programs;

(ii) programs to control vapor emissions from fuel transfer and storage operations and operations using solvents;

(iii) programs for improved public transit;

(iv) programs to establish exclusive bus and carpool lanes and areawide carpool programs;

(v) programs to limit portions of road surfaces or certain sections of the metropolitan areas to the use of common carriers, both as to time and place;

(vi) programs for long-range transit improvements involving new transportation policies and transportation facilities or major changes in existing facilities;

(vii) programs to control on-street parking;

(viii) programs to construct new parking facilities and operate existing parking facilities for the purpose of park and ride lots and fringe parking;

(ix) programs to limit portions of road surfaces or certain sections of the metropolitan area to the use of nonmotorized vehicles or pedestrian use, both as to time and place;

(x) provisions for employer participation in programs to encourage carpooling, vanpooling, mass transit, bicycling, and walking;

(xi) programs for secure bicycle storage facilities and other facilities, including bicycle lanes, for the convenience and protection of bicyclists, in both public and private areas;

(xii) programs of staggered hours of work;

(xiii) programs to institute road user charges, tolls, or differential rates to discourage single occupancy automobile trips;

(xiv) programs to control extended idling of vehicles;

(xv) programs to reduce emissions by improvements in traffic flow;

(xvi) programs for the conversion of fleet vehicles to cleaner engines or fuels, or to otherwise control fleet vehicle operations;

(xvii) programs for retrofit of emission devices or controls on vehicles and engines, other than light duty vehicles, not subject to regulations under section 7521 of this title; and

(xviii) programs to reduce motor vehicle emissions which are caused by extreme cold start conditions;

(B) information on additional methods or strategies that will contribute to the reduction of mobile source related pollutants during periods in which any primary ambient air quality standard will be exceeded and during episodes for which an air pollution alert, warning, or emergency has been declared;

(C) information on other measures which may be employed to reduce the impact on public health or protect the health of sensitive or susceptible individuals or groups; and

(D) information on the extent to which any process, procedure, or method to reduce or control such air pollutant may cause an increase in the emissions or formation of any other pollutant.

(2) In publishing such information the Administrator shall also include an assessment of—

(A) the relative effectiveness of such processes, procedures, and methods;

(B) the potential effect of such processes, procedures, and methods on transportation systems and the provision of transportation services; and

(C) the environmental, energy, and economic impact of such processes, procedures, and methods.

(July 14, 1955, ch. 360, title I, § 108, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1678, and amended Aug. 7, 1977, Pub. L. 95-95, title I, §§ 104, 105, title IV, § 401(a), 91 Stat. 689, 790.)

CODIFICATION

Section was formerly classified to section 1857c-3 of this title.

PRIOR PROVISIONS

A prior section 108 of act July 14, 1955, was renumbered section 115 by Pub. L. 91-604, and is set out as section 7415 of this title.

AMENDMENTS

1977—Subsec. (a)(1)(A). Pub. L. 95-95, § 401(a), substituted "emissions of which, in his judgment, cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare" for "which in his judgment has an adverse effect on public health or welfare".

Subsec. (b)(1). Pub. L. 95-95, § 104(a), substituted "cost of installation and operation, energy requirements, emission reduction benefits, and environmental impact of the emission control technology" for "technology and costs of emission control".

Subsec. (c). Pub. L. 95-95, § 104(b), added provision directing the Administrator, not later than six months after Aug. 7, 1977, to revise and reissue criteria relating to concentrations of NO_2 over such period (not more than three hours) as he deems appropriate, with the criteria to include a discussion of nitric and nitrous acids, nitrites, nitrates, nitrosamines, and other carcinogenic and potentially carcinogenic derivatives of oxides of nitrogen.

Subsecs. (e), (f). Pub. L. 95-95, § 105, added subsecs. (e) and (f).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7409, 7411, 7417, 7422, 7508 of this title.

§ 7409. National primary and secondary ambient air quality standards

(a) Promulgation

(1) The Administrator—

(A) within 30 days after December 31, 1970, shall publish proposed regulations prescribing a national primary ambient air quality standard and a national secondary ambient air quality standard for each air pollutant for which air quality criteria have been issued prior to such date; and

(B) after a reasonable time for interested persons to submit written comments thereon (but no later than 90 days after the initial publication of such proposed standards) shall by regulation promulgate such proposed national primary and secondary ambient air quality standards with such modifications as he deems appropriate.

(2) With respect to any air pollutant for which air quality criteria are issued after December 31, 1970, the Administrator shall publish, simultaneously with the issuance of such criteria and information, proposed national primary and secondary ambient air quality standards for any such pollutant. The procedure provided for in paragraph (1)(B) of this subsection shall apply to the promulgation of such standards.

(b) Protection of public health and welfare

(1) National primary ambient air quality standards, prescribed under subsection (a) of this section shall be ambient air quality standards the attainment and maintenance of which in the judgment of the Administrator, based on such criteria and allowing an adequate margin of safety, are requisite to protect the public health. Such primary standards may be revised in the same manner as promulgated.

(2) Any national secondary ambient air quality standard prescribed under subsection (a) of this section shall specify a level of air quality the attainment and maintenance of which in the judgment of the Administrator, based on such criteria, is requisite to protect the public welfare from any known or anticipated adverse effects associated with the presence of such air pollutant in the ambient air. Such secondary standards may be revised in the same manner as promulgated.

(c) National primary ambient air quality standard for nitrogen dioxide

The Administrator shall, not later than one year after August 7, 1977, promulgate a national primary ambient air quality standard for NO_2 concentrations over a period of not more than 3 hours unless, based on the criteria issued under section 7408(c) of this title, he finds that there is no significant evidence that such a standard for such a period is requisite to protect public health.

(d) Review and revision of criteria and standards; independent scientific review committee; appointment; advisory functions

(1) Not later than December 31, 1980, and at five-year intervals thereafter, the Administrator shall complete a thorough review of the criteria published under section 7408 of this title and the national ambient air quality standards promulgated under this section and shall make such revisions in such criteria and standards and promulgate such new standards as may be appropriate in accordance with section 7408 of this title and subsection (b) of this section. The Administrator may review and revise criteria or promulgate new standards earlier or more frequently than required under this paragraph.

(2)(A) The Administrator shall appoint an independent scientific review committee composed of seven members including at least one member of the National Academy of Sciences, one physician, and one person representing State air pollution control agencies.

(B) Not later than January 1, 1980, and at five-year intervals thereafter, the committee referred to in subparagraph (A) shall complete a review of the criteria published under section 7408 of this title and the national primary and secondary ambient air quality standards promulgated under this section and shall recommend to the Administrator any new national ambient air quality standards and revisions of existing criteria and standards as may be appropriate under section 7408 of this title and subsection (b) of this section.

(C) Such committee shall also (i) advise the Administrator of areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised national ambient air quality standards, (ii) describe the research efforts necessary to provide the required information, (iii) advise the Administrator on the relative contribution to air pollution concentrations of natural as well as anthropogenic activity, and (iv) advise the Administrator of any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of such national ambient air quality standards.

(July 14, 1955, ch. 360, title I, § 109, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1679, and amended Aug. 7, 1977, Pub. L. 95-95, title I, § 106, 91 Stat. 691.)

CODIFICATION

Section was formerly classified to section 1857c-4 of this title.

PRIOR PROVISIONS

A prior section 109 of act July 14, 1955, was renumbered section 116 by Pub. L. 91-604, and is set out as section 7416 of this title.

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-95, § 106(b), added subsec. (c).

Subsec. (d). Pub. L. 95-95, § 106(a), added subsec. (d).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY COMMITTEES

Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7415, 7607, 7618 of this title.

§ 7410. State implementation plans for national primary and secondary ambient air quality standards

(a) Adoption of plan by State; submission to Administrator; content of plan; revision; new sources; indirect source review program; supplemental or intermittent control systems

(1) Each State shall, after reasonable notice and public hearings, adopt and submit to the Administrator, within nine months after the promulgation of a national primary ambient air quality standard (or any revision thereof) under section 7409 of this title for any air pollutant, a plan which provides for implementation, maintenance, and enforcement of such primary standard in each air quality control region (or portion thereof) within such State. In addition, such State shall adopt and submit to the Administrator (either as a part of a plan submitted under the preceding sentence or separately) within nine months after the promulgation of a national ambient air quality secondary standard (or revision thereof), a plan which provides for implementation, maintenance, and enforcement of such secondary standard in each air quality control region (or portion thereof) within such State. Unless a separate public hearing is provided, each State shall consider its plan implementing such secondary standard at the hearing required by the first sentence of this paragraph.

(2) The Administrator shall, within four months after the date required for submission of a plan under paragraph (1), approve or disapprove such plan, or any portion thereof. The Administrator shall approve such plan, or any portion thereof, if he determines that it was adopted after reasonable notice and hearing and that—

(A) except as may be provided in subparagraph (I)(i) in the case of a plan implementing a national primary ambient air quality standard, it provides for the attainment of such primary standard as expeditiously as practicable but (subject to subsection (e) of this section) in no case later than three years from the date of approval of such plan (or any revision thereof to take account of a revised primary standard); and (ii) in the case of a plan implementing a national secondary ambient air quality standard, it specifies a reasonable time at which such secondary standard will be attained;

(B) it includes emission limitations, schedules, and timetables for compliance with such limitations, and such other measures as may be necessary to insure attainment and maintenance of such primary or secondary standard, including, but not limited to, transportation controls, air quality maintenance plans, and preconstruction review of direct sources of air pollution as provided in subparagraph (D);

(C) it includes provision for establishment and operation of appropriate devices, methods, systems, and procedures necessary to (i) monitor, compile, and analyze data on ambient air quality and, (ii) upon request, make such data available to the Administrator;

(D) it includes a program to provide for the enforcement of emission limitations and regulation of the modification, construction, and operation of any stationary source, including a permit program as required in parts C and D and a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that national ambient air quality standards are achieved and maintained, and (ii) a procedure, meeting the requirements of paragraph (4), for review (prior to construction or modification) of the location of new sources to which a standard of performance will apply;

(E) it contains adequate provisions (i) prohibiting any stationary source within the State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, and (ii) insuring compliance with the requirements of section 7426 of this title, relating to interstate pollution abatement;

(F) it provides (i) necessary assurances that the State will have adequate personnel, funding, and authority to carry out such implementation plan, (ii) requirements for installation of equipment by owners or operators of stationary sources to monitor emissions from such sources, (iii) for periodic reports on the nature and amounts of such emissions; (iv) that such reports shall be correlated by the State agency with any emission limitations or standards established pursuant to this chapter, which reports shall be available at reasonable times for public inspection; (v) for authority comparable to that in section 7603 of this title, and adequate contingency plans to implement such authority; and (vi) requirements that the State comply with the requirements respecting State boards under section 7428 of this title;

(G) it provides, to the extent necessary and practicable, for periodic inspection and testing of motor vehicles to enforce compliance with applicable emission standards;

(H) it provides for revision, after public hearings, of such plan (i) from time to time as may be necessary to take account of revisions of such national primary or secondary ambient air quality standard or the availability of improved or more expeditious methods of achieving such primary or secondary standards; or (ii) except as provided in paragraph (3)(C), whenever the Administrator finds on the basis of information available to him that the plan is substantially inadequate to achieve the national ambient air quality primary or secondary standard which it implements or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977;

(I) it provides that after June 30, 1979, no major stationary source shall be constructed or modified in any nonattainment area (as defined in section 7501(2) of this title) to which such plan applies, if the emissions form such facility will cause or contribute to concentrations of any pollutant for which a national ambient air quality standard is exceeded in such area, unless, as of the time of application for a permit for such construction or modification, such plan meets the requirements of part D (relating to nonattainment areas);

(J) it meets the requirements of section 7421 of this title (relating to consultation), section 7427 of this title (relating to public notification), part C (relating to prevention of significant deterioration of air quality and visibility protection); and

(K) it requires the owner or operator of each major stationary source to pay to the permitting authority as a condition of any permit required under this chapter a fee sufficient to cover—

(i) the reasonable costs of reviewing and acting upon any application for such a permit, and

(ii) if the owner or operator receives a permit for such source, whether before or after August 7, 1977, the reasonable costs (incurred after such date) of implementing and enforcing the terms and conditions of any such permit (not including any court costs or other costs associated with any enforcement action).

(3)(A) The Administrator shall approve any revision of an implementation plan applicable to an air quality control region if he determines that it meets the requirements of paragraph (2) and has been adopted by the State after reasonable notice and public hearings.

(B) As soon as practicable, the Administrator shall, consistent with the purposes of this chapter and the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 791 et seq.], review each State's applicable implementation plans and report to the State on whether such plans can be revised in relation to fuel burning stationary sources (or persons supplying fuel to such sources) without interfering with the attainment and maintenance of any national ambient air quality standard within the period permitted in this section. If the Administrator determines that any such plan can be revised, he shall notify the State that a plan revision may be submitted by the State. Any plan revision which is submitted by the State shall, after public notice and opportunity for public hearing, be approved by the Administrator if the revision relates only to fuel burning stationary sources (or persons supplying fuel to such sources), and the plan as revised complies with paragraph (2) of this subsection. The Administrator shall approve or disapprove any revision no later than three months after its submission.

(C) Neither the State, in the case of a plan (or portion thereof) approved under this subsection, nor the Administrator in the case of a plan (or portion thereof) promulgated under subsection (c) of this section, shall be required to revise an applicable implementation plan because one or more exemptions under section 7418 of this title (relating to Federal facilities), enforcement orders under section 7413(d) of this title, suspensions under subsections (f) or (g) of this section (relating to temporary energy or economic authority) or orders under section 7419 of this title (relating to primary nonferrous smelters) have been granted, if such plan would have met the requirements of this section if no such exemptions, orders, extension, or variances had been granted.

(D) Any applicable implementation plan for which an attainment date later than December 31, 1982, is provided pursuant to section 7502(a)(2) of this title shall be revised by July 1, 1979, to include the comprehensive measures and requirements referred to in subsection (c)(5)(B) of this section.

(4) The procedure referred to in paragraph (2)(D) for review, prior to construction or modification, of the location of new sources shall (A) provide for adequate authority to prevent the construction or modification of any new source to which a standard of performance under section 7411 of this title will apply at any location which the State determines will prevent the attainment or maintenance within any air quality control region (or portion thereof) within such State of a national ambient air quality primary

or secondary standard, and (B) require that prior to commencing construction or modification of any such source, the owner or operator thereof shall submit to such State such information as may be necessary to permit the State to make a determination under clause (A).

(5)(A)(i) Any State may include in a State implementation plan, but the Administrator may not require as a condition of approval of such plan under this section, any indirect source review program. The Administrator may approve and enforce, as part of an applicable implementation plan, an indirect source review program which the State chooses to adopt and submit as part of its plan.

(ii) Except as provided in subparagraph (B), no plan promulgated by the Administrator shall include any indirect source review program for any air quality control region, or portion thereof.

(iii) Any State may revise an applicable implementation plan approved under this subsection to suspend or revoke any such program included in such plan, provided that such plan meets the requirements of this section.

(B) The Administrator shall have the authority to promulgate, implement and enforce regulations under subsection (c) of this section respecting indirect source review programs which apply only to federally assisted highways, airports, and other major federally assisted indirect sources and federally owned or operated indirect sources.

(C) For purposes of this paragraph, the term "indirect source means a facility, building, structure, installation, real property, road, or highway which attracts, or may attract, mobile sources of pollution. Such term includes parking lots, parking garages, and other facilities subject to any measure for management of parking supply (within the meaning of subsection (c)(2)(D)(ii) of this section), including regulation of existing off-street parking but such term does not include new or existing on-street parking. Direct emissions sources or facilities at, within, or associated with, any indirect source shall not be deemed indirect sources for the purpose of this paragraph.

(D) For purposes of this paragraph the term "indirect source review program" means the facility-by-facility review of indirect sources of air pollution, including such measures as are necessary to assure, or assist in assuring, that a new or modified indirect source will not attract mobile sources of air pollution, the emissions from which would cause or contribute to air pollution concentrations—

(i) exceeding any national primary ambient air quality standard for a mobile source-related air pollutant after the primary standard attainment date, or

(ii) preventing maintenance of any such standard after such date.

(E) For purposes of this paragraph and paragraph (2)(B), the term "transportation control measure" does not include any measure which is an "indirect source review program".

(6) No State plan shall be treated as meeting the requirements of this section unless such plan provides that in the case of any source which uses a supplemental, or intermittent control system for purposes of meeting the requirements of an order under section 7413(d) of this title or section 7419 of this title (relating to primary nonferrous smelter orders), the owner or operator of such source may not temporarily reduce the pay of any employee by reason of the use of such supplemental or intermittent or other dispersion dependent control system.

(b) Extension of period for submission of plans

The Administrator may, wherever he determines necessary, extend the period for submission of any plan or portion thereof which implements a national secondary ambient air quality standard for a period not to exceed 18 months from the date otherwise required for submission of such plan.

(c) Preparation and publication by Administrator of proposed regulations setting forth implementation plan; transportation regulations study and report; parking surcharge; suspension authority; plan implementation

(1) The Administrator shall, after consideration of any State hearing record, promptly prepare and publish proposed regulations setting forth an implementation plan, or portion thereof, for a State if—

(A) the State fails to submit an implementation plan which meets the requirements of this section,

(B) the plan, or any portion thereof, submitted for such State is determined by the Administrator not to be in accordance with the requirements of this section, or

(C) the State fails, within 60 days after notification by the Administrator or such longer period as he may prescribe, to revise an implementation plan as required pursuant to a provision of its plan referred to in subsection (a)(2)(H) of this section.

If such State held no public hearing associated with respect to such plan (or revision thereof), the Administrator shall provide opportunity for such hearing within such State on any proposed regulation. The Administrator shall, within six months after the date required for submission of such plan (or revision thereof), promulgate any such regulations unless, prior to such promulgation, such State has adopted and submitted a plan (or revision) which the Administrator determines to be in accordance with the requirements of this section. Notwithstanding the preceding sentence, any portion of a plan relating to any measure described in the first sentence of section 7421 of this title (relating to consultation) or the consultation process required under such section 7421 of this title shall not be required to be promulgated before the date eight months after such date required for submission.

(2)(A) The Administrator shall conduct a study and shall submit a report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committee on Environment and Public Works of the United States Senate not later than three months after June 22, 1974, on the necessity of parking surcharge, management of parking supply, and preferential bus/carpool lane regulations as part of the applicable implementation plans required under this section to achieve and maintain national primary ambient air quality standards. The study shall include an assessment of the economic impact of such regulations, consideration of alternative means of reducing total vehicle miles traveled, and an assessment of the impact of such regulations on other Federal and State programs dealing with energy or transportation. In the course of such study, the Administrator shall consult with other Federal officials including, but not limited to, the Secretary of Transportation, the Federal Energy Administrator, and the Chairman of the Council on Environmental Quality.

(B) No parking surcharge regulation may be required by the Administrator under paragraph (1) of this subsection as a part of an applicable implementation plan. All parking surcharge regulations previously required by the Administrator shall be void upon June 22, 1974. This subparagraph shall not prevent the Administrator from approving parking surcharges if they are adopted and submitted by a State as part of an applicable implementation plan. The Administrator may not condition approval of any implementation plan submitted by a State on such plan's including a parking surcharge regulation.

(C) The Administrator is authorized to suspend until January 1, 1975, the effective date or applicability of any regulations for the management of parking supply or any requirement that such regulations be a part of an applicable implementation plan approved or promulgated under this section. The exercise of the authority under this subparagraph shall not prevent the Administrator from approving such regulations if they are adopted and submitted by a State as part of an applicable implementation plan. If the Administrator exercises the authority under this subparagraph, regulations requiring a review or analysis of the impact of proposed parking facilities before construction which take effect on or after January 1, 1975, shall not apply to parking facilities on which construction has been initiated before January 1, 1975.

(D) For purposes of this paragraph—

(i) The term "parking surcharge regulation" means a regulation imposing or requiring the imposition of any tax, surcharge, fee, or other charge on parking spaces, or any other area used for the temporary storage of motor vehicles.

(ii) The term "management of parking supply" shall include any requirement providing that any new facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.

(iii) The term "preferential bus/carpool lane" shall include any requirement for the setting aside of one or more lanes of a street or highway on a permanent or temporary basis for the exclusive use of buses or carpools, or both.

(E) No standard, plan, or requirement, relating to management of parking supply or preferential bus/carpool lanes shall be promulgated after June 22, 1974, by the Administrator pursuant to this section, unless such promulgation has been subjected to at least one public hearing which has been held in the area affected and for which reasonable notice has been given in such area. If substantial changes are made following public hearings, one or more additional hearings shall be held in such area after such notice.

(3) Upon application of the chief executive officer of any general purpose unit of local government, if the Administrator determines that such unit has adequate authority under State or local law, the Administrator may delegate to such unit the authority to implement and enforce within the jurisdiction of such unit any part of a plan promulgated under this subsection. Nothing in this paragraph shall prevent the Administrator from implementing or enforcing any applicable provision of a plan promulgated under this subsection.

(4) In the case of any applicable implementation plan containing measures requiring—

(A) retrofits on other than commercially owned in-use vehicles,

(B) gas rationing which the Administrator finds would have seriously disruptive and widespread economic or social effects, or

(C) the reduction of the supply of on-street parking spaces,

the Governor of the State may, after notice and opportunity for public hearing, temporarily suspend such measures notwithstanding the requirements of this section until January 1, 1979, or the date on which a plan revision under subsection (a)(2)(I) of this section is submitted, whichever is earlier. No such suspension shall be granted unless the State agrees to prepare, adopt, and submit such plan revision as determined by the Administrator.

(5)(A) Any measure in an applicable implementation plan which requires a toll or other charge for the use of a bridge located entirely within one city shall be eliminated from such plan by the Administrator upon application by the Governor of the State, which application shall include a certification by the Governor that he will revise such plan in accordance with subparagraph (B).

(B) In the case of any applicable implementation plan with respect to which a measure has been eliminated under subparagraph (A), such plan shall, not later than one year after August 7, 1977, be revised to include comprehensive measures (including the written evidence required by part D), to:

(i) establish, expand, or improve public transportation measures to meet basic transportation needs, as expeditiously as is practicable; and

(ii) implement transportation control measures necessary to attain and maintain national ambient air quality standards,

and such revised plan shall, for the purpose of implementing such comprehensive public transportation measures, include requirements to use (insofar as is necessary) Federal grants, State or local funds, or any combination of such grants and funds as may be consistent with the terms of the legislation providing such grants and funds. Such measures shall, as a substitute for the tolls or charges eliminated under subparagraph (A), provide for emissions reductions equivalent to the reductions which may reasonably be expected to be achieved through the use of the tolls or charges eliminated.

(C) Any revision of an implementation plan for purposes of meeting the requirements of subparagraph (B) shall be submitted in coordination with any plan revision required under part D.

(d) Applicable implementation plan

For purposes of this chapter, an applicable implementation plan is the implementation plan, or most recent revision thereof, which has been approved under subsection (a) of this section or promulgated under subsection (c) of this section and which implements the requirements of this section.

(e) Extension of time period for attainment of national primary ambient air quality standard in implementation plan; procedure; approval of extension by Administrator

(1) Upon application of a Governor of a State at the time of submission of any plan implementing a national ambient air quality primary standard, the Administrator may (subject to paragraph (2)) extend the three-year period referred to in subsection (a)(2)(A)(i) of this section for not more than two years for an air quality control region if after review of such plan the Administrator determines that—

(A) one or more emission sources (or classes of moving sources) are unable to comply with the requirements of such plan which implement such primary standard because the necessary technology or other alternatives are not available or will not be available soon enough to permit compliance within such three-year period, and

(B) the State has considered and applied as a part of its plan reasonably available alternative means of attaining such primary standard and has justifiably concluded that attainment of such primary standard within the three years cannot be achieved.

(2) The Administrator may grant an extension under paragraph (1) only if he determines that the State plan provides for—

(A) application of the requirements of the plan which implement such primary standard to all emission sources in such region other than the sources (or classes) described in paragraph (1)(A) within the three-year period, and

(B) such interim measures of control of the sources (or classes) described in paragraph (1)(A) as the Administrator determines to be reasonable under the circumstances.

(f) National or regional energy emergencies; determination by President

(1) Upon application by the owner or operator of a fuel burning stationary source, and after notice and opportunity for public hearing, the Governor of the State in which such source is located may petition the President to determine that a national or regional energy emergency exists of such severity that—

(A) a temporary suspension of any part of the applicable implementation plan may be necessary, and

(B) other means of responding to the energy emergency may be inadequate.

Such determination shall not be delegable by the President to any other person. If the President determines that a national or regional energy emergency of such severity exists, a temporary emergency suspension of any part of an applicable implementation plan adopted by the State may be issued by the Governor of any State covered by the President's determination under the condition specified in paragraph (2) and may take effect immediately.

(2) A temporary emergency suspension under this subsection shall be issued to a source only if the Governor of such State finds that—

(A) there exists in the vicinity of such source a temporary energy emergency involving high levels of unemployment or loss of necessary energy supplies for residential dwellings; and

(B) such unemployment or loss can be totally or partially alleviated by such emergency suspension.

Not more than one such suspension may be issued for any source on the basis of the same set of circumstances or on the basis of the same emergency.

(3) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator, if any. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of paragraph (2).

(4) This subsection shall not apply in the case of a plan provision or requirement promulgated by the Administrator under subsection (c) of this section, but in any such case the President may grant a temporary emergency suspension for a four month period of any such provision or requirement if he makes the determinations and findings specified in paragraphs (1) and (2).

(5) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c-10 of this title, as in effect before August 7, 1977, or section 7413(d) of this title, upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(g) Governor's authority to issue temporary emergency suspensions

(1) In the case of any State which has adopted and submitted to the Administrator a proposed plan revision which the State determines—

(A) meets the requirements of this section, and

(B) is necessary (i) to prevent the closing for one year or more of any source of air pollution, and (ii) to prevent substantial increases in unemployment which would result from such closing, and

which the Administrator has not approved or disapproved under this section within the required four month period, the Governor may issue a temporary emergency suspension of the part of the applicable implementation plan for such State which is proposed to be revised with respect to such source. The determination under subparagraph (B) may not be made with respect to a source which would close without regard to whether or not the proposed plan revision is approved.

(2) A temporary emergency suspension issued by a Governor under this subsection shall remain in effect for a maximum of four months or such lesser period as may be specified in a disapproval order of the Administrator. The Administrator may disapprove such suspension if he determines that it does not meet the requirements of this subsection.

(3) The Governor may include in any temporary emergency suspension issued under this subsection a provision delaying for a period identical to the period of such suspension any compliance schedule (or increment of progress) to which such source is subject under section 1857c-10 of this title as in effect before August 7, 1977, or under section 7413(d) of this title upon a finding that such source is unable to comply with such schedule (or increment) solely because of the conditions on the basis of which a suspension was issued under this subsection.

(h) Annual publication of comprehensive document for each State setting forth requirements of applicable implementation plan

(1) Not later than one year after August 7, 1977, and annually thereafter, the Administrator shall assemble and publish a comprehensive document for each State setting forth all requirements of the applicable implementation plan for such State and shall publish notice in the Federal Register of the availability of such documents. Each such document shall be revised as frequently as practicable but not less often than annually.

(2) The Administrator may promulgate such regulations as may be reasonably necessary to carry out the purpose of this subsection.

(i) Modification of requirements prohibited

Except for a primary nonferrous smelter order under section 7419 of this title, a suspension under subsection (f) or (g) of this section (relating to emergency suspensions), an exemption under section 7418 of this title (relating to certain Federal facilities), an order under section 7413(d) of this title (relating to compliance orders), a plan promulgation under subsection (c) of this section, or a plan revision under subsection (a)(3) of this section; no order, suspension, plan revision, or other action modifying any requirement of an applicable implementation plan may be taken with respect to any stationary source by the State or by the Administrator.

(j) Technological systems of continuous emission reduction on new or modified stationary sources; compliance with performance standards

As a condition for issuance of any permit required under this subchapter, the owner or operator of each new or modified stationary source which is required to obtain such a permit must show to the satisfaction of the permitting authority that the technological system of continuous emission reduction which is to be used at such source will enable it to comply with the standards of performance which are to apply to such source and that the construction or modification and operation of such source will be in compliance with all other requirements of this chapter.

(July 14, 1955, ch. 360, title I, § 110, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1680, and amended June 22, 1974, Pub. L. 93-319, § 4, 88 Stat. 256; S. Res. 4, Feb. 4, 1977; Aug. 7, 1977, Pub. L. 95-95, title I, §§ 107, 108, 91 Stat. 691, 693; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(1)-(6), 91 Stat. 1399.)

References in Text

The Clean Air Act Amendments of 1977, referred to in subsec. (a)(2)(H)(ii), is Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685, which amended this chapter generally. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 7401 of this title and Tables.

The Energy Supply and Environmental Coordination Act of 1974, referred to in subsec. (a)(3)(B), is Pub. L. 93-319, June 22, 1974, 88 Stat. 246, as amended, which is classified principally to chapter 16C (§ 791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

"Section 1857c-10 of this title, as in effect before August 7, 1977", referred to in subsecs. (f)(5) and (g)(3) was, in the original, "section 119, as in effect before the date of the enactment of this paragraph", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, (which was classified to section 1857c-10 of this title) as in effect prior to the enactment of subsecs. (f)(5) and (g)(3) of this section by Pub. L. 95-95, § 107, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413(d)(5) of this title. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Codification

Section was formerly classified to section 1857c-5 of this title.

Prior Provisions

A prior section 110 of act July 14, 1955, was renumbered section 117 by Pub. L. 91-604, and is set out as section 7417 of this title.

Amendments

1977—Subsec. (a)(2)(A). Pub. L. 95-95, § 108(a)(1), substituted "(A) except as may be provided in subparagraph (I)(i) in the case of a plan" for "(A)(i) in the case of a plan".

Subsec. (a)(2)(B). Pub. L. 95-95, § 108(a)(2), substituted "transportation controls, air quality maintenance plans, and preconstruction review of direct sources of air pollution as provided in subparagraph (D)" for "land use and transportation controls".

Subsec. (a)(2)(D). Pub. L. 95-95, § 108(a)(3), substituted "it includes a program to provide for the enforcement of emission limitations and regulation of the modification, construction, and operation of any stationary source, including a permit program as required in parts C and D and a permit or equivalent program for any major emitting facility, within such region as necessary to assure (i) that national ambient air quality standards are achieved and maintained, and (ii) a procedure" for "it includes a procedure".

Subsec. (a)(2)(E). Pub. L. 95-95, § 108(a)(4), substituted "it contains adequate provisions (i) prohibiting any stationary source within the State from emitting any air pollutant in amounts which will (I) prevent attainment or maintenance by any other State of any such national primary or secondary ambient air quality standard, or (II) interfere with measures required to be included in the applicable implementation plan for any other State under part C to prevent significant deterioration of air quality or to protect visibility, and (ii) insuring compliance with the requirements of section 7426 of this title, relating to interstate pollution abatement" for "it contains adequate provisions for intergovernmental cooperation, including measures necessary to insure that emissions of air pollutants from sources located in any air quality control region will not interfere with the attainment or maintenance of such primary or secondary standard in any portion of such region outside of such State or in any other air quality control region".

Subsec. (a)(2)(F). Pub. L. 95-95, § 108(a)(5), added cl. (vi).

Subsec. (a)(2)(H). Pub. L. 95-190, § 14(a)(1), substituted "1977;" for "1977", which for purposes of codification had already been substituted thereby requiring no further change in text.

Pub. L. 95-95, § 108(a)(6), added "except as provided in paragraph (3)(C)," after "or (ii)" and "or to otherwise comply with any additional requirements established under the Clean Air Act Amendments of 1977" after "to achieve the national ambient air quality primary or secondary standard which it implements".

Subsec. (a)(2)(I). Pub. L. 95-95, § 108(b), added subpar. (I).

Subsec. (a)(2)(J). Pub. L. 95-190, § 14(a)(2), substituted "; and" for ", and", which for purposes of codification had already been substituted thereby requiring no further change in text.

Pub. L. 95-95, § 108(b) added subpar. (J).

Subsec. (a)(2)(K). Pub. L. 95-95, § 108(b), added subpar. (K).

Subsec. (a)(3)(C). Pub. L. 95-95, § 108(c), added subpar. (C).

Subsec. (a)(3)(D). Pub. L. 95-190, § 14(a)(4), added subpar. (D).

Subsec. (a)(5). Pub. L. 95-95, § 108(3), added par. (5).

Subsec. (a)(5)(D). Pub. L. 95-190, § 14(a)(3), struck out "preconstruction or premodification" preceding "review".

Subsec. (a)(6). Pub. L. 95-95, § 108(3), added par. (6).

Subsec. (c)(1). Pub. L. 95-95, § 108(d)(1), (2), substituted "plan which meets the requirements of this section" for "plan for any national ambient air quality primary or secondary standard within the time prescribed" in subpar. (A) and, in the provisions following subpar. (C), directed that any portion of a plan relating to any measure described in the first sentence of 7421 of this title (relating to consultation) or the consultation process required under such section 7421 of this title not be required to be promulgated before the date eight months after such date required for submission.

Subsec. (c)(3) to (5). Pub. L. 95-95, § 108(d)(3), added pars. (3) to (5).

Subsec. (d). Pub. L. 95-95, § 108(f), substituted "and which implements the requirements of this section" for "and which implements a national primary or secondary ambient air quality standard in a State".

Subsec. (f). Pub. L. 95-95, § 107(a), substituted provisions relating to the handling of national or regional energy emergencies for provisions relating to the postponement of compliance by stationary sources or classes of moving sources with any requirement of applicable implementation plans.

Subsec. (g). Pub. L. 95-95, § 107(b), added subsec. (g).

Subsec. (h). Pub. L. 95-190, § 14(a)(5), redesignated subsec. (g), added by Pub. L. 95-95, § 108(g), as (h). Former subsec. (h) redesignated (i).

Subsec. (i). Pub. L. 95-190, § 14(a)(5), redesignated subsec. (h), added by Pub. L. 95-95, § 108(g), as (i). Former subsec. (i) redesignated (j) and amended.

Subsec. (j). Pub. L. 95-190 § 14(a)(5), (6), redesignated subsec. (i), added by Pub. L. 95-95, § 108(g), as (j) and in subsec. (j) as so redesignated, substituted "will enable such source" for "at such source will enable it".

1974—Subsec. (a)(3). Pub. L. 93-319, § 4(a), designated existing provisions as subpar. (A) and added subpar. (B).

Subsec. (c). Pub. L. 93-319, § 4(b), designated existing provisions as par. (1) and existing pars. (1), (2), and (3) as subpars. (A), (B), and (C), respectively, of such redesignated par. (1), and added par. (2).

Change of Name

The Committee on Public Works of the Senate was abolished and replaced by the Committee on Environment and Public Works of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Savings Provisions

Section 16 of Pub. L. 91-604 provided that:

"(a)(1) Any implementation plan adopted by any State and submitted to the Secretary of Health, Education, and Welfare, or to the Administrator pursuant to the Clean Air Act [this chapter] prior to enactment of this Act [Dec. 31, 1970] may be approved under section 110 of the Clean Air Act [this section] (as amended by this Act) [Pub. L. 91-604] and shall remain in effect, unless the Administrator determines that such implementation plan, or any portion thereof, is not consistent with applicable requirements of the Clean Air Act [this chapter] (as amended by this Act) and will not provide for the attainment of national primary ambient air quality standards in the time required by such Act. If the Administrator so determines, he shall, within 90 days after promulgation of any national ambient air quality standards pursuant to section 109(a) of the Clean Air Act [section 7409(a) of this title], notify the State and specify in what respects changes are needed to meet the additional requirements of such Act, including requirements to implement national secondary ambient air quality standards. If such changes are not adopted by the State after public hearings and within six months after such notification, the Administrator shall promulgate such changes pursuant to section 110(c) of such Act [subsec. (c) of this section].

"(2) The amendments made by section 4(b) [amending sections 7403 and 7415 of this title] shall not be construed as repealing or modifying the powers of the Administrator with respect to any conference convened under section 108(d) of the Clean Air Act [section 7415 of this title] before the date of enactment of this Act [Dec. 31, 1970].

"(b) Regulations or standards issued under this title II of the Clean Air Act [subchapter II of this chapter] prior to the enactment of this Act [Dec. 31, 1970] shall continue in effect until revised by the Administrator consistent with the purposes of such Act [this chapter]."

FEDERAL ENERGY ADMINISTRATOR

The "Federal Energy Administrator", for purposes of this chapter, to mean the Administrator of the Federal Energy Administration established by Pub. L. 93-275, May 7, 1974, 88 Stat. 97, set out as section 761 et seq. of Title 15, Commerce and Trade, but with the term to mean any officer of the United States designated as such by the President until the Federal Energy Administrator takes office and after the Federal Energy Administration ceases to exist, see section 798 of Title 15, Commerce and Trade.

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF IMPLEMENTATION PLANS APPROVED AND IN EFFECT PRIOR TO AUG. 7, 1977

Nothing in the Clean Air Act Amendments of 1977 [Pub. L. 95-95] to affect any requirement of an approved implementation plan under this section or any other provision in effect under this chapter before Aug. 7, 1977, until modified or rescinded in accordance with this chapter as amended by the Clean Air Act Amendments of 1977, see section 406(c) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6211, 6215, 7405, 7407, 7411, 7413, 7414, 7415, 7419, 7420, 7425, 7426, 7475, 7476, 7491, 7501, 7502, 7504, 7506, 7545, 7607, 7613, 7619, 8374, 8375 of this title.

§ 7411. Standards of performance for new stationary sources

(a) Definitions

For purposes of this section:

(1) The term "standard of performance" means—

(A) with respect to any air pollutant emitted from a category of fossil fuel fired stationary sources to which subsection (b) of this section applies, a standard—

(i) establishing allowable emission limitations for such category of sources, and

(ii) requiring the achievement of a percentage reduction in the emissions from such category of sources from the emissions which would have resulted from the use of fuels which are not subject to treatment prior to combustion,

(B) with respect to any air pollutant emitted from a category of stationary sources (other than fossil fuel fired sources) to which subsection (b) of this section applies, a standard such as that referred to in subparagraph (A)(i); and

(C) with respect to any air pollutant emitted from a particular source to which subsection (d) of this section applies, a standard which the State (or the Administrator under the conditions specified in subsection (d)(2) of this section) determines is applicable to that source and which reflects the degree of emission reduction achievable through the application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated for that category of sources.

For the purpose of subparagraphs (A)(i) and (ii) and (B), a standard of performance shall reflect the degree of emission limitation and the percentage reduction achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. For the purpose of subparagraph (1)(A)(ii), any cleaning of the fuel or reduction in the pollution characteristics of the fuel after extraction and prior to combustion may be credited, as determined under regulations promulgated by the Administrator, to a source which burns such fuel.

(2) The term "new source" means any stationary source, the construction or modification of which is commenced after the publication of regulations (or, if earlier, proposed regulations) prescribing a standard of performance under this section which will be applicable to such source.

(3) The term "stationary source" means any building, structure, facility, or installation which emits or may emit any air pollutant.

(4) The term "modification" means any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant emitted by such source or which results in the emission of any air pollutant not previously emitted.

(5) The term "owner or operator" means any person who owns, leases, operates, controls, or supervises a stationary source.

(6) The term "existing source" means any stationary source other than a new source.

(7) The term "technological system of continuous emission reduction" means—

(A) a technological process for production or operation by any source which is inherently low-polluting or nonpolluting, or

(B) a technological system for continuous reduction of the pollution generated by a source before such pollution is emitted into the ambient air, including precombustion cleaning or treatment of fuels.

(8) A conversion to coal (A) by reason of an order under section 2(a) of the Energy Supply and Environmental Coordination Act of 1974 [15 U.S.C. 792(a)] or any amendment thereto, or any subsequent enactment which supersedes such Act [15 U.S.C. 791 et seq.], or (B) which qualifies under section 7413(d)(5)(A)(ii) of this title, shall not be deemed to be a modification for purposes of paragraphs (2) and (4) of this subsection.

(b) List of categories of stationary sources; standards of performance; information on pollution control techniques; sources owned or operated by United States; particular systems; revised standards

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and from time to time thereafter shall revise) a list of categories of stationary sources. He shall include a category of sources in such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(B) Within 120 days after the inclusion of a category of stationary sources in a list under subparagraph (A), the Administrator shall publish proposed regulations, establishing Federal standards of performance for new sources within such category. The Administrator shall afford interested persons an opportunity for written comment on such proposed regulations. After considering such comments, he shall promulgate, within 90 days after such publications, such standards with such modifications as he deems appropriate. The Administrator shall, at least every four years, review and, if appropriate, revise such standards following the procedure required by this subsection for promulgation of such standards. Standards of performance or revisions thereof shall become effective upon promulgation.

(2) The Administrator may distinguish among classes, types and sizes within categories of new sources for the purpose of establishing such standards.

(3) The Administrator shall, from time to time, issue information on pollution control techniques for categories of new sources and air pollutants subject to the provisions of this section.

(4) The provisions of this section shall apply to any new source owned or operated by the United States.

(5) Except as otherwise authorized under subsection (h) of this section, nothing in this section shall be construed to require, or to authorize the Administrator to require, any new or modified source to install and operate any particular technological system of continuous emission reduction to comply with any new source standard of performance.

(6) The revised standards of performance required by enactment of subsection (a)(1)(A)(i) and (ii) of this section shall be promulgated not later than one year after August 7, 1977. Any new or modified fossil fuel fired stationary source which commences construction prior to the date of publication of the proposed revised standards shall not be required to comply with such revised standards.

(c) State implementation and enforcement of standards of performance

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing standards of performance for new sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable standard of performance under this section.

(d) Standards of performance for existing sources; remaining useful life of source

(1) The Administrator shall prescribe regulations which shall establish a procedure similar to that provided by section 7410 of this title under which each State shall submit to the Administrator a plan which (A) establishes standards of performance for any existing source for any air pollutant (i) for which air quality criteria have not been issued or which is not included on a list published under section 7408(a) or 7412(b)(1)(A) of this title but (ii) to which a standard of performance under this section would apply if such existing source were a new source, and (B) provides for the implementation and enforcement of such standards of performance. Regulations of the Administrator under this paragraph shall permit the State in applying a standard of performance to any particular source under a plan submitted under this paragraph to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies.

(2) The Administrator shall have the same authority—

(A) to prescribe a plan for a State in cases where the State fails to submit a satisfactory plan as he would have under section 7410(c) of this title in the case of failure to submit an implementation plan, and

(B) to enforce the provisions of such plan in cases where the State fails to enforce them as he would have under sections 7413 and 7414 of this title with respect to an implementation plan.

In promulgating a standard of performance under a plan prescribed under this paragraph, the Administrator shall take into consideration, among other factors, remaining useful lives of the sources in the category of sources to which such standard applies.

(e) Prohibited acts

After the effective date of standards of performance promulgated under this section, it shall be unlawful for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source.

(f) New source standards of performance

(1) Not later than one year after August 7, 1977, the Administrator shall promulgate regulations listing under subsection (b)(1)(A) of this section the categories of major stationary sources which are not on August 7, 1977, included on the list required under subsection (b)(1)(A) of this section. The Administrator shall promulgate regulations establishing standards of performance for the percentage of such categories of sources set forth in the following table before the expiration of the corresponding period set forth in such table:

Percentage of source categories required to be listed for which standards must be established:	Period by which standards must be promulgated after date list is required to be promulgated:
25	2 years.
75	3 years.
100	4 years.

(2) In determining priorities for promulgating standards for categories of major stationary sources for the purpose of paragraph (1), the Administrator shall consider—

(A) the quantity of air pollutant emissions which each such category will emit, or will be designed to emit;

(B) the extent to which each such pollutant may reasonably be anticipated to endanger public health or welfare; and

(C) the mobility and competitive nature of each such category of sources and the consequent need for nationally applicable new source standards of performance.

(3) Before promulgating any regulations under this subsection or listing any category of major stationary sources as required under this subsection, the Administrator shall consult with appropriate representatives of the Governors and of State air pollution control agencies.

(g) Revision of regulations

(1) Upon application by the Governor of a State showing that the Administrator has failed to specify in regulations under subsection (f)(1) of this section any category of major stationary sources required to be specified under such regulations, the Administrator shall revise such regulations to specify any such category.

(2) Upon application of the Governor of a State, showing that any category of stationary sources which is not included in the list under subsection (b)(1)(A) of this section contributes significantly to air pollution which may reasonably be anticipated to endanger public health or welfare (notwithstanding that such category is not a category of major stationary sources), the Administrator shall revise such regulations to specify such category of stationary sources.

(3) Upon application of the Governor of a State showing that the Administrator has failed to apply properly the criteria required to be considered under subsection (f)(2) of this section, the Administrator shall revise the list under subsection (b)(1)(A) of this section to apply properly such criteria.

(4) Upon application of the Governor of a State showing that—

(A) a new, innovative, or improved technology or process which achieves greater continuous emission reduction has been adequately demonstrated for any category of stationary sources, and

(B) as a result of such technology or process, the new source standard of performance in effect under this section for such category no longer reflects the greatest degree of emission limitation achievable through application of the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) has been adequately demonstrated,

the Administrator shall revise such standard of performance for such category accordingly.

(5) Upon application by the Governor of a State showing that the Administrator has failed to list any air pollutant which causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness as a hazardous air pollutant under section 7412 of this title the Administrator shall revise the list of hazardous air pollutants under such section to include such pollutant.

(6) Upon application by the Governor of a State showing that any category of stationary sources of a hazardous air pollutant listed under section 7412 of this title is not subject to emission standards under such section, the Administrator shall propose and promulgate such emission standards applicable to such category of sources.

(7) Unless later deadlines for action of the Administrator are otherwise prescribed under this section or section 7412 of this title, the Administrator shall, not later than three months following the date of receipt of any application by a Governor of a State, either—

(A) find that such application does not contain the requisite showing and deny such application, or

(B) grant such application and take the action required under this subsection.

(8) Before taking any action required by subsection (f) of this section or by this subsection, the Administrator shall provide notice and opportunity for public hearing.

(h) Design, equipment, work practice, or operational standard; alternative emission limitation

(1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce a standard of performance, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which reflects the best technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the

proper operation and maintenance of any such element of design or equipment.

(2) For the purpose of this subsection, the phrase "not feasible to prescribe or enforce a standard of performance" means any situation in which the Administrator determines that (A) a pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

(3) If after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Any standard promulgated under paragraph (1) shall be promulgated in terms of standard of performance whenever it becomes feasible to promulgate and enforce such standard in such terms.

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as a standard of performance for purposes of the provisions of this chapter (other than the provisions of subsection (a) of this section and this subsection).

(i) Country elevators

Any regulations promulgated by the Administrator under this section applicable to grain elevators shall not apply to country elevators (as defined by the Administrator) which have a storage capacity of less than two million five hundred thousand bushels.

(j) Innovative technological systems of continuous emission reduction

(1)(A) Any person proposing to own or operate a new source may request the Administrator for one or more waivers from the requirements of this section for such source or any portion thereof with respect to any air pollutant to encourage the use of an innovative technological system or systems of continuous emission reduction. The Administrator may, with the consent of the Governor of the State in which the source is to be located, grant a waiver under this paragraph, if the Administrator determines after notice and opportunity for public hearing, that—

(i) the proposed system or systems have not been adequately demonstrated,

(ii) the proposed system or systems will operate effectively and there is a substantial likelihood that such system or systems will achieve greater continuous emission reduction than that required to be achieved under the standards of performance which would otherwise apply, or achieve at least an equivalent reduction at lower cost in terms of energy, economic, or nonair quality environmental impact,

(iii) the owner or operator of the proposed source has demonstrated to the satisfaction of the Administrator that the proposed system will not cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation, function, or malfunction, and

(iv) the granting of such waiver is consistent with the requirements of subparagraph (C).

In making any determination under clause (ii), the Administrator shall take into account any previous failure of such system or systems to operate effectively or to meet any requirement of the new source performance standards. In determining whether an unreasonable risk exists under clause (iii), the Administrator shall consider, among other factors, whether and to what extent the use of the proposed technological system will cause, increase, reduce, or eliminate emissions of any unregulated pollutants; available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such system; and the availability of other technological systems which may be used to conform to standards under this section without causing or contributing to such unreasonable risk. The Administrator may conduct such tests and may require the owner or operator of the proposed source to conduct such tests and provide such information as is necessary to carry out clause (iii) of this subparagraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system if such pollutant was not emitted, or was emitted in significantly lesser amounts without use of such system.

(B) A waiver under this paragraph shall be granted on such terms and conditions as the Administrator determines to be necessary to assure—

(i) emissions from the source will not prevent attainment and maintenance of any national ambient air quality standards, and

(ii) proper functioning of the technological system or systems authorized.

Any such term or condition shall be treated as a standard of performance for the purposes of subsection (e) of this section and section 7413 of this title.

(C) The number of waivers granted under this paragraph with respect to a proposed technological system of continuous emission reduction shall not exceed such number as the Administrator finds necessary to ascertain whether or not such system will achieve the conditions specified in clauses (ii) and (iii) of subparagraph (A).

(D) A waiver under this paragraph shall extend to the sooner of—

(i) the date determined by the Administrator, after consultation with the owner or operator of the source, taking into consideration the design, installation, and capital cost of the technological system or systems being used, or

(ii) the date on which the Administrator determines that such system has failed to—

(I) achieve at least an equivalent continuous emission reduction to that required to be achieved under the standards of performance which would otherwise apply, or

(II) comply with the condition specified in paragraph (1)(A)(iii),

and that such failure cannot be corrected.

(E) In carrying out subparagraph (D)(i), the Administrator shall not permit any waiver for a source or portion thereof to extend beyond the date—

(i) seven years after the date on which any waiver is granted to such source or portion thereof, or

(ii) four years after the date on which such source or portion thereof commences operation,

whichever is earlier.

(F) No waiver under this subsection shall apply to any portion of a source other than the portion on which the innovative technological system or systems of continuous emission reduction is used.

(2)(A) If a waiver under paragraph (1) is terminated under clause (ii) of paragraph (1)(D), the Administrator shall grant an extension of the requirements of this section for such source for such minimum period as may be necessary to comply with the applicable standard of performance under this section. Such period shall not extend beyond the date three years from the time such waiver is terminated.

(B) An extension granted under this paragraph shall set forth emission limits and a compliance schedule containing increments of progress which require compliance with the applicable standards of performance as expeditiously as practicable and include such measures as are necessary and practicable in the interim to minimize emissions. Such schedule shall be treated as a standard of performance for purposes of subsection (e) of this section and section 7413 of this title.

(July 14, 1955, ch. 360, title I, § 111, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1683, and amended Nov. 18, 1971, Pub. L. 92-157, title III, § 302(f), 85 Stat. 464; Aug. 7, 1977, Pub. L. 95-95, title I, § 109(a)-(d)(1), (e), (f), title IV, § 401(b), 91 Stat. 697-703, 791; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(7)-(9), 91 Stat. 1399; Nov. 9, 1978, Pub. L. 95-623, § 13(a), 92 Stat. 3457.)

References in Text

Such Act, referred to in subsec. (a)(8), means Pub. L. 93-319, June 22, 1974, 88 Stat. 246, as amended, known as the Energy Supply and Environmental Coordination Act of 1974, which is classified principally to chapter 16C (§ 791 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 791 of Title 15 and Tables.

Codification

Section was formerly classified to section 1857c-6 of this title.

Prior Provisions

A prior section 111 of Act July 14, 1955, was renumbered section 118 by Pub. L. 91-604, and is set out as section 7418 of this title.

Amendments

1978—Subsec. (d)(1)(A)(ii). Pub. L. 95-623, § 13(a)(2), substituted "under this section" for "under subsection (b) of this section".

Subsec. (g)(4)(B). Pub. L. 95-623, § 13(a)(2), substituted "under this section" for "under subsection (b) of this section".

Subsec. (h)(5). Pub. L. 95-623, § 13(a)(1), added par. (5).

Subsec. (j). Pub. L. 95-623, § 13(a)(3), substituted in pars. (1)(A) and (2)(A) "standards under this section" and "under this section" for "standards under subsection (b) of this section" and "under subsection (b) of this section".

1977—Subsec. (a)(1). Pub. L. 95-95, § 109(c)(1)(A), added subpars. (A), (B), and (C), substituted "For the purpose of subparagraphs (A)(i) and (ii) and (B), a standard of performance shall reflect" for "a standard for emissions of air pollutants which reflects", "and the percentage reduction achievable" for "achievable", and "technological system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environment impact and energy requirements)" for "system of emission reduction which (taking into account the cost of achieving such reduction)" in the existing provisions, and added provision that, for the purpose of subparagraph (1)(A)(ii), any cleaning of the fuel or reduction in the pollution characteristics of the fuel after extraction and prior to combustion may be credited, as determined under regulations promulgated by the Administrator, to a source which burns such fuel.

Subsec. (a)(7). Pub. L. 95-95, § 109(c)(1)(B), added subsec. (a)(7), defining "technological system of continuous emission reduction".

Subsec. (a)(8). Pub. L. 95-190, § 14(a)(7), redesignated subsec. (a)(7) as (a)(8), which for purposes of codification had already been redesignated as (a)(8), thereby requiring no further change in text.

Pub. L. 95-95, § 109(f), added a subsec. (a)(7) directing that under certain circumstances a conversion to coal not be deemed a modification for purposes of pars. (2) and (4), which was designated as (a)(8) for purposes of codification.

Subsec. (b)(1)(A). Pub. L. 95-95, § 401(b), substituted "such list if in his judgment it causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger" for "such list if he determines it may contribute significantly to air pollution which causes or contributes to the endangerment of".

Subsec. (b)(1)(B). Pub. L. 95-95, § 109(c)(2), substituted "shall, at least every four years, review and, if appropriate," for "may, from time to time,".

Subsec. (b)(5), (6). Pub. L. 95-95, § 109(c)(3), added subsec. (b)(5) and (6).

Subsec. (c)(1). Pub. L. 95-95, § 109(d)(1), struck out "(except with respect to new sources owned or operated by the United States)" after "implement and enforce such standards".

Subsec. (d)(1). Pub. L. 95-95, § 109(b)(1), substituted "standards of performance" for "emission standards" and added provisions directing that regulations of the Administrator permit the State, in applying a standard of performance to any particular source under a submitted plan, to take into consideration, among other factors, the remaining useful life of the existing source to which the standard applies.

Subsec. (d)(2). Pub. L. 95-95, § 109(b)(2), provided that, in promulgating a standard of performance under a plan, the Administrator take into consideration, among other factors, the remaining useful lives of the sources in the category of sources to which the standard applies.

Subsecs. (f) to (i). Pub. L. 95-95, § 109(a), added subsecs. (f) to (i).

Subsec. (j). Pub. L. 95-190, § 14(a)(8), (9), redesignated subsec. (k) as (j) and, as so redesignated, substituted "(B)" for "(8)" as designation for second subpar. in par. (2). Former subsec. (j) added by Pub. L. 95-95, § 109(e), which related to compliance with applicable standards of performance, was struck out.

Subsec. (k). Pub. L. 95-190, § 14(a)(8), redesignated subsec. (k) as (j).

Pub. L. 95-95, § 109(e), added subsec. (k).

1971—Subsec. (b)(1)(B). Pub. L. 92-157 substituted in first sentence "publish proposed" for "propose".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TRANSFER OF FUNCTIONS

Enforcement functions of Administrator or other official in the Environmental Protection Agency related to compliance with new source performance standards under this section with respect to pre-construction, construction, and initial operation of transportation system for Canadian and Alaskan natural gas were transferred to the Federal Inspector, Office of Federal Inspector for the Alaska Natural Gas Transportation System, until the first anniversary of date of initial operation of the Alaska Natural Gas Transportation System, see Reorg. Plan No. 1 of 1979, eff. July 1, 1979, §§ 102(a), 203(a), 44 F.R. 33663, 33666, 93 Stat. 1373, 1376, set out in the Appendix to Title 5, Government Organization and Employees.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7412, 7413, 7414, 7416, 7417, 7418, 7420, 7422, 7425, 7475, 7479, 7501, 7604, 7607, 7608, 7616, 7617, 7618 of this title.

§ 7412. National emission standards for hazardous air pollutants

(a) Definitions

For purposes of this section—

(1) The term "hazardous air pollutant" means an air pollutant to which no ambient air quality standard is applicable and which in the judgment of the Administrator causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness.

(2) The term "new source" means a stationary source the construction or modification of which is commenced after the Administrator proposes regulations under this section establishing an emission standard which will be applicable to such source.

(3) The terms "stationary source", "modification", "owner or operator" and "existing source" shall have the same meaning as such terms have under section 7411(a) of this title.

(b) List of hazardous air pollutants; emission standards; pollution control techniques

(1)(A) The Administrator shall, within 90 days after December 31, 1970, publish (and shall from time to time thereafter revise) a list which includes each hazardous air pollutant for which he intends to establish an emission standard under this section.

(B) Within 180 days after the inclusion of any air pollutant in such list, the Administrator shall publish proposed regulations establishing emission standards for such pollutant together with a notice of a public hearing within thirty days. Not later than 180 days after such publication, the Administrator shall prescribe an emission standard for such pollutant, unless he finds, on the basis of information presented at such hearings, that such pollutant clearly is not a hazardous air pollutant. The Administrator shall establish any such standard at the level which in his judgment provides an ample margin of safety to protect the public health from such hazardous air pollutant.

(C) Any emission standard established pursuant to this section shall become effective upon promulgation.

(2) The Administrator shall, from time to time, issue information on pollution control techniques for air pollutant subject to the provisions of this section.

(c) Prohibited acts; exemption

(1) After the effective date of any emission standard under this section—

(A) no person may construct any new source or modify any existing source which in the Administrator's judgment, will emit an air pollutant to which such standard applies unless the Administrator finds that such source if properly operated will not cause emissions in violation of such standard, and

(B) no air pollutant to which such standard applies may be emitted from any stationary source in violation of such standard, except that in the case of an existing source—

(i) such standard shall not apply until 90 days after its effective date, and

(ii) the Administrator may grant a waiver permitting such source a period of up to two years after the effective date of a standard to comply with the standard, if he finds that such period is necessary for the installation of controls and that steps will be taken during the period of the waiver to assure that the health of persons will be protected from imminent endangerment.

(2) The President may exempt any stationary source from compliance with paragraph (1) for

a period of not more than two years if he finds that the technology to implement such standards is not available and the operation of such source is required for reasons of national security. An exemption under this paragraph may be extended for one or more additional periods, each period not to exceed two years. The President shall make a report to Congress with respect to each exemption (or extension thereof) made under this paragraph.

(d) State implementation and enforcement

(1) Each State may develop and submit to the Administrator a procedure for implementing and enforcing emission standards for hazardous air pollutants for stationary sources located in such State. If the Administrator finds the State procedure is adequate, he shall delegate to such State any authority he has under this chapter to implement and enforce such standards.

(2) Nothing in this subsection shall prohibit the Administrator from enforcing any applicable emission standard under this section.

(e) Design, equipment, work practice, and operational standards

(1) For purposes of this section, if in the judgment of the Administrator, it is not feasible to prescribe or enforce an emission standard for control of a hazardous air pollutant or pollutants, he may instead promulgate a design, equipment, work practice, or operational standard, or combination thereof, which in his judgment is adequate to protect the public health from such pollutant or pollutants with an ample margin of safety. In the event the Administrator promulgates a design or equipment standard under this subsection, he shall include as part of such standard such requirements as will assure the proper operation and maintenance of any such element of design or equipment.

(2) For the purpose of this subsection, the phrase "not feasible to prescribe or enforce an emission standard" means any situation in which the Administrator determines that (A) a hazardous pollutant or pollutants cannot be emitted through a conveyance designed and constructed to emit or capture such pollutant, or that any requirement for, or use of, such a conveyance would be inconsistent with any Federal, State, or local law, or (B) the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations.

(3) If after notice and opportunity for public hearing, any person establishes to the satisfaction of the Administrator that an alternative means of emission limitation will achieve a reduction in emissions of any air pollutant at least equivalent to the reduction in emissions of such air pollutant achieved under the requirements of paragraph (1), the Administrator shall permit the use of such alternative by the source for purposes of compliance with this section with respect to such pollutant.

(4) Any standard promulgated under paragraph (1) shall be promulgated in terms of an emission standard whenever it becomes feasible to promulgate and enforce such standard in such terms.

(5) Any design, equipment, work practice, or operational standard, or any combination thereof, described in this subsection shall be treated as an emission standard for purposes of the provisions of this chapter (other than the provisions of this subsection).

(July 14, 1955, ch. 360, title I, § 112, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1685, and amended Aug. 7, 1977, Pub. L. 95-95, title I, §§ 109(d)(2), 110, title IV, § 401(c), 91 Stat. 701, 703, 791; Nov. 9, 1978, Pub. L. 95-623, § 13(b), 92 Stat. 3458.)

CODIFICATION

Section was formerly classified to section 1857c-7 of this title.

AMENDMENTS

1978—Subsec. (e)(5). Pub. L. 95-623 added par. (5).

1977—Subsec. (a)(1). Pub. L. 95-95, § 401(c), substituted "causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness" for "may cause, or contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness".

Subsec. (d)(1). Pub. L. 95-95, § 109(d)(2), struck out "(except with respect to stationary sources owned or operated by the United States)" after "implement and enforce such standards".

Subsec. (e). Pub. L. 95-95, § 110, added subsec. (e).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7411, 7413, 7414, 7416, 7417, 7418, 7420, 7422, 7479, 7604, 7607, 7608, 7616, 7618 of this title.

§ 7413. Federal enforcement procedures

(a) Finding of violation; notice; compliance order; civil action; State failure to enforce plan; construction or modification of major stationary sources

(1) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of any requirement of an applicable implementation plan, the Administrator shall notify the person in violation of the plan and the State in which the plan applies of such finding. If such violation extends beyond the 30th day after the date of the Administrator's notification, the Administrator may issue an order requiring such person to comply with the requirements of such plan or he may bring a civil action in accordance with subsection (b) of this section.

(2) Whenever, on the basis of information available to him, the Administrator finds that violations of an applicable implementation plan are so widespread that such violations appear to result from a failure of the State in which the plan applies to enforce the plan effectively, he shall so notify the State. If the Administrator finds such failure extends beyond the 30th day after such notice, he shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement of such plan with respect to any person—

(A) by issuing an order to comply with such requirement, or

(B) by bringing a civil action under subsection (b) of this section.

(3) Whenever, on the basis of any information available to him, the Administrator finds that any person is in violation of section 7411(e) of this title (relating to new source performance standards), section 7412(c) of this title (relating to standards for hazardous emissions), or section 1857c-10(g) of this title (relating to energy-related authorities) is in violation of any requirement of section 7414 of this title (relating to inspections, etc.), he may issue an order requiring such person to comply with such section or requirement, or he may bring a civil action in accordance with subsection (b) of this section.

(4) An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation, specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to appropriate corporate officers.

(5) Whenever, on the basis of information available to him, the Administrator finds that a State is not acting in compliance with any requirement of the regulation referred to in section 129(a)(1) of the Clean Air Act Amendments of 1977 (relating to certain interpretative regulations) or any plan provisions required under section 7410(a)(2)(I) of this title and part D, he may issue an order prohibiting the construction or modification of any major stationary source in any area to which such provisions apply or he may bring a civil action under subsection (b)(5) of this section.

(b) Violations by owners or operators of major stationary sources

The Administrator shall, in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day of violation, or both, whenever such person—

(1) violates or fails or refuses to comply with any order issued under subsection (a) of this section; or

(2) violates any requirement of an applicable implementation plan (A) during any period of Federally assumed enforcement, or (B) more than 30 days after having been notified by the Administrator under subsection (a)(1) of this section of a finding that such person is violating such requirement; or

(3) violates section 7411(e), section 7412(c), section 1857c-10(g) of this title (as in effect before August 7, 1977), subsection (d)(5) of this section (relating to coal conversion), section 7624 of this title (relating to cost of certain vapor recovery), section 7419 of this title (relating to smelter orders), or any regulation under part B (relating to ozone); or

(4) fails or refuses to comply with any requirement of section 7414 of this title or subsection (d) of this section; or

(5) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator may commence a civil action for recovery of any noncompliance penalty under section 7420 of this title or for recovery of any nonpayment penalty for which any person is liable under section 7420 of this title or for both. Any action under this subsection may be brought in the district court of the United States for the district in which the violation occurred or in which the defendant resides or has his principal place of business, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty and to collect any noncompliance penalty (and nonpayment penalty) owed under section 7420 of this title. In determining the amount of any civil penalty to be assessed under this subsection, the court shall take into consideration (in addition to other factors) the size of the business, the economic impact of the penalty on the business, and the seriousness of the violation. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought in any case where the court finds that such action was unreasonable.

(c) Penalties

(1) Any person who knowingly—

(A) violates any requirement of an applicable implementation plan (i) during any period of Federally assumed enforcement, or (ii) more than 30 days after having been notified by the Administrator under subsection (a)(1) of this section that such person is violating such requirement, or

(B) violates or fails or refuses to comply with any order under section 7419 of this title or under subsection (a) or (d) of this section, or

(C) violates section 7411(e), section 7412(c) of this title, or

(D) violates any requirement of section 1857c-10(g) of this title (as in effect before August 7, 1977), subsection (b)(7) or (d)(5) of section 7420 of this title (relating to noncompliance penalties), or any requirement of part B (relating to ozone),

shall be punished by a fine of not more than $25,000 per day of violation, or by imprisonment for not more than one year, or by both. If the conviction is for a violation committed after the first conviction of such person under this paragraph, punishment shall be by a fine of not more than $50,000 per day of violation, or by imprisonment for not more than two years, or by both.

(2) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this chapter or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this chapter, shall upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than six months, or by both.

(3) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602(e) of this title, any responsible corporate officer.

(d) Final compliance orders

(1) A State (or, after thirty days notice to the State, the Administrator) may issue to any stationary source which is unable to comply with any requirement of an applicable implementation plan an order which specifies a date for final compliance with such requirement later than the date for attainment of any national ambient air quality standard specified in such plan if—

(A) such order is issued after notice to the public (and, as appropriate, to the Administrator) containing the content of the proposed order and opportunity for public hearing;

(B) the order contains a schedule and timetable for compliance;

(C) the order requires compliance with applicable interim requirements as provided in paragraph (5)(B) (relating to sources converting to coal), and paragraph (6) and (7) (relating to all sources receiving such orders) and requires the emission monitoring and reporting by the source authorized to be required under sections 7410(a)(2)(F) and 7414(a)(1) of this title;

(D) the order provides for final compliance with the requirement of the applicable implementation plan as expeditiously as practicable, but (except as provided in paragraph (4) or (5)) in no event later than July 1, 1979, or three years after the date for final compliance with such requirement specified in such plan, whichever is later; and

(E) in the case of a major stationary source, the order notifies the source that, unless exempted under section 7420(a)(2)(B) or (C), it will be required to pay a noncompliance penalty effective July 1, 1979, as provided under section 7420 of this title or by such later date as is set forth in the order in accordance with section 7420(b)(3) or (g) of this title in the event such source fails to achieve final compliance by July 1, 1979.

(2) In the case of any major stationary source, no such order issued by the State shall take effect until the Administrator determines that such order has been issued in accordance with the requirements of this chapter. The Administrator shall determine, not later than 90 days after receipt of notice of the issuance of an order under this subsection with respect to any major stationary source, whether or not any State order under this subsection is in accordance with the requirements of this chapter. In the case of any source other than a major stationary source, such order issued by the State shall cease to be effective upon a determination by the Administrator that it was not issued in accordance with the requirements of this chapter. If the Administrator so objects, he shall simultaneously proceed to issue an enforcement order in accordance with subsection (a) of this section or an order under this subsection. Nothing in this section shall be construed as limiting the authority of a State or political subdivision to adopt and enforce a more stringent emission limitation or more expeditious schedule or timetable for compliance than that contained in an order by the Administrator.

(3) If any source not in compliance with any requirement of an applicable implementation plan gives written notification to the State (or the Administrator) that such source intends to comply by means of replacement of the facility, a complete change in production process, or a termination of operation, the State (or the Administrator) may issue an order under paragraph (1) of this subsection permitting the source to operate until July 1, 1979, without any interim schedule of compliance: *Provided*, That as a condition of the issuance of any such order, the owner or operator of such source shall post a bond or other surety in an amount

equal to the cost of actual compliance by such facility and any economic value which may accrue to the owner or operator of such source by reason of the failure to comply. If a source for which the bond or other surety required by this paragraph has been posted fails to replace the facility, change the production process, or terminate the operations as specified in the order by the required date, the owner or operator shall immediately forfeit on the bond or other surety and the State (or the Administrator) shall have no discretion to modify the order under this paragraph or to compromise the bond or other surety.

(4) An order under paragraph (1) of this subsection may be issued to an existing stationary source if—

(A) the source will expeditiously use new means of emission limitation which the Administrator determines is likely to be adequately demonstrated (within the meaning of section 7411(a)(1)) of this title upon expiration of the order,

(B) such new means of emission limitation is not likely to be used by such source unless an order is granted under this subsection.[1]

(C) such new means of emission limitation is determined by the Administrator to have a substantial likelihood of—

(i) achieving greater continuous emission reduction than the means of emission limitation which, but for such order, would be required; or

(ii) achieving an equivalent continuous reduction at lower cost in terms of energy, economic, or nonair quality environmental impact; and

(D) compliance by the source with the requirement of the applicable implementation plan would be impracticable prior to, or during, the installation of such new means.

Such an order shall provide for final compliance with the requirement in the applicable implementation plan as expeditiously as practicable, but in no event later than five years after the date on which the source would otherwise be required to be in full compliance with the requirement.

(5)(A) In the case of a major stationary source which is burning petroleum products or natural gas, or both and which—

(i) is prohibited from doing so under an order pursuant to the provisions of section 792(a) of title 15, or any amendment thereto, or any subsequent enactment which supersedes such provisions, or

(ii) within one year after August 7, 1977, gives notice of intent to convert to coal as its primary energy source because of actual or anticipated curtailment of natural gas supplies under any curtailment plan or schedule approved by the Federal Power Commission (or, in the case of intrastate natural gas supplies, approved by the appropriate State regulatory commission),

and which thereby would no longer be in compliance with any requirement under an applicable implementation plan, an order may be issued by the Administrator under paragraph (1) of this subsection for such source which specifies a date for final compliance with such requirement as expeditiously as practicable, but not later than December 31, 1980. The Administrator may issue an additional order under paragraph (1) of this subsection for such source providing an additional period for such source to come into compliance with the requirement in the applicable implementation plan, which shall be as expeditiously as practicable, but in no event later than five years after the date required for compliance under the preceding sentence.

(B) In issuing an order pursuant to subparagraph (A), the Administrator shall prescribe (and may from time to time modify) emission limitations, requirements respecting pollution characteristics of coal, or other enforceable measures for control of emissions for each source to which such an order applies. Such limitations, requirements, and measures shall be those which the Administrator determines must be complied with by the source in order to assure (throughout the period before the date for final compliance established in the order) that the burning of coal by such source will not result in emissions which cause or contribute to concentrations of any air pollutant in excess of any national primary ambient air quality standard for such pollutant.

(C) The Administrator may, by regulation, establish priorities under which manufacturers of continuous emission reduction systems necessary to carry out this paragraph shall provide such systems to users thereof, if he finds, after consultation with the States, that priorities must be imposed in order to assure that such systems are first provided to sources subject to orders under this paragraph in air quality control regions in which national primary ambient air quality standards have not been achieved. No regulation under this subparagraph may impair the obligation of any contract entered into before August 7, 1977.

(D) No order issued to a source under this paragraph with respect to an air pollutant shall be effective if the national primary ambient air quality standard with respect to such pollutant is being exceeded at any time in the air quality control region in which such source is located. The preceding sentence shall not apply to a source if, upon submission by any person of evidence satisfactory to the Administrator, the Administrator determines (after notice and public hearing)—

(i) that emissions of such air pollutant from such source will affect only infrequently the air quality concentrations of such pollutant in each portion of the region where such standard is being exceeded at any time;

(ii) that emissions of such air pollutant from such source will have only insignificant effect on the air quality concentrations of such pollutant in each portion of the region where such standard is being exceeded at any time; and

(iii) with reasonable statistical assurance that emissions of such air pollutant from such source will not cause or contribute to air quality concentrations of such pollutant in excess of the national primary ambient air quality standard for such pollutant.

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[1] So in original. Probably the period should be a comma.

(6) An order issued to a source under this subsection shall set forth compliance schedules containing increments of progress which require compliance with the requirement postponed as expeditiously as practicable.

(7) A source to which an order is issued under paragraph (1), (3), (4), or (5) of this subsection shall use the best practicable system or systems of emission reduction (as determined by the Administrator taking into account the requirement with which the source must ultimately comply) for the period during which such order is in effect and shall comply with such interim requirements as the Administrator determines are reasonable and practicable. Such interim requirements shall include—

(A) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons, and

(B) a requirement that the source comply with the requirements of the applicable implementation plan during any such period insofar as such source is able to do so (as determined by the Administrator).

(8) Any order under paragraph (1) of this subsection shall be terminated if the Administrator determines on the record, after notice and hearing, that the inability of the source to comply no longer exists. If the owner or operator of the source to which the order is issued demonstrates that prompt termination of such order would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result, but in no event later than the date required under this subsection.

(9) If the Administrator determines that a source to which an order is issued under this subsection is in violation of any requirement of this subsection, he shall—

(A) enforce such requirement under subsections (a), (b), or (c) of this section,

(B) (after notice and opportunity for public hearing) revoke such order and enforce compliance with the requirement with respect to which such order was granted,

(C) give notice of noncompliance and commence action under section 7420 of this title, or

(D) take any appropriate combination of such actions.

(10) During the period of the order in effect under this subsection and where the owner or operator is in compliance with the terms of such order, no Federal enforcement action pursuant to this section and no action under section 7604 of this title shall be pursued against such owner or operator based upon noncompliance during the period the order is in effect with the requirement for the source covered by such order.

(11) For the purposes of sections 7410, 7604, and 7607 of this title, any order issued by the State and in effect pursuant to this subsection shall become part of the applicable implementation plan.

(12) Any enforcement order issued under subsection (a) of this section or any consent decree in an enforcement action which is in effect on August 7, 1977, shall remain in effect to the extent that such order or consent decree is (A) not inconsistent with the requirements of this subsection and section 7419 of this title or (B) the administrative orders on consent issued by the Administrator on November 5, 1975 and February 26, 1976 and requiring compliance with sulfur dioxide emission limitations or standards at least as stringent as those promulgated under section 7411 of this title. Any such enforcement order issued under subsection (a) of this section or consent decree which provides for an extension beyond July 1, 1979, except such administrative orders on consent, is void unless modified under this subsection within one year after August 7, 1977, to comply with the requirements of this subsection.

(July 14, 1955, ch. 360, title I, § 113, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1686, and amended Nov. 18, 1971, Pub. L. 92-157, title III, § 302(b), (c), 85 Stat. 464; June 22, 1974, Pub. L. 93-319, § 6(a)(1)-(3), 88 Stat. 259; Aug. 7, 1977, Pub. L. 95-95, title I, §§ 111, 112(a), 91 Stat. 704, 705; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(10)-(21), (b)(1), 91 Stat. 1400, 1404.)

REFERENCES IN TEXT

Section 1857c-10(g) of this title, referred to in subsec. (a)(3), was in the original "119(g)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, which was classified to section 1857c-10 of this title. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of this section. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Section 129(a)(1) of the Clean Air Act Amendments of 1977, referred to in subsec. (a)(5), is Pub. L. 95-95, § 129(a)(1), Aug. 7, 1977, 91 Stat. 745, which is set out as a note under section 7502 of this title.

Section 1857c-10(g) of this title (as in effect before August 7, 1977), referred to in subsecs. (b)(3) and (c)(1)(D), was in the original "section 119(g) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, (which was classified to section 1857c-10 of this title) as in effect prior to the enactment of Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of this section. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

CODIFICATION

Section was formerly classified to section 1857c-8 of this title.

AMENDMENTS

1977—Subsec. (a)(5). Pub. L. 95-95, § 111(a), added par. (5).

Subsec. (b). Pub. L. 95-95, § 111(b), (c), substituted "shall, in the case of any person which is the owner or operator of a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than $25,000 per day of violation, or both, whenever such person" for "may commence a civil action for appropriate relief, including a permanent or temporary injunction, whenever any person" in the provisions preceding par. (1), added references to subsec. (d)(5) of this section, sections 7419 and 7620 of this title, and regulations under part in par. (3), added reference to subsec. (d) of this section in par. (4), added par. (5), and, in the provisions following par. (5), authorized the commencement of civil actions to recover noncompliance penalties and nonpayment penalties under section 7420 of this title, expanded the jurisdictional provisions to authorize actions in districts in which the violation occurred and to authorize the district court to restrain violations, to require compliance, to assess civil penalties, and to collect penalties under section 7420 of this title, enumerated the factors to be taken into consideration in determining the amount of civil penalties, and authorized the awarding of costs to the party or parties against whom the action was brought in cases where the court finds that the action was unreasonable.

Subsec. (b)(3). Pub. L. 95-190, § 14(a)(10), (11), added "or" following "ozone);", and substituted "7624" for "7620", "conversion), section" for "conversion) section", and "orders), or" for "orders) or".

Subsec. (c)(1). Pub. L. 95-95, § 111(d)(1), (2), substituted "any order issued under section 7419 of this title or under subsection (a) or (d) of this section" for "any order issued by the Administrator under subsection (a) of this section" in subpar. (B), struck out reference to section 119(g) (as in effect before the date of the enactment of Pub. L. 95-95) in subpar. (C), and added subpar. (D).

Subsec. (c)(1)(B). Pub. L. 95-190, § 14(a)(12), added "or" following "section,".

Subsec. (c)(1)(D). Pub. L. 95-190, § 14(a)(13), substituted "1977 subsection" for "1977) subsection" and "penalties), or" for "penalties) or".

Subsec. (c)(3). Pub. L. 95-95, § 111(d)(3), added par. (3).

Subsec. (d). Pub. L. 95-95, § 112(a), added subsec. (d).

Subsec. (d)(1). Pub. L. 95-190, § 14(a)(14), substituted "to any stationary source which is unable to comply with any requirement of an applicable implementation plan an order" for "an order for any stationary source" and "such requirement" for "any requirement of an applicable implementation plan".

Subsec. (d)(1)(E). Pub. L. 95-190, § 14(a)(15), added provision relating to exemption under section 7420(a)(2)(B) or (C) of this title, provision relating to noncompliance penalties effective July 1, 1979, and reference to subsec. (b)(3) or (g) of section 7420 of this title.

Subsec. (d)(2). Pub. L. 95-190, § 14(a)(16), added provisions relating to determinations by the Administrator of compliance with requirements of this chapter of State orders issued under this subsection.

Subsec. (d)(4)(A). Pub. L. 95-190, § 14(a)(17), substituted "title) upon" for "title upon".

Subsec. (d)(5)(A). Pub. L. 95-190, § 14(a)(18), substituted "an additional period for" for "an additional period of".

Subsec. (d)(8). Pub. L. 95-190, § 14(a)(19), struck out reference to par. (3) of this subsection.

Subsec. (d)(10). Pub. L. 95-190, § 14(a)(20), substituted "in effect" for "issued", "Federal" for "other", and "and no action under" for "or".

Subsec. (d)(11). Pub. L. 95-190, § 14(a)(21), substituted "and in effect" for "(and approved by the Administrator)".

1974—Subsec. (a)(3). Pub. L. 93-319, § 6(a)(1), inserted reference to section 1857c-10(g) of this title (relating to energy-related authorities).

Subsec. (b)(3). Pub. L. 93-319, § 6(a)(2), inserted reference to section 1857c-10(g) of this title.

Subsec. (c)(1)(C). Pub. L. 93-319, § 6(a)(3), inserted reference to section 1857c-10(g) of this title.

1971—Subsec. (b)(2). Pub. L. 92-157, § 302(b), inserted "(A)" preceding "during" and ", or (B)" following "assumed enforcement".

Subsec. (c)(1)(A). Pub. L. 92-157, § 302(c), inserted "(i)" preceding "during" and ", or (ii)" following "assumed enforcement".

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Transfer of Functions

The Federal Power Commission was terminated and its functions, personnel, property, funds, etc., were transferred to the Secretary of Energy (except for certain functions which were transferred to the Federal Energy Regulatory Commission) by sections 7151(b), 7171(a), 7172(a), 7291, and 7293 of this title.

Pending Actions and Proceedings

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Section Referred to in Other Sections

This section is referred to in sections 7407, 7410, 7411, 7414, 7419, 7420, 7421, 7425, 7426, 7604, 7606, 7607 of this title; title 15 section 792.

§ 7414. Recordkeeping, inspections, monitoring, and entry

(a) Authority of Administrator or authorized representative

For the purpose (i) of developing or assisting in the development of any implementation plan under section 7410 or section 7411(d) of this title any standard of performance under section 7411 of this title, or any emission standard under section 7412 of this title, (ii) of determining whether any person is in violation of any such standard or any requirement of such a plan, or (iii) carrying out any provision of this chapter (except a provision of subchapter II of this chapter with respect to a manufacturer of new motor vehicles or new motor vehicle engines)—

(1) the Administrator may require any person who owns or operates any emission

source or who is subject to any requirement of this chapter (other than a manufacturer subject to the provisions of section 7525(c) or 7542 of this title) with respect to a provision of subchapter II of this chapter to (A) establish and maintain such records, (B) make such reports, (C) install, use, and maintain such monitoring equipment or methods, (D) sample such emissions (in accordance with such methods, at such locations, at such intervals, and in such manner as the Administrator shall prescribe), and (E) provide such other information as he may reasonably require; and

(2) the Administrator or his authorized representative, upon presentation of his credentials—

(A) shall have a right of entry to, upon, or through any premises of such person or in which any records required to be maintained under paragraph (1) of this section are located, and

(B) may at reasonable times have access to and copy any records, inspect any monitoring equipment or method required under paragraph (1), and sample any emissions which such person is required to sample under paragraph (1).

(b) State enforcement

(1) Each State may develop and submit to the Administrator a procedure for carrying out this section in such State. If the Administrator finds the State procedure is adequate, he may delegate to such State any authority he has to carry out this section.

(2) Nothing in this subsection shall prohibit the Administrator from carrying out this section in a State.

(c) Availability of records, reports, and information to public; disclosure of trade secrets

Any records, reports or information obtained under subsection (a) of this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than emission data), to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter.

(d) Notice of proposed entry, inspection, or monitoring

(1) In the case of any emission standard or limitation or other requirement which is adopted by a State, as part of an applicable implementation plan or as part of an order under section 7413(d) of this title, before carrying out an entry, inspection, or monitoring under paragraph (2) of subsection (a) of this section with respect to such standard, limitation, or other requirement, the Administrator (or his representatives) shall provide the State air pollution control agency with reasonable prior notice of such action, indicating the purpose of such action. No State agency which receives notice under this paragraph of an action proposed to be taken may use the information contained in the notice to inform the person whose property is proposed to be affected of the proposed action. If the Administrator has reasonable basis for believing that a State agency is so using or will so use such information, notice to the agency under this paragraph is not required until such time as the Administrator determines the agency will no longer so use information contained in a notice under this paragraph. Nothing in this section shall be construed to require notification to any State agency of any action taken by the Administrator with respect to any standard, limitation, or other requirement which is not part of an applicable implementation plan or which was promulgated by the Administrator under section 7410(c) of this title.

(2) Nothing in paragraph (1) shall be construed to provide that any failure of the Administrator to comply with the requirements of such paragraph shall be a defense in any enforcement action brought by the Administrator or shall make inadmissible as evidence in any such action any information or material obtained notwithstanding such failure to comply with such requirements.

(July 14, 1955, ch. 360, title I, § 114, as added Dec. 31, 1970, Pub. L. 91-604, § 4(a), 84 Stat. 1687, and amended June 22, 1974, Pub. L. 93-319, § 6(a)(4), 88 Stat. 259; Aug. 7, 1977, Pub. L. 95-95, title I, §§ 109(d)(3), 113, title III, § 305(d), 91 Stat. 701, 709, 776; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(22), (23), 91 Stat. 1400.)

CODIFICATION

Section was formerly classified to section 1857c-9 of this title.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-190, § 14(a)(22), added reference to subchapter II of this chapter and "new" preceding "motor" in two places.

Pub. L. 95-95, § 305(d), substituted "carrying out any provision of this chapter (except with respect to a manufacturer of motor vehicles or motor vehicle engines)" for "carrying out sections 119 or 303" in cl. (iii) preceding par. (1), substituted "any person subject to any requirement of this chapter (other than a manufacturer subject to the provisions of sections 7525(c) or 7542 of this title)" for "the owner or operator of any emission source" in par. (1), substituted "any premises of such person" for "any premises in which an emission source is located" in subpar. (A) of par. (2), and substituted "emissions which such person is required to sample" for "emissions which the owner or operator of such source is required to sample" in subpar. (B) of subpar. (2).

Subsec. (a)(1). Pub. L. 95-190, § 14(a)(23), added reference to subchapter II of this chapter and "who owns or operates any emission source or who is" following "any person".

Subsec. (b)(1). Pub. L. 95-95, § 109(d)(3), struck out "(except with respect to new sources owned or operated by the United States)" following "to carry out this section".

Subsec. (d). Pub. L. 95-95, § 113, added subsec. (d).

1974—Subsec. (a). Pub. L. 93-319 inserted reference to section 119.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7411, 7413 of this title.

§ 7415. International air pollution

(a) Endangerment of public health or welfare in foreign countries from pollution emitted in United States

Whenever the Administrator, upon receipt of reports, surveys or studies from any duly constituted international agency has reason to believe that any air pollutant or pollutants emitted in the United States cause or contribute to air pollution which may reasonably be anticipated to endanger public health or welfare in a foreign country or whenever the Secretary of State requests him to do so with respect to such pollution which the Secretary of State alleges is of such a nature, the Administrator shall give formal notification thereof to the Governor of the State in which such emissions originate.

(b) Prevention or elimination of endangerment

The notice of the Administrator shall be deemed to be a finding under section 7410(a)(2)(H)(ii) of this title which requires a plan revision with respect to so much of the applicable implementation plan as is inadequate to prevent or eliminate the endangerment referred to in subsection (a) of this section. Any foreign country so affected by such emission of pollutant or pollutants shall be invited to appear at any public hearing associated with any revision of the appropriate portion of the applicable implementation plan.

(c) Reciprocity

This section shall apply only to a foreign country which the Administrator determines has given the United States essentially the same rights with respect to the prevention or control of air pollution occurring in that country as is given that country by this section.

(d) Recommendations

Recommendations issued following any abatement conference conducted prior to August 7, 1977, shall remain in effect with respect to any pollutant for which no national ambient air quality standard has been established under section 7409 of this title unless the Administrator, after consultation with all agencies which were party to the conference, rescinds any such recommendation on grounds of obsolescence.

(July 14, 1955, ch. 360, title I, § 115, formerly § 5, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 396, renumbered § 105, and amended Oct. 20, 1965, Pub. L. 89-272, title I, §§ 101(2), (3), 102, 79 Stat. 992, 995, renumbered § 108 and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 491, renumbered § 115 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 4(a), (b)(2)-(10), 15(c)(2), 84 Stat. 1678, 1688, 1689, 1713; Aug. 7, 1977, Pub. L. 95-95, title I, § 114, 91 Stat. 710.)

CODIFICATION

Section was formerly classified to section 1857d of this title.

PRIOR PROVISIONS

A prior section 5 of act July 14, 1955, ch. 360, 69 Stat. 322, as amended Sept. 22, 1959, Pub. L. 86-365, § 1, 73 Stat. 646; Oct. 9, 1962, Pub. L. 87-761, § 1, 76 Stat. 760, which was classified to a prior section 1857d of this title prior to the general amendment of this chapter by Pub. L. 88-206, related to appropriations, grants-in-aid and contracts.

AMENDMENTS

1977—Pub. L. 95-95 completely revised the section by substituting provisions establishing a mechanism for the Administrator to trigger a revision of a State implementation plan under section 7410(a)(2)(H) upon a petition of an international agency or the Secretary of State if he finds that emissions originating in a State endanger the health or welfare of persons in a foreign country for provisions calling for the abatement of air pollution by means of conference procedures.

1970—Subsec. (a). Pub. L. 91-604, § 4(b)(2), added "and which is covered by subsection (b) or (c) of this section" following "persons".

Subsec. (b). Pub. L. 91-604, §§ 4(b)(3), (4), (5), 15(c)(2), redesignated former subsec. (d)(1)(A), (B), and (C) as (b)(1), (2), and (3), and, as so redesignated, substituted "Administrator" for "Secretary" wherever appearing therein, and added subsec. (b)(4). Former subsec. (b), which related to the encouragement of municipal, State, and interstate action to abate air pollution, was struck out.

Subsec. (c). Pub. L. 91-604, §§ 4(b)(3), (6), 15(c)(2), redesignated former subsec. (d)(1)(D) as (c), and, as so redesignated, substituted "Administrator" for "Secretary" and "Secretary of Health, Education, and Welfare" wherever appearing therein and "subsection" for "subparagraph" wherever appearing therein. Former subsec. (c), which related to the procedure for the promulgation of State air quality standards, was struck out.

Subsec. (d). Pub. L. 91-604, §§ 4(b)(4), (6), (7), (8), 15(c)(2), redesignated former subsec. (d)(2) and (3) as (d)(1) and (2), and, as so redesignated, in (d)(1) substituted "Administrator" for "Secretary" wherever appearing therein and "any conference under this section" for "such conference", and in (d)(2) substituted "Administrator" for "Secretary". Former subsec.

(d)(1)(A), (B), and (C) were redesignated as (b)(1), (2), and (3), respectively, and subsec. (d)(1)(D) was redesignated as (c).

Subsec. (e). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein.

Subsec. (f). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein and "Environmental Protection Agency" for "Department of Health, Education, and Welfare".

Subsec. (g). Pub. L. 91-604, §§ 4(b)(9), 15(c)(2), substituted "Administrator" for "Secretary" and "subsection (c)" for "subparagraph (D) of subsection (d)".

Subsec. (i). Pub. L. 91-604, § 15(c)(2) substituted "Administrator" for "Secretary".

Subsec. (j). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein.

Subsec. (k). Pub. L. 91-604, § 4(b)(3), (10), substituted provisions relating to compliance with any requirement of an applicable implementation plan or with any standard prescribed under section 7411 of this title or section 7412 of this title, for provisions relating to the enjoining of imminent and substantial endangerment from pollution sources.

1967—Subsec. (b). Pub. L. 90-148 substituted reference to subsec. (c), (h), or (k) of this section for reference to subsec. (g) of this section.

Subsec. (c). Pub. L. 90-148 added subsec. (c). Former subsec. (c) redesignated as subsec. (d) and amended.

Subsec. (d). Pub. L. 90-148 redesignated former subsec. (c) as subsec. (d) and, subsec. (d) as so redesignated, inserted into par. (2) provisions for the delivery prior to the conference of a Federal report to agencies and interested parties covering matters before the conference, raised from three weeks to thirty days the required notice of the conference, and added provisions for notice by newspapers, presentation of views on the Federal report, and transcript of proceedings. Former subsec. (d) redesignated as subsec. (e).

Subsec. (e). Pub. L. 90-148 redesignated former subsec. (d) as subsec. (e). Former subsec. (e) redesignated as subsec. (f) and amended.

Subsec. (f). Pub. L. 90-148 redesignated former subsec. (e) as subsec. (f) and, in subsec. (f) as so redesignated, inserted into par. (1) requirement that all interested parties be given a reasonable opportunity to present evidence to the hearing board. Former subsec. (f) redesignated as subsec. (g) and amended.

Subsec. (g). Pub. L. 90-148 redesignated former subsec. (f) as subsec. (g) and, in subsec. (g) as redesignated, substituted reference to subsec. (d) of this section for reference to subsec. (c) of this section. Former subsec. (g) redesignated as subsec. (h) and amended.

Subsec. (h). Pub. L. 90-148 redesignated former subsec. (g) as subsec. (h) and, in subsec. (h) as so redesignated, substituted reference to subsec. (g) of this section for reference to subsec. (f) of this section. Former subsec. (h) redesignated as subsec. (i) and amended.

Subsec. (i). Pub. L. 90-148 redesignated former subsec. (h) as subsec. (i) and, in subsec. (i) as so redesignated, substituted reference to subsec. (f) of this section for reference to subsec. (e) of this section and raised the per diem maximum from $50 to $100. Former subsec. (i) redesignated as subsec. (j).

Subsec. (j). Pub. L. 90-148 redesignated former subsec. (i) as subsec. (j).

Subsec (k). Pub. L. 90-148 added subsec. (k).

1965—Subsec. (b). Pub. L. 89-272, § 101(2), substituted "this title" for "this Act", which for purposes of codification has been changed to "this subchapter".

Subsec. (c)(1)(D). Pub. L. 89-272, § 102(a), added subpar. (D).

Subsec. (d)(3). Pub. L. 89-272, § 101(2), substituted "subchapter" for "chapter".

Subsec. (f)(1). Pub. L. 89-272, § 102(b), inserted "(A)" and added cl. (B).

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

United States-Canadian Negotiations on Air Quality

Pub. L. 95-426, title VI § 612, Oct. 7, 1978, 92 Stat. 990, provided that:

"(a) The Congress finds that—

"(1) the United States and Canada share a common environment along a 5,500 mile border;

"(2) the United States and Canada are both becoming increasingly concerned about the effects of pollution, particularly that resulting from power generation facilities, since the facilities of each country affect the environment of the other;

"(3) the United States and Canada have subscribed to international conventions; have joined in the environmental work of the United Nations, the Organization for Economic Cooperation and Development, and other international environmental forums; and have entered into and implemented effectively the provisions of the historic Boundary Waters Treaty of 1909; and

"(4) the United States and Canada have a tradition of cooperative resolution of issues of mutual concern which is nowhere more evident than in the environmental area.

"(b) It is the sense of the Congress that the President should make every effort to negotiate a cooperative agreement with the Government of Canada aimed at preserving the mutual airshed of the United States and Canada so as to protect and enhance air resources and insure the attainment and maintenance of air quality protective of public health and welfare.

"(c) It is further the sense of the Congress that the President, through the Secretary of State working in concert with interested Federal agencies and the affected States, should take whatever diplomatic actions appear necessary to reduce or eliminate any undesirable impact upon the United States and Canada resulting from air pollution from any source."

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Section Referred to in Other Sections

This section is referred to in section 7403 of this title.

§ 7416. Retention of State authority

Except as otherwise provided in sections 1857c-10(c), (e), and (f) (as in effect before August 7, 1977), 7543, 7545(c)(4), and 7573 of this title (preempting certain State regulation of moving sources) nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emissions of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emission standard or limitation is in effect under an applicable implementation plan or under section 7411 or section 7412 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.

(July 14, 1955, ch. 360, title I, § 116, formerly § 109, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 497, renumbered and amended Dec. 31, 1970, Pub. L. 91-604, § 4(a), (c), 84 Stat. 1678, 1689; June 22, 1974, Pub. L. 93-319, § 6(b), 88 Stat. 259; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(24), 91 Stat. 1400.)

REFERENCES IN TEXT

"1857c-10(c), (e), and (f) (as in effect before August 7, 1977)", referred to in text, was in the original "119(c), (e), and (f) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)" meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, (which was classified to section 1857c-10 of this title) as in effect prior to the enactment of Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

CODIFICATION

Section was formerly classified to section 1857d-1 of this title.

AMENDMENTS

1977—Pub. L. 95-190 added reference to specified provisions in effect before Aug. 7, 1977.

1974—Pub. L. 93-319 inserted reference to section 1857c-10(c), (e), and (f).

1970—Pub. L. 91-604, § 4(c), substituted provisions which authorized any State or political subdivision thereof to adopt or enforce, except as otherwise provided, emission standards or limitations under the specified conditions, or any requirement respecting control or abatement of air pollution, for provisions which authorized any State, political subdivision, or intermunicipal or interstate agency to adopt standards and plans to achieve a higher level of air quality than approved by the Secretary.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7417. Advisory committees

(a) Establishment; membership

In order to obtain assistance in the development and implementation of the purposes of this chapter including air quality criteria, recommended control techniques, standards, research and development, and to encourage the continued efforts on the part of industry to improve air quality and to develop economically feasible methods for the control and abatement of air pollution, the Administrator shall from time to time establish advisory committees. Committee members shall include, but not be limited to, persons who are knowledgeable concerning air quality from the standpoint of health, welfare, economics or technology.

(b) Compensation

The members of any other advisory committees appointed pursuant to this chapter who are not officers or employees of the United States while attending conferences or meetings or while otherwise serving at the request of the Administrator, shall be entitled to receive compensation at a rate to be fixed by the Administrator, but not exceeding $100 per diem, including traveltime, and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(c) Consultations by Administrator

Prior to—

(1) issuing criteria for an air pollutant under section 7408(a)(2) of this title,

(2) publishing any list under section 7411(b)(1)(A) or section 7412(b)(1)(A) of this title,

(3) publishing any standard under section 7411 or section 7412 of this title, or

(4) publishing any regulation under section 7521(a) of this title,

the Administrator shall, to the maximum extent practicable within the time provided, consult with appropriate advisory committees, independence experts, and Federal departments and agencies.

(July 14, 1955, ch. 360, title I, §§ 117 formerly § 6, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 399, renumbered § 106, Oct. 20, 1965, Pub. L. 89-272, title I, § 101(3), 79 Stat. 992, renumbered § 110 and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 498, and renumbered § 117 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 4(a), (d), 15(c)(2), 84 Stat. 1678, 1689, 1713; Aug. 7, 1977, Pub. L. 95-95, title I, § 115, 91 Stat. 711; Nov. 9, 1978, Pub. L. 95-623, § 13(c), 92 Stat. 3458.)

CODIFICATION

Subsec. (c) was originally enacted as subsec. (f) but has been redesignated (c) for purposes of codification in view of the omission by Pub. L. 95-95 to redesignate subsec. (f) as (c) after repealing former subsecs. (a) and (b) and redesignating former subsecs. (d) and (e) as (a) and (b).

Section was formerly classified to section 1857e of this title.

PRIOR PROVISIONS

A prior section 6 of act July 14, 1955, ch. 360, 69 Stat. 323, which was classified to a prior section 1857e of this title, prior to the general amendment of this chapter by Pub. L. 88-206, defined "State air pollution control agency", "local government air pollution control agency" and "State". See section 7602 of this title.

Amendments

1978—Subsec. (c)(3). Pub. L. 95-623 substituted "7411" for "7411(b)(1)(B)" and "7412" for "7412(b)(1)(B)".

1977—Subsec. (a). Pub. L. 95-95, § 115(1), (2), redesignated subsec. (d) as (a). Former subsec. (a), establishing an Air Quality Advisory Board in the Environmental Protection Agency, was stricken.

Subsec. (b). Pub. L. 95-95, § 115(1) to (3), redesignated subsec. (e) as (b) and, in subsec. (b) as so redesignated, substituted "The members of any other advisory committees" for "The members of the Board and other advisory committees" and "conferences or meetings or while otherwise serving" for "conferences or meetings of the Board or while otherwise serving". Former subsec. (b), setting out the duties of the Air Quality Advisory Board, was stricken.

Subsecs. (c) to (e). Pub. L. 95-95, § 115(1), (2), struck out subsec. (c), which related to clerical and technical assistance for the Air Quality Advisory Board, and redesignated subsecs. (d) and (e) as (a) and (b), respectively.

1970—Subsec. (a). Pub. L. 91-604, § 15(c)(2), substituted "Environmental Protection Agency" for "Department of Health, Education, and Welfare" and "Administrator" for "Secretary".

Subsec. (b). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein.

Subsec. (c). Pub. L. 91-604, § 15(c)(2), substituted "Environmental Protection Agency" for "Department of Health, Education, and Welfare".

Subsec. (d). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (e). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein.

Subsec. (f). Pub. L. 91-604, § 4(d), added subsec. (f).

1967—Subsec. (a). Pub. L. 90-148 substituted provisions establishing in the Department of Health, Education, and Welfare an Air Quality Advisory Board and providing for the appointment and term of its members for provisions directing the Secretary to maintain liaison with manufacturers looking toward development of devices and fuels to reduce pollutants in automotive exhaust and to appoint a technical committee and call it together from time to time to evaluate progress and develop and recommend research programs.

Subsec. (b). Pub. L. 90-148 substituted provision setting out the duties of the Air Quality Advisory Board for provisions requiring the Secretary to make semiannual reports to Congress on measures being taken toward the resolution of vehicle exhaust pollution problems.

Subsecs. (c) to (e). Pub. L. 90-148 added subsecs. (c) to (e).

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Termination of Advisory Committees

Advisory Committees in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided by law. See section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 7418. Control of pollution from Federal facilities

(a) Compliance with requirements, administrative authority, process, and sanctions respecting control and abatement of air pollution

Each department, agency, and instrumentality of the executive, legislative, and judicial branches of the Federal Government (1) having jurisdiction over any property or facility, or (2) engaged in any activity resulting, or which may result, in the discharge of air pollutants, and each officer, agent, or employee thereof, shall be subject to, and comply with, all Federal, State, interstate, and local requirements, administrative authority, and process and sanctions respecting the control and abatement of air pollution in the same manner, and to the same extent as any nongovernmental entity. The preceding sentence shall apply (A) to any requirement whether substantive or procedural (including any recordkeeping or reporting requirement, any requirement respecting permits and any other requirement whatsoever), (B) to the exercise of any Federal, State, or local administrative authority, and (C) to any process and sanction, whether enforced in Federal, State, or local courts or in any other manner. This subsection shall apply notwithstanding any immunity of such agencies, officers, agents, or employees under any law or rule of law. No officer, agent, or employee of the United States shall be personally liable for any civil penalty for which he is not otherwise liable.

(b) Exemption

The President may exempt any emission source of any department, agency, or instrumentality in the executive branch from compliance with such a requirement if he determines it to be in the paramount interest of the United States to do so, except that no exemption may be granted from section 7411 of this title, and an exemption from section 7412 of this title may be granted only in accordance with section 7412(c) of this title. No such exemption shall be granted due to lack of appropriation unless the President shall have specifically requested such appropriation as a part of the budgetary process and the Congress shall have failed to make available such requested appropriation. Any exemption shall be for a period not in excess of one year, but additional exemptions may be

granted for periods of not to exceed one year upon the President's making a new determination. In addition to any such exemption of a particular emission source, the President may, if he determines it to be in the paramount interest of the United States to do so, issue regulations exempting from compliance with the requirements of this section any weaponry, equipment, aircraft, vehicles, or other classes or categories of property which are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State and which are uniquely military in nature. The President shall reconsider the need for such regulations at three-year intervals. The President shall report each January to the Congress all exemptions from the requirements of this section granted during the preceding calendar year, together with his reason for granting each such exemption.

(July 14, 1955, ch. 360, title I, § 118, formerly, § 7, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 399, renumbered § 107, Oct. 20, 1965, Pub. L. 89-272, title I, 101(3), 79 Stat. 992, renumbered § 111 and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 499, and renumbered § 118 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 4(a), 5, 84 Stat. 1678, 1689; Aug. 7, 1977, Pub. L. 95-95, title I, § 116, 91 Stat. 711.)

CODIFICATION

Section was formerly classified to section 1857f of this title.

PRIOR PROVISIONS

A prior section 7 of act July 14, 1955, ch. 360, 69 Stat. 323, which was classified to a prior section 1857f of this title, related to research and experiments under other laws.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-95, § 116(a), designated the existing first sentence as subsec. (a) and, in subsec. (a) as so designated, added provisions enumerating the legal and administrative areas to which the compliance requirements apply and directing that agencies, officers, agents, and employees not be immune and that officers, agents, or employees of the United States not be personally liable for civil penalties for which they are not otherwise liable.

Subsec. (b). Pub. L. 95-95, § 116(b), designated the second and following existing sentences as subsec. (b) and, in subsec. (b) as so designated, added provisions authorizing the President to exempt weaponry, equipment, aircraft, vehicles, and other classes and categories of property of the Armed Forces and the National Guard from compliance but to reconsider the need for such an exemption at three-year intervals.

1970—Pub. L. 91-604, § 5, struck out lettered designations (a) and (b), and, as so redesignated, substituted provisions requiring Federal facilities to comply with Federal, State, local, and interstate air pollution control and abatement requirements and provisions authorizing the President to exempt, under the specified terms and conditions, any emission source of any department, etc., in the executive branch from compliance with control and abatement requirements, for provisions requiring, to the extent practicable and consistent with the interests of the United States and within any available appropriations, Federal facilities to cooperate with the Department of Health, Education, and Welfare and with any air pollution control agency to prevent and control air pollution and provisions authorizing the Secretary to establish classes of potential pollution sources for which any Federal department or agency having jurisdiction over any facility was required to obtain a permit, under the specified terms and conditions, for the discharge of any matter into the air of the United States.

1967—Pub. L. 90-148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

EXECUTIVE ORDER NO. 11282

Ex. Ord., No. 11282, May 26, 1966, 31 F.R. 7663, which provided for the prevention, control, and abatement of air pollution from federal activities, was superseded by Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573.

EXECUTIVE ORDER NO. 11507

Ex. Ord. No. 11507, Feb. 4, 1970, 35 F.R. 2573, which provided for the prevention, control, and abatement of air pollution at federal facilities, was superseded by Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, set out as a note under section 4331 of this title.

EXECUTIVE ORDER NO. 11752

Ex. Ord. No. 11752, Dec. 17, 1973, 38 F.R. 34793, set out as a note under section 4331 of this title, provides for the prevention, control, and abatement of air pollution at Federal facilities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7423, 7604 of this title.

§ 7419. Primary nonferrous smelter orders

(a) Issuance; hearing; enforcement orders; statement of grounds for application; findings

(1) Upon application by the owner or operator of a primary nonferrous smelter, a primary nonferrous smelter order under subsection (b) of this section may be issued—

(A) by the Administrator, after thirty days' notice to the State, or

(B) by the State in which such source is located, but no such order issued by the State

shall take effect until the Administrator determines that such order has been issued in accordance with the requirements of this chapter.

Not later than ninety days after submission by the State to the Administrator of notice of the issuance of a primary nonferrous smelter order under this section, the Administrator shall determine whether or not such order has been issued by the State in accordance with the requirements of this chapter. If the Administrator determines that such order has not been issued in accordance with such requirements, he shall conduct a hearing respecting the reasonably available control technology for primary nonferrous smelters.

(2)(A) An order issued under this section to a primary nonferrous smelter shall be referred to as a "primary nonferrous smelter order". No primary nonferrous smelter may receive both an enforcement order under section 7413(d) of this title and a primary nonferrous smelter order under this section.

(B) Before any hearing conducted under this section, in the case of an application made by the owner or operator of a primary nonferrous smelter for a second order under this section, the applicant shall furnish the Administrator (or the State as the case may be) with a statement of the grounds on which such application is based (including all supporting documents and information). The statement of the grounds for the proposed order shall be provided by the Administrator or the State in any case in which such State or Administrator is acting on its own initiative. Such statement (including such documents and information) shall be made available to the public for a thirty-day period before such hearing and shall be considered as part of such hearing. No primary nonferrous smelter order may be granted unless the applicant establishes that he meets the conditions required for the issuance of such order (or the Administrator or State establishes the meeting of such conditions when acting on their own initiative).

(C) Any decision with respect to the issuance of a primary nonferrous smelter order shall be accompanied by a concise statement of the findings and of the basis of such findings.

(3) For the purposes of sections 7410, 7604, and 7607 of this title, any order issued by the State and in effect pursuant to this subsection shall become part of the applicable implementation plan.

(b) Prerequisites to issuance of orders

A primary nonferrous smelter order under this section may be issued to a primary nonferrous smelter if—

(1) such smelter is in existence on August 7, 1977;

(2) the requirement of the applicable implementation plan with respect to which the order is issued is an emission limitation or standard for sulfur oxides which is necessary and intended to be itself sufficient to enable attainment and maintenance of national primary and secondary ambient air quality standards for sulfur oxides; and

(3) such smelter is unable to comply with such requirement by the applicable date for compliance because no means of emission limitation applicable to such smelter which will enable it to achieve compliance with such requirement has been adequately demonstrated to be reasonably available (as determined by the Administrator, taking into account the cost of compliance, non-air quality health and environmental impact and energy consideration).

(c) Second orders

(1) A second order issued to a smelter under this section shall set forth compliance schedules containing increments of progress which require compliance with the requirement postponed as expeditiously as practicable. The increments of progress shall be limited to requiring compliance with subsection (d) of this section and, in the case of a second order, to procuring, installing, and operating the necessary means of emission limitation as expeditiously as practicable after the Administrator determines such means have been adequately demonstrated to be reasonably available within the meaning of subsection (b)(3) of this section.

(2) Not in excess of two primary nonferrous smelter orders may be issued under this section to any primary nonferrous smelter. The first such order issued to a smelter shall not result in the postponement of the requirement with respect to which such order is issued beyond January 1, 1983. The second such order shall not result in the postponement of such requirement beyond January 1, 1988.

(d) Interim measures; continuous emission reduction technology

(1)(A) Each primary nonferrous smelter to which an order is issued under this section shall be required to use such interim measures for the period during which such order is in effect as may be necessary in the judgment of the Administrator to assure attainment and maintenance of the national primary and secondary ambient air quality standards during such period, taking into account the aggregate effect on air quality of such order together with all variances, extensions, waivers, enforcement orders, delayed compliance orders and primary nonferrous smelter orders previously issued under this chapter.

(B) Such interim requirements shall include—

(i) a requirement that the source to which the order applies comply with such reporting requirements and conduct such monitoring as the Administrator determines may be necessary, and

(ii) such measures as the Administrator determines are necessary to avoid an imminent and substantial endangerment to health of persons.

(C) Such interim measures shall also, except as provided in paragraph (2), include continuous emission reduction technology. The Administrator shall condition the use of any such interim measures upon the agreement of the owner or operator of the smelter—

(i) to comply with such conditions as the Administrator determines are necessary to maximize the reliability and enforceability of such interim measures, as applied to the smelter, in attaining and maintaining the national ambient air quality standards to which the order relates, and

(ii) to commit reasonable resources to research and development of appropriate emission control technology.

(2) The requirement of paragraph (1) for the use of continuous emission reduction technology may be waived with respect to a particular smelter by the State or the Administrator, after notice and a hearing on the record, and upon a showing by the owner or operator of the smelter that such requirement would be so costly as to necessitate permanent or prolonged temporary cessation of operations of the smelter. Upon application for such waiver, the Administrator shall be notified and shall, within ninety days, hold a hearing on the record in accordance with section 554 of title 5. At such hearing the Administrator shall require the smelter involved to present information relating to any alleged cessation of operations and the detailed reasons or justifications therefor. On the basis of such hearing the Administrator shall make findings of fact as to the effect of such requirement and on the alleged cessation of operations and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public, and shall be taken into account by the State or the Administrator in making the decision whether or not to grant such waiver.

(3) In order to obtain information for purposes of a waiver under paragraph (2), the Administrator may, on his own motion, conduct an investigation and use the authority of section 7621 of this title.

(4) In the case of any smelter which on August 7, 1977, uses continuous emission reduction technology and supplemental controls and which receives an initial primary nonferrous smelter order under this section, no additional continuous emission reduction technology shall be required as a condition of such order unless the Administrator determines, at any time, after notice and public hearing, that such additional continuous emission reduction technology is adequately demonstrated to be reasonably available for the primary nonferrous smelter industry.

(e) Termination of orders

At any time during which an order under this section applies, the Administrator may enter upon a public hearing respecting the availability of technology. Any order under this section shall be terminated if the Administrator determines on the record, after notice and public hearing, that the conditions upon which the order was based no longer exist. If the owner or operator of the smelter to which the order is issued demonstrates that prompt termination of such order would result in undue hardship, the termination shall become effective at the earliest practicable date on which such undue hardship would not result, but in no event later than the date required under subsection (c) of this section.

(f) Violation of requirements

If the Administrator determines that a smelter to which an order is issued under this section is in violation of any requirement of subsection (c) or (d) of this section, he shall—

(1) enforce such requirement under section 7413 of this title,

(2) (after notice and opportunity for public hearing) revoke such order and enforce compliance with the requirement with respect to which such order was granted,

(3) give notice of noncompliance and commence action under section 7420 of this title, or

(4) take any appropriate combination of such actions.

(July 14, 1955, ch. 360, title I, § 119, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 117(b), 91 Stat. 712, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(25)-(27), 91 Stat. 1401.)

PRIOR PROVISIONS

A prior section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, which was classified to section 1857c-10 of this title, provided for the authority to deal with energy shortages. Such section 119 was repealed by Pub. L. 95-95, title I, § 112(b)(1), Aug. 7, 1977, 91 Stat. 709, which provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to section 7413(d)(5) of this title.

AMENDMENTS

1977—Subsec. (a)(3). Pub. L. 95-190, § 14(a)(25), added par. (3).

Subsec. (d)(3). Pub. L. 95-190, § 14(a)(26), substituted "7621" for "7619".

Subsec. (e). Pub. L. 95-190, § 14(a)(27), substituted "an order under this section" for "such order".

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7413, 7420, 7604, 7607, 7621 of this title; title 15 sections 793, 798.

§ 7420. Noncompliance penalty

(a) Assessment and collection

(1)(A) Not later than 6 months after August 7, 1977, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations requiring the assessment and collection of a noncompliance penalty against persons referred to in paragraph (2)(A).

(B)(i) Each State may develop and submit to the Administrator a plan for carrying out this section in such State. If the Administrator finds that the State plan meets the requirements of this section, he may delegate to such State any authority he has to carry out this section.

(ii) Notwithstanding a delegation to a State under clause (i), the Administrator may carry out this section in such State under the circumstances described in subsection (b)(2)(B) of this section.

(2)(A) Except as provided in subparagraph (B) or (C) of this paragraph, the State or the Administrator shall assess and collect a noncompliance penalty against every person who owns or operates—

(i) a major stationary source (other than a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title), which is not in compliance with any emission limitation, emission standard or compliance schedule under any applicable implementation plan (whether or not such source is subject to a Federal or State consent decree), or

(ii) a stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement established under section 7411 or 7412 of this title, or

(iii) any source referred to in clause (i) or (ii) (for which an extension, order, or suspension referred to in subparagraph (B), or Federal or State consent decree is in effect), or a primary nonferrous smelter which has received a primary nonferrous smelter order under section 7419 of this title which is not in compliance with any interim emission control requirement or schedule of compliance under such extension, order, suspension, or consent decree.

For purposes of subsection (d)(2) of this section, in the case of a penalty assessed with respect to a source referred to in clause (iii) of this subparagraph, the costs referred to in such subsection (d)(2) shall be the economic value of noncompliance with the interim emission control requirement or the remaining steps in the schedule of compliance referred to in such clause.

(B) Notwithstanding the requirements of subparagraph (A)(i) and (ii), the owner or operator of any source shall be exempted from the duty to pay a noncompliance penalty under such requirements with respect to that source if, in accordance with the procedures in subsection (b)(5) of this section, the owner or operator demonstrates that the failure of such source to comply with any such requirement is due solely to—

(i) a conversion by such source from the burning of petroleum products or natural gas, or both, as the permanent primary energy source to the burning of coal pursuant to an order under section 7413(d)(5) of this title or section 1857c-10 of this title (as in effect before August 7, 1977);

(ii) in the case of a coal-burning source granted an extension under the second sentence of section 1857c-10(c)(1) of this title (as in effect before August 7, 1977), a prohibition from using petroleum products or natural gas or both, by reason of an order under the provisions of section 792(a) and (b) of title 15 or under any legislation which amends or supersedes such provisions;

(iii) the use of innovative technology sanctioned by an enforcement order under section 7413(d)(4) of this title;

(iv) an inability to comply with any such requirement, for which inability the source has received an order under section 7413(d) of this title (or an order under section 7413 of this title issued before August 7, 1977) which has the effect of permitting a delay or violation of any requirement of this chapter (including a requirement of an applicable implementation plan) which inability results from reasons entirely beyond the control of the owner or operator of such source or of any entity controlling, controlled by, or under common control with the owner or operator of such source; or

(v) the conditions by reason of which a temporary emergency suspension is authorized under section 7410(f) or (g) of this title.

An exemption under this subparagraph shall cease to be effective if the source fails to comply with the interim emission control requirements or schedules of compliance (including increments of progress) under any such extension, order, or suspension.

(C) The Administrator may, after notice and opportunity for public hearing, exempt any source from the requirements of this section with respect to a particular instance of noncompliance if he finds that such instance of noncompliance is de minimis in nature and in duration.

(b) Regulations

Regulations under subsection (a) of this section shall—

(1) permit the assessment and collection of such penalty by the State if the State has a delegation of authority in effect under subsection (a)(1)(B)(i) of this section;

(2) provide for the assessment and collection of such penalty by the Administrator, if—

(A) the State does not have a delegation of authority in effect under subsection (a)(1)(B)(i) of this section, or

(B) the State has such a delegation in effect but fails with respect to any particular person or source to assess or collect the penalty in accordance with the requirements of this section;

(3) require the States, or in the event the States fail to do so, the Administrator, to give a brief but reasonably specific notice of noncompliance under this section to each person referred to in subsection (a)(2)(A) of this section with respect to each source owned or operated by such person which is not in compli-

ance as provided in such subsection, not later than July 1, 1979, or thirty days after the discovery of such noncompliance, whichever is later;

(4) require each person to whom notice is given under paragraph (3) to—

(A) calculate the amount of the penalty owed (determined in accordance with subsection (d)(2) of this section) and the schedule of payments (determined in accordance with subsection (d)(3) of this section) for each such source and, within forty-five days after the issuance of such notice or after the denial of a petition under subparagraph (B), to submit that calculation and proposed schedule, together with the information necessary for an independent verification thereof, to the State and to the Administrator, or

(B) submit a petition, within forty-five days after the issuance of such notice, challenging such notice of noncompliance or alleging entitlement to an exemption under subsection (a)(2)(B) of this section with respect to a particular source;

(5) require the Administrator to provide a hearing on the record (within the meaning of subchapter II of chapter 5 of title 5) and to make a decision on such petition (including findings of fact and conclusions of law) not later than ninety days after the receipt of any petition under paragraph (4)(B), unless the State agrees to provide a hearing which is substantially similar to such a hearing on the record and to make a decision on such petition (including such findings and conclusions) within such ninety-day period;

(6)(A) authorize the Administrator on his own initiative to review the decision of the State under paragraph (5) and disapprove it if it is not in accordance with the requirements of this section, and (B) require the Administrator to do so not later than sixty days after receipt of a petition under this subparagraph, notice, and public hearing and a showing by such petitioner that the State decision under paragraph (5) is not in accordance with the requirements of this section;

(7) require payment, in accordance with subsection (d) of this section, of the penalty by each person to whom notice of noncompliance is given under paragraph (3) with respect to each noncomplying source for which such notice is given unless there has been a final determination granting a petition under paragraph (4)(B) with respect to such source;

(8) authorize the State or the Administrator to adjust (and from time to time to readjust) the amount of the penalty assessment calculated or the payment schedule proposed by such owner or operator under paragraph (4), if the Administrator finds after notice and opportunity for a hearing on the record that the penalty or schedule does not meet the requirements of this section; and

(9) require a final adjustment of the penalty within 180 days after such source comes into compliance in accordance with subsection (d)(4) of this section.

In any case in which the State establishes a noncompliance penalty under this section, the State shall provide notice thereof to the Administrator. A noncompliance penalty established by a State under this section shall apply unless the Administrator, within ninety days after the date of receipt of notice of the State penalty assessment under this section, objects in writing to the amount of the penalty as less than would be required to comply with guidelines established by the Administrator. If the Administrator objects, he shall immediately establish a substitute noncompliance penalty applicable to such source.

(c) Contract to assist in determining amount of penalty assessment or payment schedule

If the owner or operator of any stationary source to whom a notice is issued under subsection (b)(3) of this section—

(1) does not submit a timely petition under subsection (b)(4)(B) of this section, or

(2) submits a petition under subsection (b)(4)(B) of this section which is denied, and

fails to submit a calculation of the penalty assessment, a schedule for payment, and the information necessary for independent verification thereof, the State (or the Administrator, as the case may be) may enter into a contract with any person who has no financial interest in the owner or operator of the source (or in any person controlling, controlled by or under common control with such source) to assist in determining the amount of the penalty assessment or payment schedule with respect to such source. The cost of carrying out such contract may be added to the penalty to be assessed against the owner or operator of such source.

(d) Payment

(1) All penalties assessed by the Administrator under this section shall be paid to the United States Treasury. All penalties assessed by the State under this section shall be paid to such State.

(2) The amount of the penalty which shall be assessed and collected with respect to any source under this section shall be equal to—

(A) the amount determined in accordance with regulations promulgated by the Administrator under subsection (a) of this section, which is no less than the economic value which a delay in compliance beyond July 1, 1979, may have for the owner of such source, including the quarterly equivalent of the capital costs of compliance and debt service over a normal amortization period, not to exceed ten years, operation and maintenance costs foregone as a result of noncompliance, and any additional economic value which such a delay may have for the owner or operator of such source, minus

(B) the amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into, and maintaining compliance with, such requirement, to the extent that such expenditures have not been taken into account in the calculation of the penalty under subparagraph (A).

To the extent that any expenditure under subparagraph (B) made during any quarter is not subtracted for such quarter from the costs under subparagraph (A), such expenditure may be subtracted for any subsequent quarter from such costs. In no event shall the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3)(A) The assessed penalty required under this section shall be paid in quarterly installments for the period of covered noncompliance. All quarterly payments (determined without regard to any adjustment or any subtraction under paragraph (2)(B)) after the first payment shall be equal.

(B) The first payment shall be due on the date six months after the date of issuance of the notice of noncompliance under subsection (b)(3) of this section with respect to any source or on January 1, 1980, whichever is later. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for any preceding period within the period of covered noncompliance for such source.

(C) For the purpose of this section, the term "period of covered noncompliance" means the period which begins—

(i) two years after August 7, 1977, in the case of a source for which notice of noncompliance under subsection (b)(3) of this section is issued on or before the date two years after August 7, 1977, or

(ii) on the date of issuance of the notice of noncompliance under subsection (b)(3) of this section, in the case of a source for which such notice is issued after July 1, 1979,

and ending on the date on which such source comes into (or for the purpose of establishing the schedule of payments, is estimated to come into) compliance with such requirement.

(4) Upon making a determination that a source with respect to which a penalty has been paid under this section is in compliance and is maintaining compliance with the applicable requirement, the State (or the Administrator as the case may be) shall review the actual expenditures made by the owner or operator of such source for the purpose of attaining and maintaining compliance, and shall within 180 days after such source comes into compliance—

(A) provide reimbursement with interest (to be paid by the State or Secretary of the Treasury, as the case may be) at appropriate prevailing rates (as determined by the Secretary of the Treasury) for any overpayment by such person, or

(B) assess and collect an additional payment with interest at appropriate prevailing rates (as determined by the Secretary of the Treasury) for any underpayment by such person.

(5) Any person who fails to pay the amount of any penalty with respect to any source under this section on a timely basis shall be required to pay in addition a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties and nonpayment penalties with respect to such source which are unpaid as of the beginning of such quarter.

(e) Judicial review

Any action pursuant to this section, including any objection of the Administrator under the last sentence of subsection (b) of this section, shall be considered a final action for purposes of judicial review of any penalty under section 7607 of this title.

(f) Other orders, payments, sanctions, or requirements

Any orders, payments, sanctions, or other requirements under this section shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this chapter, and shall in no way affect any civil or criminal enforcement proceedings brought under any provision of this chapter or State or local law.

(g) More stringent emission limitations or other requirements

In the case of any emission limitation or other requirement approved or promulgated by the Administrator under this chapter after August 7, 1977, which is more stringent than the emission limitation or requirement for the source in effect prior to such approval or promulgation, if any, or where there was no emission limitation or requirement approved or promulgated before August 7, 1977, the date for imposition of the non-compliance penalty under this section, shall be either July 1, 1979, or the date on which the source is required to be in full compliance with such emission limitation or requirement, whichever is later, but in no event later than three years after the approval or promulgation of such emission limitation or requirement.

(July 14, 1955, ch. 360, title I, § 120, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 118, 91 Stat. 714, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(28)-(38), 91 Stat. 1401.)

REFERENCES IN TEXT

Section 1857c-10 of this title (as in effect before August 7, 1977), referred to in subsec. (a)(2)(B)(i), was in the original "section 119 (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, (which was classified to section 1857c-10 of this title) as in effect prior to the enactment of Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

Section 1857c-10(c)(1) of this title (as in effect before August 7, 1977), referred to in subsec. (a)(2)(B)(ii), was in the original "section 119(c)(1) (as in effect before the date of the enactment of the Clean Air Act Amendments of 1977)." See paragraph set out above for explanation of codification.

AMENDMENTS

1977—Subsec. (a)(2)(A). Pub. L. 95-190, § 14(a)(28), (29), in cls. (i) and (iii) added provisions relating to consent decrees wherever appearing therein.

Subsec. (a)(2)(B). Pub. L. 95-190, § 14(a)(30),(31), in cl. (i) added reference to section 7413(d)(5) of this title, and in cls. (i) and (ii) added provision relating to orders in effect under section 1857c-10 of this title before Aug. 7, 1977, wherever appearing therein.

Subsec. (b). Pub. L. 95-190, § 14(a)(34) to (36), in closing material added provisions relating to notice to the Administrator when a noncompliance penalty is established by a State, and substituted references to noncompliance for references to delayed compliance in two places, "source" for "facility", and "receipt of notice of the State penalty assessment" for "publication of the proposed penalty".

Subsec. (b)(2)(A). Pub. L. 95-190, § 14(a)(33), substituted "(a)(1)(B)(i)" for "(e)".

Subsec. (b)(8). Pub. L. 95-190, § 14(a)(32), substituted "(4)" for "(6)".

Subsec. (d)(2)(A). Pub. L. 95-190, § 14(a)(37), added provisions relating to inclusion of the economic value of a delay in compliance, and substituted "such a delay" for "a delay in compliance beyond July 1, 1979,".

Subsec. (e). Pub. L. 95-190, § 14(a)(38), substituted "subsection, shall" for "subsection shall".

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 7419, 7425, 7607 of this title.

§ 7421. Consultation

In carrying out the requirements of this chapter requiring applicable implementation plans to contain—

(1) any transportation controls, air quality maintenance plan requirements or preconstruction review of direct sources of air pollution, or

(2) any measure referred to—

(A) in part D (pertaining to nonattainment requirements), or

(B) in part C (pertaining to prevention of significant deterioration),

and in carrying out the requirements of section 7413(d) of this title (relating to certain enforcement orders), the State shall provide a satisfactory process of consultation with general purpose local governments, designated organizations of elected officials of local governments and any Federal land manager having authority over Federal land to which the State plan applies, effective with respect to any such requirement which is adopted more than one year after August 7, 1977, as part of such plan. Such process shall be in accordance with regulations promulgated by the Administrator to assure adequate consultation. Such regulations shall be promulgated after notice and opportunity for public hearing and not later than 6 months after August 7, 1977. Only a general purpose unit of local government, regional agency, or council of governments adversely affected by action of the Administrator approving any portion of a plan referred to in this subsection may petition for judicial review of such action on the basis of a violation of the requirements of this section.

(July 14, 1955, ch. 360, title I, § 121, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 119, 91 Stat. 719.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7410 of this title; title 15 sections 1410, 2002.

§ 7422. Listing of certain unregulated pollutants

(a) Radioactive pollutants, cadmium, arsenic, and polycyclic organic matter

Not later than one year after August 7, 1977 (two years for radioactive pollutants) and after notice and opportunity for public hearing, the Administrator shall review all available relevant information and determine whether or not emissions of radioactive pollutants (including source material, special nuclear material, and byproduct material), cadmium, arsenic and polycyclic organic matter into the ambient air will cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health. If the Administrator makes an affirmative determination with respect to any such substance, he shall simultaneously with such determination include such substance in the list published under section 7408(a)(1) or 7412(b)(1)(A) of this title (in the case of a substance which, in the judgment of the Administrator, causes, or contributes to, air pollution which may reasonably be anticipated to result in an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness), or shall include each category of stationary sources emitting such substance in significant amounts in the list published under section 7411(b)(1)(A) of this title, or take any combination of such actions.

(b) Revision authority

Nothing in subsection (a) of this section shall be construed to affect the authority of the Administrator to revise any list referred to in subsection (a) of this section with respect to any substance (whether or not enumerated in subsection (a) of this section).

(c) Consultation with Nuclear Regulatory Commission; interagency agreement; notice and hearing

(1) Before listing any source material, special nuclear, or byproduct material (or component or derivative thereof) as provided in subsection (a) of this section, the Administrator shall consult with the Nuclear Regulatory Commission.

(2) Not later than six months after listing any such material (or component or derivative thereof) the Administrator and the Nuclear Regulatory Commission shall enter into an interagency agreement with respect to those sources or facilities which are under the jurisdiction of the Commission. This agreement shall, to the maximum extent practicable consistent with this chapter, minimize duplication of effort and conserve administrative resources in the establishment, implementation, and enforcement of emission limitations, standards of

performance, and other requirements and authorities (substantive and procedural) under this chapter respecting the emission of such material (or component or derivative thereof) from such sources or facilities.

(3) In case of any standard or emission limitation promulgated by the Administrator, under this chapter or by any State (or the Administrator) under any applicable implementation plan under this chapter, if the Nuclear Regulatory Commission determines, after notice and opportunity for public hearing that the application of such standard or limitation to a source or facility within the jurisdiction of the Commission would endanger public health or safety, such standard or limitation shall not apply to such facilities or sources unless the President determines otherwise within ninety days from the date of such finding.

(July 14, 1955, ch. 360, title I, § 122, as added Aug. 7, 1977, Pub. L. 95-95, title § 120(a), 91 Stat. 720.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY BY ADMINISTRATOR OF ENVIRONMENTAL PROTECTION AGENCY

Section 120(b) of Pub. L. 95-95 provided that: "The Administrator of the Environmental Protection Agency shall conduct a study, in conjunction with other appropriate agencies, concerning the effect on the public health and welfare of sulfates, radioactive pollutants, cadmium, arsenic, and polycyclic organic matter which are present or may reasonably be anticipated to occur in the ambient air. Such study shall include a thorough investigation of how sulfates are formed and how to protect public health and welfare from the injurious effects, if any, of sulfates, cadmium, arsenic, and polycyclic organic matter."

§ 7423. Stack heights

(a) Heights in excess of good engineering practice; other dispersion techniques

The degree of emission limitation required for control of any air pollutant under an applicable implementation plan under this subchapter shall not be affected in any manner by—

(1) so much of the stack height of any source as exceeds good engineering practice (as determined under regulations promulgated by the Administrator), or

(2) any other dispersion technique.

The preceding sentence shall not apply with respect to stack heights in existence before December 31, 1970, or dispersion techniques implemented before such date. In establishing an emission limitation for coal-fired steam electric generating units which are subject to the provisions of section 7418 of this title and which commenced operation before July 1, 1957, the effect of the entire stack height of stacks for which a construction contract was awarded before February 8, 1974, may be taken into account.

(b) Dispersion technique

For the purpose of this section, the term "dispersion technique" includes any intermittent or supplemental control of air pollutants varying with atmospheric conditions.

(c) Regulations; good engineering practice

Not later than six months after August 7, 1977, the Administrator, shall after notice and opportunity for public hearing, promulgate regulations to carry out this section. For purposes of this section, good engineering practice means, with respect to stack heights, the height necessary to insure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies and wakes which may be created by the source itself, nearby structures or nearby terrain obstacles (as determined by the Administrator). For purposes of this section such height shall not exceed two and a half times the height of such source unless the owner or operator of the source demonstrates, after notice and opportunity for public hearing, to the satisfaction of the Administrator, that a greater height is necessary as provided under the preceding sentence. In no event may the Administrator prohibit any increase in any stack height or restrict in any manner the stack height of any source.

(July 14, 1955, ch. 360, title I, § 123, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 121, 91 Stat. 721.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7424. Assurance of adequacy of State plans

(a) State review of implementation plans which relate to major fuel burning sources

As expeditiously as practicable but not later than one year after August 7, 1977, each State shall review the provisions of its implementation plan which relate to major fuel burning sources and shall determine—

(1) the extent to which compliance with requirements of such plan is dependent upon the use by major fuel burning stationary sources of petroleum products or natural gas,

(2) the extent to which such plan may reasonably be anticipated to be inadequate to meet the requirements of this chapter in such State on a reliable and long-term basis by reason of its dependence upon the use of such fuels, and

(3) the extent to which compliance with the requirements of such plan is dependent upon use of coal or coal derivatives which is not locally or regionally available.

Each State shall submit the results of its review and its determination under this paragraph to the Administrator promptly upon completion thereof.

(b) Plan revision

(1) Not later than eighteen months after August 7, 1977, the Administrator shall review the submissions of the States under subsection (a) of this section and shall require each State to revise its plan if, in the judgment of the Ad-

ministrator, such plan revision is necessary to assure that such plan will be adequate to assure compliance with the requirements of this chapter in such State on a reliable and long-term basis, taking into account the actual or potential prohibitions on use of petroleum products or natural gas, or both, under any other authority of law.

(2) Before requiring a plan revision under this subsection, with respect to any State the Administrator shall take into account the report of the review conducted by such State under paragraph (1) and shall consult with the Governor of the State respecting such required revision.

(July 14, 1955, ch. 360, title I, § 124, as added Aug. 7, 1977, Pub. L. 95–95, title I, § 122, 91 Stat. 722.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95–95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7425. Measures to prevent economic disruption or unemployment

(a) Determination that action is necessary

After notice and opportunity for a public hearing—

(1) the Governor of any State in which a major fuel burning stationary source referred to in this subsection (or class or category thereof) is located,

(2) the Administrator, or

(3) the President (or his designee),

may determine that action under subsection (b) of this section is necessary to prevent or minimize significant local or regional economic disruption or unemployment which would otherwise result from use by such source (or class or category) of—

(A) coal or coal derivatives other than locally or regionally available coal,

(B) petroleum products,

(C) natural gas, or

(D) any combination of fuels referred to in subparagraphs (A) through (C),

to comply with the requirements of a State implementation plan.

(b) Use of locally or regionally available coal or coal derivatives to comply with implementation plan requirements

Upon a determination under subsection (a) of this section—

(1) such Governor, with the written consent of the President or his designee,

(2) the President's designee with the written consent of such Governor, or

(3) the President

may by rule or order prohibit any such major fuel burning stationary source (or class or category thereof) from using fuels other than locally or regionally available coal or coal derivatives to comply with implementation plan requirements. In taking any action under this subsection, the Governor, the President, or the President's designee as the case may be, shall take into account, the final cost to the consumer of such an action.

(c) Contracts; schedules

The Governor, in the case of action under subsection (b)(1) of this section, or the Administrator, in the case of an action under subsection (b)(2) or (3) of this section shall, by rule or order, require each source to which such action applies to—

(1) enter into long-term contracts of at least ten years in duration (except as the President or his designee may otherwise permit or require by rule or order for good cause) for supplies of regionally available coal or coal derivatives,

(2) enter into contracts to acquire any additional means of emission limitation which the Administrator or the State determines may be necessary to comply with the requirements of this chapter while using such coal or coal derivatives as fuel, and

(3) comply with such schedules (including increments of progress), timetables and other requirements as may be necessary to assure compliance with the requirements of this chapter.

Requirements under this subsection shall be established simultaneously with, and as a condition of, any action under subsection (b) of this section.

(d) Existing or new major fuel burning stationary sources

This section applies only to existing or new major fuel burning stationary sources—

(1) which have the design capacity to produce 250,000,000 Btu's per hour (or its equivalent), as determined by the Administrator, and

(2) which are not in compliance with the requirements of an applicable implementation plan or which are prohibited from burning oil or natural gas, or both, under any other authority of law.

(e) Actions not to be deemed modifications of major fuel burning stationary sources

Except as may otherwise be provided by rule by the State or the Administrator for good cause, any action required to be taken by a major fuel burning stationary source under this section shall not be deemed to constitute a modification for purposes of section 7411(a)(2) and (4) of this title.

(f) Treatment of prohibitions, rules, or orders as requirements or parts of plans under other provisions

For purposes of sections 7413 and 7420 of this title a prohibition under subsection (b) of this section, and a corresponding rule or order under subsection (c) of this section, shall be treated as a requirement of section 7413 of this title. For purposes of any plan (or portion thereof) promulgated under section 7410(c) of this title, any rule or order under subsection (c) of this section, corresponding to a prohibition under subsection (b) of this section, shall be treated as a part of such plan. For purposes of section 7413 of this title, a prohibition under subsection (b) of this section, applicable to any source, and a corresponding rule or order under subsection (c) of this section, shall be treated as part of the applicable implementation plan for the State in which subject source is located.

(g) Delegation of Presidential authority

The President may delegate his authority under this section to an officer or employee of the United States designated by him on a case-by-case basis or in any other manner he deems suitable.

(h) Locally or regionally available coal or coal derivatives

For the purpose of this section the term "locally or regionally available coal or coal derivatives" means coal or coal derivatives which is, or can in the judgment of the State or the Administrator feasibly be, mined or produced in the local or regional area (as determined by the Administrator) in which the major fuel burning stationary source is located.

(July 14, 1955, ch. 360, title I, § 125, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 122, 91 Stat. 722.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6215 of this title; title 15 section 2003.

§ 7426. Interstate pollution abatement

(a) Written notice to all nearby States

Each applicable implementation plan shall—

(1) require each major proposed new (or modified) source—

(A) subject to part C (relating to significant deterioration of air quality) or

(B) which may significantly contribute to levels of air pollution in excess of the national ambient air quality standards in any air quality control region outside the State in which such source intends to locate (or make such modification),

to provide written notice to all nearby States the air pollution levels of which may be affected by such source at least sixty days prior to the date on which commencement of construction is to be permitted by the State providing notice, and

(2) identify all major existing stationary sources which may have the impact described in paragraph (1) with respect to new or modified sources and provide notice to all nearby States of the identity of such sources not later than three months after August 7, 1977.

(b) Petition for finding that major sources emit or would emit prohibited air pollutants

Any State or political subdivision may petition the Administrator for a finding that any major source emits or would emit any air pollutant in violation of the prohibition of section 7410(a)(2)(E)(i) of this title. Within 60 days after receipt of any petition under this subsection and after public hearing, the Administrator shall make such a finding or deny the petition.

(c) Violations; allowable continued operation

Notwithstanding any permit which may have been granted by the State in which the source is located (or intends to locate), it shall be a violation of the applicable implementation plan in such State—

(1) for any major proposed new (or modified) source with respect to which a finding has been made under subsection (b) of this section to be constructed or to operate in violation of the prohibition of section 7410(a)(2)(E)(i) of this title, or

(2) for any major existing source to operate more than three months after such finding has been made with respect to it.

The Administrator may permit the continued operation of a source referred to in paragraph (2) beyond the expiration of such three-month period if such source complies with such emission limitations and compliance schedules (containing increments of progress) as may be provided by the Administrator to bring about compliance with the requirements contained in section 7410(a)(2)(E)(i) of this title as expeditiously as practicable, but in no case later than three years after the date of such finding. Nothing in the preceding sentence shall be construed to preclude any such source from being eligible for an enforcement order under section 7413(d) of this title after the expiration of such period during which the Administrator has permitted continuous operation.

(July 14, 1955, ch. 360, title I, § 126, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 123, 91 Stat. 724, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(39), 91 Stat. 1401.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-190 substituted "(relating to significant deterioration of air quality)" for ", relating to significant deterioration of air quality,".

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7607 of this title.

§ 7427. Public notification

(a) Warning signs; television, radio, or press notices or information

Each State plan shall contain measures which will be effective to notify the public during any calendar[1] on a regular basis of instances or areas in which any national primary ambient air quality standard is exceeded or was exceeded during any portion of the preceding calendar year to advise the public of the health hazards associated with such pollution, and to enhance public awareness of the measures which can be taken to prevent such standards from being exceeded and the ways in which the public can participate in regulatory and other efforts to improve air quality. Such measures may include the posting of warning signs on interstate highway access points to metropolitan areas or television, radio, or press notices or information.

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[1] So in original. Probably should read "calendar year".

(b) Grants

The Administrator is authorized to make grants to States to assist in carrying out the requirements of subsection (a) of this section.

(July 14, 1955, ch. 360, title I, § 127, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 124, 91 Stat. 725.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7626 of this title.

§ 7428. State boards

(a)[1] Not later than the date one year after August 7, 1977, each applicable implementation plan shall contain requirements that—

(1) any board or body which approves permits or enforcement orders under this chapter shall have at least a majority of members who represent the public interest and do not derive any significant portion of their income from persons subject to permits or enforcement orders under this chapter, and

(2) any potential conflicts of interest by members of such board or body or the head of an executive agency with similar powers be adequately disclosed.

A State may adopt any requirements respecting conflicts of interest for such boards or bodies or heads of executive agencies, or any other entities which are more stringent than the requirements of paragraph (1) and (2), and the Administrator shall approve any such more stringent requirements submitted as part of an implementation plan.

(July 14, 1955, ch. 360, title I, § 128, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 125, 91 Stat. 725.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7410 of this title.

PART B—OZONE PROTECTION

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 7604, 7607, 7413, 7617, 7626 of this title.

§ 7450. Congressional declaration of purpose

The purposes of this part are (1) to provide for a better understanding of the effects of human actions on the stratosphere, especially the ozone in the stratosphere, (2) to provide for a better understanding of the effects of changes in the stratosphere, especially the ozone in the stratosphere on the public health and welfare, (3) to provide information on the progress of regulation of activities which may reasonably be anticipated to affect the ozone in the stratosphere in such a way as to cause or contribute to endangerment of the public health or welfare, and (4) to provide information on the need for additional legislation in this area, if any.

(July 14, 1955, ch. 360, title I, § 150, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 726.)

EFFECTIVE DATE

Part effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7451. Congressional findings

(a)[1] The Congress finds, on the basis of presently available information, that—

(1) halocarbon compounds introduced into the environment potentially threaten to reduce the concentration of ozone in the stratosphere;

(2) ozone reduction will lead to increased incidence of solar ultraviolet radiation at the surface of the Earth;

(3) increased incidence of solar ultraviolet radiation is likely to cause increased rates of disease in humans (including increased rates of skin cancer), threaten food crops, and otherwise damage the natural environment;

(4) other substances, practices, processes, and activities may affect the ozone in the stratosphere, and should be investigated to give early warning of any potential problem and to develop the basis for possible future regulatory action; and

(5) there is some authority under existing law, to regulate certain substances, practices, processes, and activities which may affect the ozone in the stratosphere.

(July 14, 1955, ch. 360, title I, § 151, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 726.)

§ 7452. Definitions

For the purposes of this part—

(1) the term "halocarbon" means the chemical compounds $CFCl_3$ and CF_2Cl_2 and such other halogenated compounds as the Administrator determines may reasonably be anticipated to contribute to reductions in the concentration of ozone in the stratosphere;

(2) the term "stratosphere" means that part of the atmosphere above the tropopause.

(July 14, 1955, ch. 360, title I, § 152, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 726.)

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[1] So in original. Section enacted without subsec. (b).

[1] So in original. Section enacted without a subsec. (b).

REFERENCES IN TEXT

This part, referred to in text, was in the original, "this subtitle" and has been translated as "this part" to reflect the probable intent of Congress.

§ 7453. Studies by Environmental Protection Agency

(a) Study of cumulative effect of all substances, practices, processes, and activities on the stratosphere

The Administrator shall conduct a study of the cumulative effect of all substances, practices, processes, and activities which may affect the stratosphere, especially ozone in the stratosphere. The study shall include an analysis of the independent effects on the stratosphere especially such ozone in the stratosphere of—

(1) the release into the ambient air of halocarbons,

(2) the release into the ambient air of other sources of chlorine,

(3) the uses of bromine compounds, and

(4) emissions of aircraft and aircraft propulsion systems employed by operational and experimental aircraft.

The study shall also include such physical, chemical, atmospheric, biomedical, or other research and monitoring as may be necessary to ascertain (A) any direct or indirect effects upon the public health and welfare of changes in the stratosphere, especially ozone in the stratosphere, and (B) the probable causes of changes in the stratosphere, especially the ozone in the stratosphere.

(b) Research

The Administrator shall undertake research on—

(1) methods to recover and recycle substances which directly or indirectly affect the stratosphere, especially ozone in the stratosphere,

(2) methods of preventing the escape of such substances,

(3) safe substitutes for such substances, and

(4) other methods to regulate substances, practices, processes, and activities which may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere.

(c) Cooperation and assistance in studies and research

(1) The studies and research conducted under this section may be undertaken with such cooperation and assistance from universities and private industry as may be available. Each department, agency, and instrumentality of the United States having the capability to do so is authorized and encouraged to provide assistance to the Administrator in carrying out the requirements of this section, including (notwithstanding any other provision of law) any services which such department, agency, or instrumentality may have the capability to render or obtain by contract with third parties.

(2) The Administrator shall encourage the cooperation and assistance of other nations in carrying out the studies and research under this section. The Administrator is authorized to cooperate with and support similar research efforts of other nations.

(d) Study by National Academy of Sciences

(1) The Administrator shall undertake to contract with the National Academy of Sciences to study the state of knowledge and the adequacy of research efforts to understand (A) the effects of all substances, practices, processes, and activities which may affect the stratosphere, especially ozone in the stratosphere; (B) the health and welfare effects of modifications of the stratosphere, especially ozone in the stratosphere; and (C) methods of control of such substances, practices, processes, and activities including alternatives, costs, feasibility, and timing. The Academy shall make a report of its findings by January 1, 1978.

(2) The Administrator shall make available to the Academy such information in the Administrator's possession as is needed for the purposes of the study provided for in this subsection.

(e) Study by Secretary of Labor

The Secretary of Labor shall study and transmit a report to the Administrator and the Congress not later than six months after August 7, 1977, with respect to the losses and gains to industry and employment which could result from the elimination of the use of halocarbons in aerosol containers and for other purposes. Such report shall include recommended means of alleviating unemployment or other undesirable economic impact, if any, resulting therefrom.

(f) Coordination in carrying out research and studies; Coordinating Committee

(1) The Administrator shall establish and act as Chairman of a Coordinating Committee for the purpose of insuring coordination of the efforts of other Federal agencies carrying out research and studies related to or supportive of the research provided for in subsections (a) and (b) of this section and section 7454 of this title.

(2) Members of the Coordinating Committee shall include the appropriate official responsible for the relevant research efforts of each of the following agencies:

(A) the National Oceanic and Atmospheric Administration,

(B) the National Aeronautics and Space Administration,

(C) the Federal Aviation Administration,

(D) the Department of Agriculture,

(E) the National Cancer Institute,

(F) the National Institute of Environmental Health Sciences,

(G) the National Science Foundation, and the appropriate officials responsible for the relevant research efforts of such other agencies carrying out related efforts as the Chairman shall designate. A representative of the Department of State shall sit on the Coordinating Committee to encourage and facilitate international coordination.

(3) The Coordinating Committee shall review and comment on plans for, and the execution and results of, pertinent research and studies. For this purpose, the agencies named in or designated under paragraph (2) of this subsection shall make appropriate and timely reports to the Coordinating Committee on plans for and the execution and results of such research and studies.

(4) The Chairman may request a report from any Federal Agency for the purpose of determining if that agency should sit on the Coordinating Committee.

(g) Reports to Congressional committees

Not later than January 1, 1978, and biennially thereafter, the Administrator shall report to the appropriate committees of the House and the Senate, the results of the studies and research conducted under this section and the results of related research and studies conducted by other Federal agencies.

(July 14, 1955, ch. 360, title I, § 153, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 726.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7457 of this title.

§ 7454. Research and monitoring by other agencies

(a) National Oceanic and Atmospheric Administration

The Administrator of the National Oceanic and Atmospheric Administration shall establish a continuing program of research and monitoring of the stratosphere for the purpose of early detection of changes in the stratosphere and climatic effects of such changes. Such Administrator shall on or before January 1, 1978, and biennially thereafter, transmit such report to the Administrator and the Congress on the findings of such research and monitoring. Such report shall contain any appropriate recommendations for legislation or regulation (or both).

(b) National Aeronautics and Space Administration

The National Aeronautics and Space Administration shall, pursuant to its authority under title IV of the National Aeronautics and Space Act of 1958 [42 U.S.C. 2481 et seq.] continue programs of research, technology, and monitoring of the stratosphere for the purpose of understanding the physics and chemistry of the stratosphere and for the early detection of potentially harmful changes in the ozone in the stratosphere. Such Administration shall transmit reports by January 1, 1978, and biennially thereafter to the Administrator and the Congress on the results of the programs authorized in this subsection, together with any appropriate recommendations for legislation or regulation (or both).

(c) National Science Foundation

The Director of the National Science Foundation shall encourage and support ongoing stratospheric research programs and continuing research programs that will increase scientific knowledge of the effects of changes in the ozone layer in the stratosphere upon living organisms and ecosystems. Such Director shall transmit reports by January 1, 1978, and biennially thereafter to the Administrator and the Congress on the results of such programs, together with any appropriate recommendations for legislation or regulation (or both).

(d) Department of Agriculture

The Secretary of Agriculture shall encourage and support continuing research programs that will increase scientific knowledge of the effects of changes in the ozone in the stratosphere upon animals, crops, and other plant life. Such Secretary shall transmit reports by January 1, 1978, and biennially thereafter to the Administrator and the Congress on the results of such programs together with any appropriate recommendations for legislation or regulation (or both).

(e) Department of Health, Education, and Welfare

The Secretary of Health, Education, and Welfare shall encourage and support continuing research programs that will increase scientific knowledge of the effects of changes in the ozone in the stratosphere upon human health. Such Secretary shall transmit reports by January 1, 1978, and biennially thereafter, to the Administrator and the Congress on the results of such programs, together with any appropriate recommendations for legislation or regulation (or both).

(f) Cooperation and assistance

In carrying out subsections (a) through (e) of this section, the agencies involved (1) shall enlist and encourage cooperation and assistance from other Federal agencies, universities, and private industry, and (2) shall solicit the views of the Administrator with regard to plans for the research involved so that any such research will, if regulatory action by the Administrator is indicated, provide the preliminary information base for such action.

(July 14, 1955, ch. 360, title I, § 154, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 728.)

REFERENCES IN TEXT

The National Aeronautics and Space Act of 1958, referred to in subsec. (b), is Pub. L. 85-568, July 29, 1958; 72 Stat. 426, as amended. Title IV of the National Aeronautics and Space Act of 1958 is classified generally to subchapter III (§ 2481 et seq.) of chapter 26 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2451 of this title and Tables.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7453, 7457 of this title.

§ 7455. Progress of regulation

The Administrator shall provide an interim report to the Congress by January 1, 1978, shall provide a final report within two years after August 7, 1977, and shall provide follow-up reports annually thereafter on the actions taken by the Environmental Protection Agency and all other Federal agencies to regulate sources of halocarbon emissions, the results of such regulations in protecting the ozone layer, and the need for additional regulatory action, if any. The reports under this section shall also include recommendations for the control of substances, practices, processes, and activities other than those involving halocarbons, which are found to affect the ozone in the stratosphere and which may cause or contribute to harmful effects on public health or welfare.

(July 14, 1955, ch. 360, title I, § 155, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 729.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7457 of this title.

§ 7456. International cooperation

The President shall undertake to enter into international agreements to foster cooperative research which complements studies and research authorized by this part, and to develop standards and regulations which protect the stratosphere consistent with regulations applicable within the United States. For these purposes the President through the Secretary of State and the Assistant Secretary of State for Oceans and International Environmental and Scientific Affairs, shall negotiate multilateral treaties, conventions, resolutions, or other agreements, and formulate, present, or support proposals at the United Nations and other appropriate international forums and shall report to the Congress periodically on efforts to arrive at such agreements.

(July 14, 1955, ch. 360, title I, § 156, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 729.)

§ 7457. Regulations

(a) Endangerment of public health or welfare prior to submission of final report

If at any time prior to the submission of the final report referred to in section 7455 of this title in the Administrator's judgment, any substance, practice, process, or activity may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, and such effect may reasonably be anticipated to endanger public health or welfare, the Administrator shall promptly promulgate regulations respecting the control of such substance, practice, process, or activity, and shall simultaneously submit notice of the promulgation of such regulations to the Congress.

(b) Proposed regulations; final form of regulations; revision

Upon submission of the final report referred to in section 7455 of this title, and after consideration of the research and study under sections 7453 and 7454 of this title and, consultation with appropriate Federal agencies and scientific entities, the Administrator shall propose regulations for the control of any substance, practice, process, or activity (or any combination thereof) which in his judgment may reasonably be anticipated to affect the stratosphere, especially ozone in the stratosphere, if such effect in the stratosphere may reasonably be anticipated to endanger public health or welfare. Such regulations shall take into account the feasibility and the costs of achieving such control. Such regulations may exempt medical use products for which the Administrator determines there is no suitable substitute. Not later than three months after proposal of such regulations the Administrator shall promulgate such regulations in final form. From time to time, and under the same procedures, the Administrator may revise any of the regulations submitted under this subsection.

(July 14, 1955, ch. 360, title I, § 157, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 729.)

§ 7458. Other provisions unaffected

Nothing in this part shall be construed to alter or affect the authority of the Administrator under section 7603 of this title (relating to emergency powers), under section 7571 of this title (relating to aircraft emission standards), or under any other provision of this chapter or to affect the authority of any other department, agency, or instrumentality of the United States under any other provision of law to promulgate or enforce any requirement respecting the control of any substance, practice, process, or activity for purposes of protecting the stratosphere or ozone in the stratosphere. In the case of any proposed rule respecting ozone in the stratosphere which has been published under the Toxic Substances Control Act [15 U.S.C. 2601 et seq.] prior to August 7, 1977, notwithstanding section 9(b) of such Act [15 U.S.C. 2608(b)], nothing in this part shall be construed to prohibit or restrict the Administrator from taking any action under the Toxic Substances Control Act respecting the promulgation or enforcement of such rule.

(July 14, 1955, ch. 360, title I, § 158, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 730.)

REFERENCES IN TEXT

The Toxic Substances Control Act, referred to in text, is Pub. L. 94-469, Oct. 11, 1976, 90 Stat. 2003, which is classified generally to chapter 53 (§ 2601 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 2601 of Title 15 and Tables.

§ 7459. State authority

(a) Efforts of States or political subdivisions to protect the stratosphere

Nothing in this part shall preclude or deny any State or political subdivision thereof from adopting or enforcing any requirement respecting the control of any substance, practice, process, or activity for purposes of protecting the stratosphere or ozone in the stratosphere except as otherwise provided in subsection (b) of this section.

(b) Identical requirements of State and Federal regulations

If a regulation of any substance, practice, process, or activity is in effect under this part in order to prevent or abate any risk to the stratosphere, or ozone in the stratosphere, no State or political subdivision thereof may adopt or attempt to enforce any requirement respecting the control of any such substance, practice, process, or activity to prevent or abate such risk, unless the requirement of the State or political subdivision is identical to the require-

ment of such regulation. The preceding sentence shall not apply with respect to any law or regulation of any State or political subdivision controlling the use of halocarbons as propellants in aerosol spray containers.

(July 14, 1955, ch. 360, title I, § 159, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 126, 91 Stat. 730.)

PART C—PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 7407, 7410, 7421, 7426, 7521, 7604, 7607, 7616, 7617, 7620, 7623 of this title; title 16 section 460m-24.

SUBPART I—CLEAN AIR

§ 7470. Congressional declaration of purpose

The purposes of this part are as follows:

(1) to protect public health and welfare from any actual or potential adverse effect which in the Administrator's judgment may reasonably be anticipate[1] to occur from air pollution or from exposures to pollutants in other media, which pollutants originate as emissions to the ambient air)[2], notwithstanding attainment and maintenance of all national ambient air quality standards;

(2) to preserve, protect, and enhance the air quality in national parks, national wilderness areas, national monuments, national seashores, and other areas of special national or regional natural, recreational, scenic, or historic value;

(3) to insure that economic growth will occur in a manner consistent with the preservation of existing clean air resources;

(4) to assure that emissions from any source in any State will not interfere with any portion of the applicable implementation plan to prevent significant deterioration of air quality for any other State; and

(5) to assure that any decision to permit increased air pollution in any area to which this section applies is made only after careful evaluation of all the consequences of such a decision and after adequate procedural opportunities for informed public participation in the decisionmaking process.

(July 14, 1955, ch. 360, title I, § 160, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 127(a), 91 Stat. 731.)

EFFECTIVE DATE

Subpart effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

GUIDANCE DOCUMENT

Section 127(c) of Pub. L. 95-95, which provided that not later than 1 year after Aug. 7, 1977, the Administrator publish a guidance document to assist the States in carrying out their functions under part C of title I of the Clean Air Act, this part, with respect to pollutants for which national ambient air quality standards are promulgated, was omitted from the Code as executed.

STUDY AND REPORT ON PROGRESS MADE IN PROGRAM RELATING TO SIGNIFICANT DETERIORATION OF AIR QUALITY

Section 127(d) of Pub. L. 95-95, which provided that not later than 2 years after Aug. 7, 1977, the Administrator complete a study and report to the Congress on the progress made in carrying out part C of title I of the Clean Air Act, this part, and the problems associated in carrying out such section, was omitted from the Code as executed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7476 of this title.

§ 7471. Plan requirements

In accordance with the policy of section 7401(b)(1) of this title, each applicable implementation plan shall contain emission limitations and such other measures as may be necessary, as determined under regulations promulgated under this part, to prevent significant deterioration of air quality in each region (or portion thereof) identified pursuant to section 7407(d)(1)(D) or (E) of this title.

(July 14, 1955, ch. 360, title I, § 161, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 127(a), 91 Stat. 731.)

§ 7472. Initial classifications

(a) Areas designated as class I

Upon the enactment of this part, all—

(1) international parks,

(2) national wilderness areas which exceed 5,000 acres in size,

(3) national memorial parks which exceed 5,000 acres in size, and

(4) national parks which exceed six thousand acres in size,

and which are in existence on August 7, 1977, shall be class I areas and may not be redesignated. All areas which were redesignated as class I under regulations promulgated before August 7, 1977, shall be class I areas which may be redesignated as provided in this part.

(b) Areas designated as class II

All areas in such State identified pursuant to section 7407(d)(1)(D) or (E) of this title which are not established as class I under subsection (a) of this section shall be class II areas unless redesignated under section 7474 of this title.

(July 14, 1955, ch. 360, title I, § 162, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 127(a), 91 Stat. 731, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(40), 91 Stat. 1401.)

AMENDMENTS

1977—Subsec. (a)(4). Pub. L. 95-190 added a comma following "size".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7474, 7478 of this title.

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[1] So in original. Probably should read "anticipated".

[2] So in original. Section was enacted without an opening parenthesis.

§ 7473. Increments and ceilings

(a) Sulfur oxide and particulate matter; requirement that maximum allowable increases and maximum allowable concentrations not be exceeded

In the case of sulfur oxide and particulate matter, each applicable implementation plan shall contain measures assuring that maximum allowable increases over baseline concentrations of, and maximum allowable concentrations of, such pollutant shall not be exceeded. In the case of any maximum allowable increase (except an allowable increase specified under section 7475(d)(2)(C)(iv) of this title) for a pollutant based on concentrations permitted under national ambient air quality standards for any period other than an annual period, such regulations shall permit such maximum allowable increase to be exceeded during one such period per year.

(b) Maximum allowable increases in concentrations over baseline concentrations

(1) For any class I area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

Pollutant	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	5
Twenty-four-hour maximum	10
Sulfur dioxide:	
Annual arithmetic mean	2
Twenty-four-hour maximum	5
Three-hour maximum	25

(2) For any class II area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

Pollutant	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	19
Twenty-four-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
Twenty-four-hour maximum	91
Three-hour maximum	512

(3) For any class III area, the maximum allowable increase in concentrations of sulfur dioxide and particulate matter over the baseline concentration of such pollutants shall not exceed the following amounts:

Pollutant	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	37
Twenty-four-hour maximum	75
Sulfur dioxide:	
Annual arithmetic mean	40
Twenty-four-hour maximum	182
Three-hour maximum	700

(4) The maximum allowable concentration of any air pollutant in any area to which this part applies shall not exceed a concentration for such pollutant for each period of exposure equal to—

(A) the concentration permitted under the national secondary ambient air quality standard, or

(B) the concentration permitted under the national primary ambient air quality standard,

whichever concentration is lowest for such pollutant for such period of exposure.

(c) Orders or rules for determining compliance with maximum allowable increases in ambient concentrations of air pollutants

(1) In the case of any State which has a plan approved by the Administrator for purposes of carrying out this part, the Governor of such State may, after notice and opportunity for public hearing, issue orders or promulgate rules providing that for purposes of determining compliance with the maximum allowable increases in ambient concentrations of an air pollutant, the following concentrations of such pollutant shall not be taken into account:

(A) concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from the use of petroleum products, or natural gas, or both, by reason of an order which is in effect under the provisions of sections 792(a) and (b) of title 15 (or any subsequent legislation which supersedes such provisions) over the emissions from such sources before the effective date of such order.

(B) the concentrations of such pollutant attributable to the increase in emissions from stationary sources which have converted from using natural gas by reason of a natural gas curtailment pursuant to a natural gas curtailment plan in effect pursuant to the Federal Power Act [16 U.S.C. 791a et seq.] over the emissions from such sources before the effective date of such plan,

(C) concentrations of particulate matter attributable to the increase in emissions from construction or other temporary emission-related activities, and

(D) the increase in concentrations attributable to new sources outside the United States over the concentrations attributable to existing sources which are included in the baseline concentration determined in accordance with section 7479(4) of this title.

(2) No action taken with respect to a source under paragraph (1)(A) or (1)(B) shall apply more than five years after the effective date of the order referred to in paragraph (1)(A) or the plan referred to in paragraph (1)(B), whichever is applicable. If both such order and plan are applicable, no such action shall apply more than five years after the later of such effective dates.

(3) No action under this subsection shall take effect unless the Governor submits the order or rule providing for such exclusion to the Administrator and the Administrator determines that such order or rule is in compliance with the provisions of this subsection.

(July 14, 1955, ch. 360, title I, § 163, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 127(a), 91 Stat. 732, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(41), 91 Stat. 1401.)

REFERENCES IN TEXT

The Federal Power Act, referred to in subsec. (c)(1)(B), is act June 10, 1920, ch. 285, 41 Stat. 1063, as amended, which is classified generally to chapter 12 (§ 791a et seq.) of Title 16, Conservation. For complete classification of this Act to the Code, see section 791a of Title 16 and Tables.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-190 added "section" preceding "7475", which for purposes of codification had already been added thereby requiring no further change in text.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7476, 7478 of this title.

§ 7474. Area redesignation

(a) Authority of States to redesignate areas

Except as otherwise provided under subsection (c) of this section, a State may redesignate such areas as it deems appropriate as class I areas. The following areas may be redesignated only as class I or II:

(1) an area which exceeds ten thousand acres in size and is a national monument, a national primitive area, a national preserve, a national recreation area, a national wild and scenic river, a national wildlife refuge, a national lakeshore or seashore, and

(2) a national park or national wilderness area established after August 7, 1977, which exceeds ten thousand acres in size.

Any area (other than an area referred to in paragraph (1) or (2) or an area established as class I under the first sentence of section 7472(a) of this title) may be redesignated by the State as class III if—

(A) such redesignation has been specifically approved by the Governor of the State, after consultation with the appropriate Committees of the legislature if it is in session or with the leadership of the legislature if it is not in session (unless State law provides that such redesignation must be specifically approved by State legislation) and if general purpose units of local government representing a majority of the residents of the area so redesignated enact legislation (including for such units of local government resolutions where appropriate) concurring in the State's redesignation;

(B) such redesignation will not cause, or contribute to, concentrations of any air pollutant which exceed any maximum allowable increase or maximum allowable concentration permitted under the classification of any other area; and

(C) such redesignation otherwise meets the requirements of this part.

Subparagraph (A) of this paragraph shall not apply to area redesignations by Indian tribes.

(b) Notice and hearing; notice to Federal land manager; written comments and recommendations; regulations; disapproval of redesignation

(1)(A) Prior to redesignation of any area under this part, notice shall be afforded and public hearings shall be conducted in areas proposed to be redesignated and in areas which may be affected by the proposed redesignation. Prior to any such public hearing a satisfactory description and analysis of the health, environmental, economic, social, and energy effects of the proposed redesignation shall be prepared and made available for public inspection and prior to any such redesignation, the description and analysis of such effects shall be reviewed and examined by the redesignating authorities.

(B) Prior to the issuance of notice under subparagraph (A) respecting the redesignation of any area under this subsection, if such area includes any Federal lands, the State shall provide written notice to the appropriate Federal land manager and afford adequate opportunity (but not in excess of 60 days) to confer with the State respecting the intended notice of redesignation and to submit written comments and recommendations with respect to such intended notice of redesignation. In redesignating any area under this section with respect to which any Federal land manager has submitted written comments and recommendations, the State shall publish a list of any inconsistency between such redesignation and such recommendations and an explanation of such inconsistency (together with the reasons for making such redesignation against the recommendation of the Federal land manager).

(C) The Administrator shall promulgate regulations not later than six months after August 7, 1977, to assure, insofar as practicable, that prior to any public hearing on redesignation of any area, there shall be available for public inspection any specific plans for any new or modified major emitting facility which may be permitted to be constructed and operated only if the area in question is designated or redesignated as class III.

(2) The Administrator may disapprove the redesignation of any area only if he finds, after notice and opportunity for public hearing, that such redesignation does not meet the procedural requirements of this section or is inconsistent with the requirements of section 7472(a) of this title or of subsection (a) of this section. If any such disapproval occurs, the classification of the area shall be that which was in effect prior to the redesignation which was disapproved.

(c) Indian reservations

Lands within the exterior boundaries of reservations of federally recognized Indian tribes may be redesignated only by the appropriate Indian governing body. Such Indian governing body shall be subject in all respect to the provisions of subsection (e) of this section.

(d) Review of national monuments, primitive areas, and national preserves

The Federal Land Manager shall review all national monuments, primitive areas, and national preserves, and shall recommend any appropriate areas for redesignation as class I where air quality related values are important attributes of the area. The Federal Land Manager shall report such recommendations, within[1] supporting analysis, to the Congress and the affected States within one year after August 7, 1977. The Federal Land Manager shall consult with the appropriate States before making such recommendations.

(e) Resolution of disputes between State and Indian Tribes

If any State affected by the redesignation of an area by an Indian tribe or any Indian tribe affected by the redesignation of an area by a State disagrees with such redesignation of any area, or if a permit is proposed to be issued for any new major emitting facility proposed for construction in any State which the Governor of an affected State or governing body of an affected Indian tribe determines will cause or contribute to a cumulative change in air quality in excess of that allowed in this part within the affected State or tribal reservation, the Governor or Indian ruling body may request the Administrator to enter into negotiations with the parties involved to resolve such dispute. If requested by any State or Indian tribe involved, the Administrator shall make a recommendation to resolve the dispute and protect the air quality related values of the lands involved. If the parties involved do not reach agreement, the Administrator shall resolve the dispute and his determination, or the results of agreements reached through other means, shall become part of the applicable plan and shall be enforceable as part of such plan. In resolving such disputes relating to area redesignation, the Administrator shall consider the extent to which the lands involved are of sufficient size to allow effective air quality management or have air quality related values of such an area.

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[1] So in original. Probably should read "with".

(July 14, 1955, ch. 360, title I, § 164, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 127(a), 91 Stat. 733, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(42), (43), 91 Stat. 1402.)

AMENDMENTS

1977—Subsec. (b)(2). Pub. L. 95-190, § 14(a)(42), added "or is inconsistent with the requirements of section 7472(a) of this title or of subsection (a) of this section." following "this section".

Subsec. (e). Pub. L. 95-190, § 14(a)(43), added "an" following "If any State affected by the redesignation of".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7472, 7478 of this title.

§ 7475. Preconstruction requirements

(a) Major emitting facilities on which construction is commenced

No major emitting facility on which construction is commenced after August 7, 1977, may be constructed in any area to which this part applies unless—

(1) a permit has been issued for such proposed facility in accordance with this part setting forth emission limitations for such facility which conform to the requirements of this part;

(2) the proposed permit has been subject to a review in accordance with this section, the required analysis has been conducted in accordance with regulations promulgated by the Administrator, and a public hearing has been held with opportunity for interested persons including representatives of the Administrator to appear and submit written or oral presentations on the air quality impact of such source, alternatives thereto, control technology requirements, and other appropriate considerations;

(3) the owner or operator of such facility demonstrates, as required pursuant to section 7410(j) of this title, that emissions from construction or operation of such facility will not cause, or contribute to, air pollution in excess of any (A) maximum allowable increase or maximum allowable concentration for any pollutant in any area to which this part applies more than one time per year, (B) national ambient air quality standard in any air quality control region, or (C) any other applicable emission standard or standard of performance under this chapter;

(4) the proposed facility is subject to the best available control technology for each pollutant subject to regulation under this chapter emitted from, or which results from, such facility;

(5) the provisions of subsection (d) of this section with respect to protection of class I areas have been complied with for such facility;

(6) there has been an analysis of any air quality impacts projected for the area as a result of growth associated with such facility;

(7) the person who owns or operates, or proposes to own or operate, a major emitting facility for which a permit is required under this part agrees to conduct such monitoring as may be necessary to determine the effect which emissions from any such facility may have, or is having, on air quality in any area which may be affected by emissions from such source; and

(8) in the case of a source which proposes to construct in a class III area, emissions from which would cause or contribute to exceeding the maximum allowable increments applicable in a class II area and where no standard under section 7411 of this title has been promulgated subsequent to August 7, 1977, for such source category, the Administrator has approved the determination of best available technology as set forth in the permit.

(b) Exception

The demonstration pertaining to maximum allowable increases required under subsection (a)(3) of this section shall not apply to maximum allowable increases for class II areas in the case of an expansion or modification of a major emitting facility which is in existence on August 7, 1977, whose allowable emissions of air pollutants, after compliance with subsection (a)(4) of this section, will be less than fifty tons per year and for which the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur oxides will not cause or contribute to ambient air quality levels in excess of the national secondary ambient air quality standard for either of such pollutants.

(c) Permit applications

Any completed permit application under section 7410 of this title for a major emitting facility in any area to which this part applies shall be granted or denied not later than one year after the date of filing of such completed application.

(d) Action taken on permit applications; notice; adverse impact on air quality related values; variance; emission limitations

(1) Each State shall transmit to the Administrator a copy of each permit application relat-

ing to a major emitting facility received by such State and provide notice to the Administrator of every action related to the consideration of such permit.

(2)(A) The Administrator shall provide notice of the permit application to the Federal Land Manager and the Federal official charged with direct responsibility for management of any lands within a class I area which may be affected by emissions from the proposed facility.

(B) The Federal Land Manager and the Federal official charged with direct responsibility for management of such lands shall have an affirmative responsibility to protect the air quality related values (including visibility) of any such lands within a class I area and to consider, in consultation with the Administrator, whether a proposed major emitting facility will have an adverse impact on such values.

(C)(i) In any case where the Federal official charged with direct responsibility for management of any lands within a class I area or the Federal Land Manager of such lands, or the Administrator, or the Governor of an adjacent State containing such a class I area files a notice alleging that emissions from a proposed major emitting facility may cause or contribute to a change in the air quality in such area and identifying the potential adverse impact of such change, a permit shall not be issued unless the owner or operator of such facility demonstrates that emissions of particulate matter and sulfur dioxide will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area.

(ii) In any case where the Federal Land Manager demonstrates to the satisfaction of the State that the emissions from such facility will have an adverse impact on the air quality-related values (including visibility) of such lands, notwithstanding the fact that the change in air quality resulting from emissions from such facility will not cause or contribute to concentrations which exceed the maximum allowable increases for a class I area, a permit shall not be issued.

(iii) In any case where the owner or operator of such facility demonstrates to the satisfaction of the Federal Land Manager, and the Federal Land Manager so certifies, that the emissions from such facility will have no adverse impact on the air quality-related values of such lands (including visibility), notwithstanding the fact that the change in air quality resulting from emissions from such facility will cause or contribute to concentrations which exceed the maximum allowable increases for class I areas, the State may issue a permit.

(iv) In the case of a permit issued pursuant to clause (iii), such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides and particulates from such facility will not cause or contribute to concentrations of such pollutant which exceed the following maximum allowable increases over the baseline concentration for such pollutants:

	Maximum allowable increase (in micrograms per cubic meter)
Particulate matter:	
Annual geometric mean	19
Twenty-four-hour maximum	37
Sulfur dioxide:	
Annual arithmetic mean	20
Twenty-four-hour maximum	91
Three-hour maximum	325

(D)(i) In any case where the owner or operator of a proposed major emitting facility who has been denied a certification under subparagraph (C)(iii) demonstrates to the satisfaction of the Governor, after notice and public hearing, and the Governor finds, that the facility cannot be constructed by reason of any maximum allowable increase for sulfur dioxide for periods of twenty-four hours or less applicable to any class I area and, in the case of Federal mandatory class I areas, that a variance under this clause will not adversely affect the air quality related values of the area (including visibility), the Governor, after consideration of the Federal Land Manager's recommendation (if any) and subject to his concurrence, may grant a variance from such maximum allowable increase. If such variance is granted, a permit may be issued to such source pursuant to the requirements of this subparagraph.

(ii) In any case in which the Governor recommends a variance under this subparagraph in which the Federal Land Manager does not concur, the recommendations of the Governor and the Federal Land Manager shall be transmitted to the President. The President may approve the Governor's recommendation if he finds that such variance is in the national interest. No Presidential finding shall be reviewable in any court. The variance shall take effect if the President approves the Governor's recommendations. The President shall approve or disapprove such recommendation within ninety days after his receipt of the recommendations of the Governor and the Federal Land Manager.

(iii) In the case of a permit issued pursuant to this subparagraph, such facility shall comply with such emission limitations under such permit as may be necessary to assure that emissions of sulfur oxides from such facility will not (during any day on which the otherwise applicable maximum allowable increases are exceeded) cause or contribute to concentrations which exceed the following maximum allowable increases for such areas over the baseline concentration for such pollutant and to assure that such emissions will not cause or contribute to concentrations which exceed the otherwise applicable maximum allowable increases for periods of exposure of 24 hours or less on more than 18 days during any annual period:

MAXIMUM ALLOWABLE INCREASE

(In micrograms per cubic meter)

Period of exposure	Low terrain areas	High terrain areas
24-hr maximum	36	62
3-hr maximum	130	221

(iv) For purposes of clause (iii), the term "high terrain area" means with respect to any facility, any area having an elevation of 900 feet or more above the base of the stack of such facility, and the term "low terrain area" means any area other than a high terrain area.

(e) Analysis; continuous air quality monitoring data; regulations; model adjustments

(1) The review provided for in subsection (a) of this section shall be preceded by an analysis in accordance with regulations of the Administrator, promulgated under this subsection, which may be conducted by the State (or any general purpose unit of local government) or by the major emitting facility applying for such permit, of the ambient air quality at the proposed site and in areas which may be affected by emissions from such facility for each pollutant subject to regulation under this chapter which will be emitted from such facility.

(2) Effective one year after August 7, 1977, the analysis required by this subsection shall include continuous air quality monitoring data gathered for purposes of determining whether emissions from such facility will exceed the maximum allowable increases or the maximum allowable concentration permitted under this part. Such data shall be gathered over a period of one calendar year preceding the date of application for a permit under this part unless the State, in accordance with regulations promulgated by the Administrator, determines that a complete and adequate analysis for such purposes may be accomplished in a shorter period. The results of such analysis shall be available at the time of the public hearing on the application for such permit.

(3) The Administrator shall within six months after August 7, 1977, promulgate regulations respecting the analysis required under this subsection which regulations—

(A) shall not require the use of any automatic or uniform buffer zone or zones,

(B) shall require an analysis of the ambient air quality, climate and meteorology, terrain, soils and vegetation, and visibility at the site of the proposed major emitting facility and in the area potentially affected by the emissions from such facility for each pollutant regulated under this chapter which will be emitted from, or which results from the construction or operation of, such facility, the size and nature of the proposed facility, the degree of continuous emission reduction which could be achieved by such facility, and such other factors as may be relevant in determining the effect of emissions from a proposed facility on any air quality control region,

(C) shall require the results of such analysis shall be available at the time of the public hearing on the application for such permit, and

(D) shall specify with reasonable particularity each air quality model or models to be used under specified sets of conditions for purposes of this part.

Any model or models designated under such regulations may be adjusted upon a determination, after notice and opportunity for public hearing, by the Administrator that such adjustment is necessary to take into account unique terrain or meteorological characteristics of an area potentially affected by emissions from a source applying for a permit required under this part.

(July 14, 1955, ch. 360, title I, § 165, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 127(a), 91 Stat. 735, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(44)-(51), 91 Stat. 1402.)

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-190, § 14(a)(44), substituted "part;" for "part:".

Subsec. (a)(3). Pub. L. 95-190, § 14(a)(45), added provision making applicable requirement of section 7410(j) of this title.

Subsec. (b). Pub. L. 95-190, § 14(a)(46), added "cause or" preceding "contribute" and struck out "actual" preceding "allowable emissions".

Subsec. (d)(2)(C). Pub. L. 95-190, § 14(a)(47) to (49), in cl. (ii) substituted "contribute" for "contribute", which for purposes of codification had already been substituted thereby requiring no further substitution in text, in cl. (iii) substituted "quality-related" for "quality-related" and "concentrations which" for "concentrations, which", and in cl. (iv) substituted "such facility" for "such sources" and "will not cause or contribute to concentrations of such pollutant which exceed" for "together with all other sources, will not exceed".

Subsec. (d)(2)(D). Pub. L. 95-190, § 14(a)(50), (51), in cl. (iii) substituted provisions relating to determinations of amounts of emissions of sulfur oxides from facilities, for provisions relating to determinations of amounts of emissions of sulfur oxides from sources operating under permits issued pursuant to this subpar., together with all other sources, and added cl. (iv).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7473 of this title.

§ 7476. Other pollutants

(a) Hydrocarbons, carbon monoxide, petrochemical oxidants, and nitrogen oxides

In the case of the pollutants hydrocarbons, carbon monoxide, photochemical oxidants, and nitrogen oxides, the Administrator shall conduct a study and not later than two years after August 7, 1977, promulgate regulations to prevent the significant deterioration of air quality which would result from the emissions of such pollutants. In the case of pollutants for which national ambient air quality standards are promulgated after August 7, 1977, he shall promulgate such regulations not more than 2 years after the date of promulgation of such standards.

(b) Effective date of regulations

Regulations referred to in subsection (a) of this section shall become effective one year after the date of promulgation. Within 21 months after such date of promulgation such plan revision shall be submitted to the Administrator who shall approve or disapprove the plan within 25 months after such date or promulgation in the same manner as required under section 7410 of this title.

(c) Contents of regulations

Such regulations shall provide specific numerical measures against which permit applications may be evaluated, a framework for stimulating improved control technology, protection of air quality values, and fulfill the goals and purposes set forth in section 7401 and section 7470 of this title.

(d) Specific measures to fulfill goals and purposes

The regulations of the Administrator under subsection (a) of this section shall provide specific measures at least as effective as the increments established in section 7473 of this title to fulfill such goals and purposes, and may contain air quality increments, emission density requirements, or other measures.

(e) Area classification plan not required

With respect to any air pollutant for which a national ambient air quality standard is established other than sulfur oxides or particulate matter, an area classification plan shall not be required under this section if the implementation plan adopted by the State and submitted for the Administrator's approval or promulgated by the Administrator under section 7410(c) of this title contains other provisions which when considered as a whole, the Administrator finds will carry out the purposes in section 7470 of this title at least as effectively as an area classification plan for such pollutant. Such other provisions referred to in the preceding sentence need not require the establishment of maximum allowable increases with respect to such pollutant for any area to which this section applies.

(July 14, 1955, ch. 360, title I, § 166, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 127(a), 91 Stat. 739.)

§ 7477. Enforcement

The Administrator shall, and a State may, take such measures, including issuance of an order, or seeking injunctive relief, as necessary to prevent the construction of a major emitting facility which does not conform to the requirements of this part, or which is proposed to be constructed in any area included in the list promulgated pursuant to paragraph (1)(D) or (E) of subsection (d) of section 7407 of this title and which is not subject to an implementation plan which meets the requirements of this part.

(July 14, 1955, ch. 360, title I, § 167, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 127(a), 91 Stat. 740.)

§ 7478. Period before plan approval

(a) Existing regulations to remain in effect

Until such time as an applicable implementation plan is in effect for any area, which plan meets the requirements of this part to prevent significant deterioration of air quality with respect to any air pollutant, applicable regulations under this chapter prior to August 7, 1977, shall remain in effect to prevent significant deterioration of air quality in any such area for any such pollutant except as otherwise provided in subsection (b) of this section.

(b) Regulations deemed amended; construction commenced after June 1, 1975

If any regulation in effect prior to August 7, 1977, to prevent significant deterioration of air quality would be inconsistent with the requirements of section 7472(a), section 7473(b) or section 7474(a) of this title, then such regulations shall be deemed amended so as to conform with such requirements. In the case of a facility on which construction was commenced (in accordance with the definition of "commenced" in section 7479(2) of this title) after June 1, 1975, and prior to August 7, 1977, the review and permitting of such facility shall be in accordance with the regulations for the prevention of significant deterioration in effect prior to August 7, 1977.

(July 14, 1955, ch. 360, title I, § 168, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 127(a), 91 Stat. 740, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(52), 91 Stat. 1402.)

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-190 substituted "(in accordance with the definition of 'commenced' in section 7479(2) of this title)" for "in accordance with this definition".

§ 7479. Definitions

For purposes of this part—

(1) The term "major emitting facility" means any of the following stationary sources of air pollutants which emit, or have the potential to emit, one hundred tons per year or more of any air pollutant from the following types of stationary sources: fossil-fuel fired steam electric plants of more than two hundred and fifty million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than two hundred and fifty tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than two hundred and fifty million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding three hundred thousand barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities. Such term also includes any other source with the potential to emit two hundred and fifty tons per year or more of any air pollutant. This term shall not include new or modified facilities which are nonprofit health or education institutions which have been exempted by the State.

(2)(A) The term "commenced" as applied to construction of a major emitting facility means that the owner or operator has obtained all necessary preconstruction approvals or permits required by Federal, State, or local air pollution emissions and air quality laws or regulations and either has (i) begun, or caused to begin, a continuous program of physical on-site construction of the facility or (ii) entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of construction of the facility to be completed within a reasonable time.

(B) The term "necessary preconstruction approvals or permits" means those permits or approvals, required by the permitting authority as a precondition to undertaking any activity under clauses (i) or (ii) of subparagraph (A) of this paragraph.

(C) The term "construction" when used in connection with any source or facility, includes the modification (as defined in section 7411(a) of this title) of any source or facility.

(3) The term "best available control technology" means an emission limitation based on the maximum degree of reduction of each pollutant subject to regulation under this chapter emitted from or which results from any major emitting facility, which the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such facility through application of production processes and available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants which will exceed the emissions allowed by any applicable standard established pursuant to section 7411 or 7412 of this title.

(4) The term "baseline concentration" means, with respect to a pollutant, the ambient concentration levels which exist at the time of the first application for a permit in an area subject to this part, based on air quality data available in the Environmental Protection Agency or a State air pollution control agency and on such monitoring data as the permit applicant is required to submit. Such ambient concentration levels shall take into account all projected emissions in, or which may affect, such area from any major emitting facility on which construction commenced prior to January 6, 1975, but which has not begun operation by the date of the baseline air quality concentration determination. Emissions of sulfur oxides and particulate matter from any major emitting facility on which construction commenced after January 6, 1975, shall not be included in the baseline and shall be counted against the maximum allowable increases in pollutant concentrations established under this part.

(July 14, 1955, ch. 360, title I, § 169, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 127(a), 91 Stat. 740, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(54), 91 Stat. 1402.)

AMENDMENTS

1977—Subsec. (2)(C). Pub. L. 95-190 added subpar. (C).

STUDY OF MAJOR EMITTING FACILITIES WITH POTENTIAL OF EMITTING 250 TONS PER YEAR

Section 127(b) of Pub. L. 95-95, which provided that within 1 year after Aug. 7, 1977, the Administrator report to the Congress on the consequences of that portion of the definition of "major emitting facility" under this subpart which applies to facilities with the potential to emit 250 tons per year or more, was omitted from the Code as executed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7473, 7478 of this title.

SUBPART II—VISIBILITY PROTECTION

CODIFICATION

As originally enacted, subpart II of part C of subchapter I of this chapter was added following section 7478 of this title. Pub. L. 95-190, § 14(a)(53), Nov. 16, 1977, 91 Stat. 1402, struck out subpart II and inserted such subpart following section 7479 of this title.

§ 7491. Visibility protection for Federal class I areas

(a) Impairment of visibility; list of areas; study and report

(1) Congress hereby declares as a national goal the prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal areas which impairment results from manmade air pollution.

(2) Not later than six months after August 7, 1977, the Secretary of the Interior in consultation with other Federal land managers shall review all mandatory class I Federal areas and identify those where visibility is an important value of the area. From time to time the Secretary of the Interior may revise such identifications. Not later than one year after August 7, 1977, the Administrator shall, after consultation with the Secretary of the Interior, promulgate a list of mandatory class I Federal areas in which he determines visibility is an important value.

(3) Not later than eighteen months after August 7, 1977, the Administrator shall complete a study and report to Congress on available methods for implementing the national goal set forth in paragraph (1). Such report shall include recommendations for—

(A) methods for identifying, characterizing, determining, quantifying, and measuring visibility impairment in Federal areas referred to in paragraph (1), and

(B) modeling techniques (or other methods) for determining the extent to which manmade air pollution may reasonably be anticipated to cause or contribute to such impairment, and

(C) methods for preventing and remedying such manmade air pollution and resulting visibility impairment.

Such report shall also identify the classes or categories of sources and the types of air pollutants which, alone or in conjunction with other sources or pollutants, may reasonably be anticipated to cause or contribute significantly to impairment of visibility.

(4) Not later than twenty-four months after August 7, 1977, and after notice and public hearing, the Administrator shall promulgate regulations to assure (A) reasonable progress toward meeting the national goal specified in paragraph (1), and (B) compliance with the requirements of this section.

(b) Regulations

Regulations under subsection (a)(4) of this section shall—

(1) provide guidelines to the States, taking into account the recommendations under subsection (a)(3) of this section on appropriate techniques and methods for implementing this section (as provided in subparagraphs (A) through (C) of such subsection (a)(3)), and

(2) require each applicable implementation plan for a State in which any area listed by the Administrator under subsection (a)(2) of this section is located (or for a State the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area) to contain such emission limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal specified in subsection (a) of this section, including—

(A) except as otherwise provided pursuant to subsection (c) of this section, a requirement that each major stationary source which is in existence on August 7, 1977, but which has not been in operation for more than fifteen years as of such date, and which, as determined by the State (or the Administrator in the case of a plan promulgated under section 7410(c) of this title) emits any air pollutant which may reasonably be anticipated to cause or contribute to any impairment of visibility in any such area, shall procure, install, and operate, as expeditiously as practicable (and maintain thereafter) the best available retrofit technology, as determined by the State (or the Administrator in the case of a plan promulgated under section 7410(c) of this title) for controlling emissions from such source for the purpose of eliminating or reducing any such impairment, and

(B) a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal specified in subsection (a) of this section.

In the case of a fossil-fuel fired generating powerplant having a total generating capacity in excess of 750 megawatts, the emission limitations required under this paragraph shall be determined pursuant to guidelines, promulgated by the Administrator under paragraph (1).

(c) Exemptions

(1) The Administrator may, by rule, after notice and opportunity for public hearing, exempt any major stationary source from the requirement of subsection (b)(2)(A) of this section, upon his determination that such source does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to a significant impairment of visibility in any mandatory class I Federal area.

(2) Paragraph (1) of this subsection shall not be applicable to any fossil-fuel fired powerplant with total design capacity of 750 megawatts or more, unless the owner or operator of any such plant demonstrates to the satisfaction of the Administrator that such powerplant is located at such distance from all areas listed by the Administrator under subsection (a)(2) of this section that such powerplant does not or will not, by itself or in combination with other sources, emit any air pollutant which may reasonably be anticipated to cause or contribute to significant impairment of visibility in any such area.

(3) An exemption under this subsection shall be effective only upon concurrence by the appropriate Federal land manager or managers with the Administrator's determination under this subsection.

(d) Consultations with appropriate Federal land managers

Before holding the public hearing on the proposed revision of an applicable implementation plan to meet the requirements of this section, the State (or the Administrator, in the case of a plan promulgated under section 7410(c) of this title) shall consult in person with the appropriate Federal land manager or managers and shall include a summary of the conclusions and recommendations of the Federal land managers in the notice to the public.

(e) Buffer zones

In promulgating regulations under this section, the Administrator shall not require the use of any automatic or uniform buffer zone or zones.

(f) Nondiscretionary duty

For purposes of section 7604(a)(2) of this title, the meeting of the national goal specified in subsection (a)(1) of this section by any specific date or dates shall not be considered a "nondiscretionary duty" of the Administrator.

(g) Definitions

For the purpose of this section—

(1) in determining reasonable progress there shall be taken into consideration the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements;

(2) in determining best available retrofit technology the State (or the Administrator in determining emission limitations which reflect such technology) shall take into consideration the costs of compliance, the energy and nonair quality environmental impacts of compliance, any existing pollution control technology in use at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology;

(3) the term "manmade air pollution" means air pollution which results directly or indirectly from human activities;

(4) the term "as expeditiously as practicable" means as expeditiously as practicable but in no event later than five years after the date of approval of a plan revision under this section (or the date of promulgation of such a plan revision in the case of action by the Administrator under section 7410(c) of this title for purposes of this section);

(5) the term "mandatory class I Federal areas" means Federal areas which may not be designated as other than class I under this part;

(6) the terms "visibility impairment" and "impairment of visibility" shall include reduc-

tion in visual range and atmospheric discoloration; and

(7) the term "major stationary source" means the following types of stationary sources with the potential to emit 250 tons or more of any pollutant: fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (thermal dryers), kraft pulp mills, Portland Cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production facilities, chemical process plants, fossil-fuel boilers of more than 250 million British thermal units per hour heat input, petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels, taconite ore processing facilities, glass fiber processing plants, charcoal production facilities.

(July 14, 1955, ch. 360, title I, § 169A, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 128, 91 Stat. 742.)

EFFECTIVE DATE

Subpart effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7604 of this title.

PART D—PLAN REQUIREMENTS FOR NONATTAINMENT AREAS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 7407, 7410, 7421, 7604, 7616 of this title.

§ 7501. Definitions

For the purpose of this part and section 7410(a)(2)(I) of this title—

(1) The term "reasonable further progress" means annual incremental reductions in emissions of the applicable air pollutant (including substantial reductions in the early years following approval or promulgation of plan provisions under this part and section 7410(a)(2)(I) of this title and regular reductions thereafter) which are sufficient in the judgment of the Administrator, to provide for attainment of the applicable national ambient air quality standard by the date required in section 7502(a) of this title.

(2) The term "nonattainment area" means, for any air pollutant an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator to be reliable) to exceed any national ambient air quality standard for such pollutant. Such term includes any area identified under subparagraphs (A) through (C) of section 7407(d)(1) of this title.

(3) The term "lowest achievable emission rate" means for any source, that rate of emissions which reflects—

(A) the most stringent emission limitation which is contained in the implementation plan of any State for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable, or

(B) the most stringent emission limitation which is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source standards of performance.

(4) The terms "modifications" and "modified" mean the same as the term "modification" as used in section 7411(a)(4) of this title.

(July 14, 1955, ch. 360, title I, § 171, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 129(b), 91 Stat. 746.)

EFFECTIVE DATE

Part effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7502, 7503 of this title.

§ 7502. Nonattainment plan provisions

(a) Expeditious attainment of national ambient air quality standards

(1) The provisions of an applicable implementation plan for a State relating to attainment and maintenance of national ambient air quality standards in any nonattainment area which are required by section 7410(a)(2)(I) of this title as a precondition for the construction or modification of any major stationary source in any such area on or after July 1, 1979, shall provide for attainment of each such national ambient air quality standard in each such area as expeditiously as practicable, but, in the case of national primary ambient air quality standards, not later than December 31, 1982.

(2) In the case of the national primary ambient air quality standard for photochemical oxidants or carbon monoxide (or both) if the State demonstrates to the satisfaction of the Administrator (on or before the time required for submission of such plan) that such attainment is not possible in an area with respect to either or both of such pollutants within the period prior to December 31, 1982, despite the implementation of all reasonably available measures, such provisions shall provide for the attainment of the national primary standard for the pollutant (or pollutants) with respect to which such demonstration is made, as expeditiously as practicable but not later than December 31, 1987.

(b) Requisite provisions of plan

The plan provisions required by subsection (a) of this section shall—

(1) be adopted by the State (or promulgated by the Administrator under section 7410(c) of this title) after reasonable notice and public hearing;

(2) provide for the implementation of all reasonably available control measures as expeditiously as practicable;

(3) require, in the interim, reasonable further progress (as defined in section 7501(1) of this title) including such reduction in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology;

(4) include a comprehensive, accurate, current inventory of actual emissions from all sources (as provided by rule of the Administrator) of each such pollutant for each such area which is revised and resubmitted as frequently as may be necessary to assure that the requirements of paragraph (3) are met and to assess the need for additional reductions to assure attainment of each standard by the date required under subsection (a) of this section;

(5) expressly identify and quantify the emissions, if any, of any such pollutant which will be allowed to result from the construction and operation of major new or modified stationary sources for each such area;

(6) require permits for the construction and operation of new or modified major stationary sources in accordance with section 7503 of this title (relating to permit requirements);

(7) identify and commit the financial and manpower resources necessary to carry out the plan provisions required by this subsection;

(8) contain emission limitations, schedules of compliance and such other measures as may be necessary to meet the requirements of this section;

(9) evidence public, local government, and State legislative involvement and consultation in accordance with section 7504 of this title (relating to planning procedures) and include (A) an identification and analysis of the air quality, health, welfare, economic, energy, and social effects of the plan provisions required by this subsection and of the alternatives considered by the State, and (B) a summary of the public comment on such analysis;

(10) include written evidence that the State, the general purpose local government or governments, or a regional agency designated by general purpose local governments for such purpose, have adopted by statute, regulation, ordinance, or other legally enforceable document, the necessary requirements and schedules and timetables for compliance, and are committed to implement and enforce the appropriate elements of the plan;

(11) in the case of plans which make a demonstration pursuant to paragraph (2) of subsection (a) of this section—

(A) establish a program which requires, prior to issuance of any permit for construction or modification of a major emitting facility, an analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification;

(B) establish a specific schedule for implementation of a vehicle emission control inspection and maintenance program; and

(C) identify other measures necessary to provide for attainment of the applicable national ambient air quality standard not later than December 31, 1987.

(c) Attainment of applicable standard not later than July 1, 1987

In the case of a State plan revision required under the Clean Air Act Amendments of 1977 to be submitted before July 1, 1982, by reason of a demonstration under subsection (a)(2) of this section, effective on such date such plan shall contain enforceable measures to assure attainment of the applicable standard not later than December 31, 1987.

(July 14, 1955, ch. 360, title I, § 172, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 129(b), 91 Stat. 746, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(55), (56), 91 Stat. 1402.)

REFERENCES IN TEXT

The Clean Air Act Amendments of 1977, referred to in subsec. (c), is Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685, which amended this chapter generally. For complete classification of this Act to the Code, see Short Title of 1977 Amendment note set out under section 7401 of this title and Tables.

AMENDMENTS

1977—Subsec. (b)(4). Pub. L. 95-190, § 14(a)(55), substituted "subsection (a) of this section" for "paragraph (1)".

Subsec. (c). Pub. L. 95-190, § 14(a)(56), substituted "December 31" for "July 1".

NONATTAINMENT AREAS

Section 129(a) of Pub. L. 95-95, as amended by Pub. L. 95-190, § 14(b)(2), (3), Nov. 16, 1977, 91 Stat. 1404, provided that:

"(1) Before July 1, 1979, the interpretative regulation of the Administrator of the Environmental Protection Agency published in 41 Federal Register 55524-30, December 21, 1976, as may be modified by rule of the Administrator, shall apply except that the baseline to be used for determination of appropriate emission offsets under such regulation shall be the applicable implementation plan of the State in effect at the time of application for a permit by a proposed major stationary source (within the meaning of section 302 of the Clean Air Act) [section 7602 of this title].

"(2) Before July 1, 1979, the requirements of the regulation referred to in paragraph (1) shall be waived by the Administrator with respect to any pollutant if he determines that the State has—

"(A) an inventory of emissions of the applicable pollutant for each nonattainment area (as defined in section 171 of the Clean Air Act [section 7501 of this title]) that identifies the type, quantity, and source of such pollutant so as to provide information sufficient to demonstrate that the requirements of subparagraph (C) are being met;

"(B) an enforceable permit program which—

"(i) requires new or modified major stationary sources to meet emission limitations at least as stringent as required under the permit requirements referred to in paragraphs (2) and (3) of section 173 of the Clean Air Act [section 7503 of this title] (relating to lowest achievable emission rate and compliance by other sources) and which assures compliance with the annual reduction requirements of subparagraph (C); and

"(ii) requires existing sources to achieve such reduction in emissions in the area as may be obtained through the adoption, at a minimum of reasonably available control technology, and

"(C) a program which requires reductions in total allowable emissions in the area prior to July 1, 1979, so as to provide for the same level of emission reduction as would result from the application of the regulation referred to in paragraph (1).

The Administrator shall terminate such waiver if in his judgment the reduction in emissions actually being attained is less than the reduction on which the waiver was conditioned pursuant to subparagraph (C), or if the Administrator determines that the State is no longer in compliance with any requirement of this paragraph. Upon application by the State, the Administrator may reinstate a waiver terminated under the preceding sentence if he is satisfied that such State is in compliance with all requirements of this subsection.

"(3) Operating permits may be issued to those applicants who were properly granted construction permits, in accordance with the law and applicable regulations in effect at the time granted, for construction of a new or modified source in areas exceeding national primary air quality standards on or before the date of the enactment of this Act [Aug. 7, 1977] if such construction permits were granted prior to the date of the enactment of this Act and the person issued any such permit is able to demonstrate that the emissions from the source will be within the limitations set forth in such construction permit."

STATE IMPLEMENTATION PLAN REVISION

Section 129(c) of Pub. L. 95-95, as amended by Pub. L. 95-190, § 14(b)(4), Nov. 16, 1977, 91 Stat. 1405, provided that: "Notwithstanding the requirements of section 406(d)(2) [set out as an Effective Date of 1977 Amendment rate under section 7401 of this title] (relating to date required for submission of certain implementation plan revisions), for purposes of section 110(a)(2) of the Clean Air Act [section 7410 (a)(2) of this title] each State in which there is any nonattainment area (as defined in part D of title I of the Clean Air Act) [this part] shall adopt and submit an implementation plan revision which meets the requirements of section 110(a)(2)(I) [section 7410(a)(2)(I) of this title] and part D of title I of the Clean Air Act [this part] not later than January 1, 1979. In the case of any State for which a plan revision adopted and submitted before such date has made the demonstration required under section 172(a)(2) of the Clean Air Act [subsec. (a)(2) of this section] (respecting impossibility of attainment before 1983), such State shall adopt and submit to the Administrator a plan revision before July 1, 1982, which meets the requirements of section 172(b) and (c) of such Act [subsecs. (b) and (c) of this section]."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7501, 7503, 7506 of this title.

§ 7503. Permit requirements

The permit program required by section 7502(b)(6) of this title shall provide that permits to construct and operate may be issued if—

(1) the permitting agency determines that—

(A) by the time the source is to commence operation, total allowable emissions from existing sources in the region, from new or modified sources which are not major emitting facilities, and from the proposed source will be sufficiently less than total emissions from existing sources allowed under the applicable implementation plan prior to the application for such permit to construct or modify so as to represent (when considered together with the plan provisions required under section 7502 of this title) reasonable further progress (as defined in section 7501 of this title); or

(B) that emissions of such pollutant resulting from the proposed new or modified major stationary source will not cause or contribute to emissions levels which exceed the allowance permitted for such pollutant for such area from new or modified major stationary sources under section 7502(b) of this title;

(2) the proposed source is required to comply with the lowest achievable emission rate;

(3) the owner or operator of the proposed new or modified source has demonstrated that all major stationary sources owned or operated by such person (or by any entity controlling, controlled by, or under common control with such person) in such State are subject to emission limitations and are in compliance, or on a schedule for compliance, with all applicable emission limitations and standards under this chapter; and

(4) the applicable implementation plan is being carried out for the nonattainment area in which the proposed source is to be constructed or modified in accordance with the requirements of this part.

Any emission reductions required as a precondition of the issuance of a permit under paragraph (1)(A) shall be legally binding before such permit may be issued.

(July 14, 1955, ch. 360, title I, § 173, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 129(b), 91 Stat. 748, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(57), (58), 91 Stat. 1403.)

AMENDMENTS

1977—Par. (1)(A). Pub. L. 95-190, § 14(a)(57), added "or modified" following "from new" and "applicable" preceding "implementation plan", and substituted "source" for "facility" wherever appearing therein.

Par. (4). Pub. L. 95-190, § 14(a)(58), added par. (4).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7502 of this title.

§ 7504. Planning procedures

(a) Preparation of implementation plan by designated organization

Within six months after August 7, 1977, for each region in which the national primary ambient air quality standard for carbon monoxide or photochemical oxidants will not be attained by July 1, 1979, the State and elected officials of affected local governments shall jointly determine which elements of a revised implementation plan will be planned for and implemented or enforced by the State and which such elements will be planned for and implemented or enforced by local governments or regional agencies, or any combination of local governments, regional agencies, or the State. Where possible within the time required under this subsection, the implementation plan required by this part shall be prepared by an organization of elected officials of local governments designated by agreement of the local governments in an affected area, and certified by the State for this purpose. Where such an organization has not been designated by agreement within six months after August 7, 1977, the Governor (or, in the case of an interstate area, Governors), after consultation with elected officials of local governments, and in accordance with the determination under the first sentence of this subparagraph, shall designate an organization of elected officials of local governments in the affected area or a State agency to prepare such plan. Where feasible, such organization shall be the metropolitan planning organization designated to conduct the continuing, cooperative and comprehensive transportation planning process for the area under section 134 of title 23, or the organization responsible for the air quality maintenance planning process under regulations implementing this section, or the organization with both responsibilities.

(b) Coordination of plan preparation

The preparation of implementation plan provisions under this part shall be coordinated with the continuing, cooperative, and comprehensive transportation planning process required under section 134 of title 23 and the air quality maintenance planning process required under section 7410 of this title, and such planning processes shall take into account the requirements of this part.

(July 14, 1955, ch. 360, title I, § 174, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 129(b), 91 Stat. 748.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7502, 7505 of this title.

§ 7505. Environmental Protection Agency grants

(a) Plan revision development costs

The Administrator shall make grants to any organization of local elected officials with transportation or air quality maintenance planning responsibilities recognized by the State under section 7504(a) of this title for payment of the reasonable costs of developing a plan revision under this part.

(b) Uses of grant funds

The amount granted to any organization under subsection (a) of this section shall be 100 percent of any additional costs of developing a plan revision under this part for the first two fiscal years following receipt of the grant under this paragraph, and shall supplement any funds available under Federal law to such organization for transportation or air quality maintenance planning. Grants under this section shall not be used for construction.

(July 14, 1955, ch. 360, title I, § 175, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 129(b), 91 Stat. 749.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7408, 7626 of this title.

§ 7506. Limitations on certain Federal assistance

(a) Approval of projects or award of grants

The Administrator shall not approve any projects or award any grants authorized by this chapter and the Secretary of Transportation shall not approve any projects or award any grants under title 23, other than for safety, mass transit, or transportation improvement projects related to air quality improvement or maintenance, in any air quality control region—

(1) in which any national primary ambient air quality standard has not been attained,

(2) where transportation control measures are necessary for the attainment of such standard, and

(3) where the Administrator finds after July 1, 1979, that the Governor has not submitted an implementation plan which considers each of the elements required by section 7502 of this title or that reasonable efforts toward submitting such an implementation plan are not being made (or, after July 1, 1982, in the case of an implementation plan revision required under section 7502 of this title to be submitted before July 1, 1982).

(b) Implementation of approved or promulgated plans

In any area in which the State or, as the case may be, the general purpose local government or governments or any regional agency designated by such general purpose local governments for such purpose, is not implementing any requirement of an approved or promulgated plan under section 7410 of this title, including any requirement for a revised implementation plan under this part, the Administrator shall not make any grants under this chapter.

(c) Activities not conforming to approved or promulgated plans

No department, agency, or instrumentality of the Federal Government shall (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve, any activity which does not conform to a plan after it has been approved or promulgated under section 7410 of this title. No metropolitan planning organization designated under section 134 of title 23, shall give its approval to any project, program, or plan which does not conform to a plan approved or promulgated under section 7410 of this title. The assurance of conformity to such a plan shall be an affirmative responsibility of the head of such department, agency, or instrumentality.

(d) Priority of achieving and maintaining national primary ambient air quality standards

Each department, agency, or instrumentality of the Federal Government having authority to conduct or support any program with air-quality related transportation consequences shall give priority in the exercise of such authority, consistent with statutory requirements for allocation among States or other jurisdictions, to the implementation of those portions of plans prepared under this section to achieve and maintain the national primary ambient air quality standard. This paragraph extends to, but is not limited to, authority exercised under the Urban Mass Transportation Act [49 U.S.C. 1601 et seq.], title 23, and the Housing and Urban Development Act.

(July 14, 1955, ch. 360, title I, § 176, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 129(b), 91 Stat. 749, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(59), 91 Stat. 1403.)

REFERENCES IN TEXT

Title 23, referred to in subsecs. (a) and (d), is Title 23, Highways.

The Urban Mass Transportation Act, referred to in subsec. (d), probably means the Urban Mass Transportation Act of 1964, Pub. L. 88-365, July 9, 1964, 78 Stat. 302, as amended, which is classified generally to chapter 21 (§ 1601 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of Title 49 and Tables.

The Housing and Urban Development Act, referred to in subsec. (d), may be the name for a series of acts sharing the same name but enacted in different years by Pub. L. 89-117, Aug. 10, 1965, 79 Stat. 451; Pub. L. 90-448, Aug. 1, 1968, 82 Stat. 476; Pub. L. 91-152, Dec. 24, 1969, 83 Stat. 379; and Pub. L. 91-609, Dec. 31, 1970, 84 Stat. 1770, respectively. For complete classification of these Acts to the Code, see Short Title notes set out under section 1701 of Title 12, Banks and Banking, and Tables.

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-190 added "national" preceding "primary".

§ 7507. New motor vehicle emission standards in nonattainment areas

Notwithstanding section 7543(a) of this title, any State which has plan provisions approved under this part may adopt and enforce for any model year standards relating to control of emissions from new motor vehicles or new motor vehicle engines and take such other actions as are referred to in section 7543(a) of this title respecting such vehicles if—

(1) such standards are identical to the California standards for which a waiver has been granted for such model year, and

(2) California and such State adopt such standards at least two years before commencement of such model year (as determined by regulations of the Administrator).

(July 14, 1955, ch. 360, title I, § 177, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 129(b), 91 Stat. 750.)

§ 7508. Guidance documents

The Administrator shall issue guidance documents under section 7408 of this title for purposes of assisting States in implementing requirements of this part respecting the lowest achievable emission rate. Such a document shall be published not later than nine months after August 7, 1977, and shall be revised at least every two years thereafter.

(July 14, 1955, ch. 360, title I, § 178, as added Aug. 7, 1977, Pub. L. 95-95, title I, § 129(b), 91 Stat. 750.)

SUBCHAPTER II—EMISSION STANDARDS FOR MOVING SOURCES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7414, 7613 of this title.

PART A—VEHICLE EMISSION AND FUEL STANDARDS

§ 7521. Emission standards for new motor vehicles or new motor vehicle engines

(a) Authority of Administrator to prescribe by regulation

Except as otherwise provided in subsection (b) of this section—

(1) The Administrator shall by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare. Such standards shall be applicable to such vehicles and engines for their useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices to prevent or control such pollution.

(2) Any regulation prescribed under paragraph (1) of this subsection (and any revision thereof) shall take effect after such period as the Administrator finds necessary to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(3)(A)(i) The Administrator shall prescribe regulations under paragraph (1) of this subsection applicable to emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen from classes or categories of heavy-duty vehicles or engines manufactured during and after model year 1979. Such regulations applicable to such pollutants from such classes or categories of vehicles or engines manufactured during model years 1979 through 1982 shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology.

(ii) Unless a different standard is temporarily promulgated as provided in subparagraph (B) or unless the standard is changed as provided in subparagraph (E), regulations under paragraph (1) of this subsection applicable to emissions from vehicles or engines manufactured during and after model year—

(I) 1983, in the case of hydrocarbons and carbon monoxide, shall contain standards which require a reduction of at least 90 per cent, and

(II) 1985, in the case of oxides of nitrogen, shall contain standards which require a reduction of at least 75 per cent,

from the average of the actually measured emissions from heavy-duty gasoline-fueled vehicles or engines, or any class or category thereof, manufactured during the baseline model year.

(iii) The Administrator shall prescribe regulations under paragraph (1) of this subsection applicable to emissions of particulate matter from classes or categories of vehicles manufactured during and after model year 1981 (or during any earlier model year, if practicable). Such regulations shall contain standards which reflect the greatest degree of emission reduction achievable through the application of technology which the Administrator determines will be available for the model year to which such standards apply, giving appropriate consideration to the cost of applying such technology within the period of time available to manufacturers and to noise, energy, and safety factors associated with the application of such technology. Such standards shall be promulgated and shall take effect as expeditiously as practicable taking into account the period necessary for compliance.

(iv) In establishing classes or categories of vehicles or engines for purposes of regulations under this paragraph, the Administrator may base such classes or categories on gross vehicle weight, horsepower, or such other factors as may be appropriate.

(v) For the purpose of this paragraph, the term "baseline model year" means, with respect to any pollutant emitted from any vehicle or engine, or class or category thereof, the model year immediately preceding the model year in which Federal standards applicable to such vehicle or engine, or class or category thereof, first applied with respect to such pollutant.

(B) During the period of June 1 through December 31, 1978, in the case of hydrocarbons and carbon monoxide, or during the period of June 1 through December 31, 1980, in the case of oxides of nitrogen, and during each period of June 1 through December 31 of each third year thereafter, the Administrator may, after notice and opportunity for a public hearing promulgate regulations revising any standard prescribed as provided in subparagraph (A)(ii) for any class or category of heavy-duty vehicles or engines. Such standard shall apply only for the period of three model years beginning four model years after the model year in which such revised standard is promulgated. In revising any standard under this subparagraph for any such three model year period, the Administrator shall determine the maximum degree of emission reduction which can be achieved by means reasonably expected to be available for production of such period and shall prescribe a revised emission standard in accordance with such determination. Such revised standard shall require a reduction of emissions from any standard which applies in the previous model year.

(C) Action revising any standard for any period may be taken by the Administrator under subparagraph (B) only if he finds—

(i) that compliance with the emission standards otherwise applicable for such model year cannot be achieved by technology, processes, operating methods, or other alternatives reasonably expected to be available for production for such model year without increasing cost or decreasing fuel economy to an excessive and unreasonable degree; and

(ii) the National Academy of Sciences has not, pursuant to its study and investigation under subsection (c) of this section, issued a report substantially contrary to the findings of the Administrator under clause (i).

(D) A report shall be made to the Congress with respect to any standard revised under subparagraph (B) which shall contain—

(i) a summary of the health effects found, or believed to be associated with, the pollutant covered by such standard,

(ii) an analysis of the cost-effectiveness of other strategies for attaining and maintaining national ambient air quality standards and carrying out regulations under part C of subchapter I (relating to significant deterioration) in relation to the cost-effectiveness for such purposes of standards which, but for such revision, would apply.

(iii) a summary of the research and development efforts and progress being made by each manufacturer for purposes of meeting the standards promulgated as provided in subparagraph (A)(ii) or, if applicable, subparagraph (E), and

(iv) specific findings as to the relative costs of compliance, and relative fuel economy, which may be expected to result from the application for any model year of such revised standard and the application for such model year of the standard, which, but for such revision, would apply.

(E)(i) The Administrator shall conduct a continuing pollutant-specific study concerning the effects of each air pollutant emitted from heavy-duty vehicles or engines and from other sources of mobile source related pollutants on the public health and welfare. The results of such study shall be published in the Federal Register and reported to the Congress not later than June 1, 1978, in the case of hydrocarbons and carbon monoxide, and June 1, 1980, in the case of oxides of nitrogen, and before June 1 of each third year thereafter.

(ii) On the basis of such study and such other information as is available to him (including the studies under section 7548 of this title), the Administrator may, after notice and opportunity for a public hearing, promulgate regulations under paragraph (1) of this subsection changing any standard prescribed in subparagraph (A)(ii) (or revised under subparagraph (B) or previously changed under this subparagraph). No such changed standard shall apply for any model year before the model year four years after the model year during which regulations containing such changed standard are promulgated.

(F) For purposes of this paragraph, motorcycles and motorcycle engines shall be treated in the same manner as heavy-duty vehicles and engines (except as otherwise permitted under section 7525(f)(1) of this title) unless the Administrator promulgates a rule reclassifying motorcycles as light-duty vehicles within the meaning of this section or unless the Administrator promulgates regulations under subsection (a) of this section applying standards applicable to the emission of air pollutants from motorcycles as a separate class or category. In any case in which such standards are promulgated for such emissions from motorcycles as a separate class or category, the Administrator, in promulgating such standards, shall consider the need to achieve equivalency of emission reductions between motorcycles and other motor vehicles to the maximum extent practicable.

(4)(A) Effective with respect to vehicles and engines manufactured after model year 1978, no emission control device, system, or element of design shall be used in a new motor vehicle or new motor vehicle engine for purposes of complying with standards prescribed under this subsection if such device, system, or element of design will cause or contribute to an unreasonable risk to public health, welfare, or safety in its operation or function.

(B) In determining whether an unreasonable risk exists under subparagraph (A), the Administrator shall consider, among other factors, (i) whether and to what extent the use of any device, system, or element of design causes, increases, reduces, or eliminates emissions of any unregulated pollutants; (ii) available methods for reducing or eliminating any risk to public health, welfare, or safety which may be associated with the use of such device, system, or element of design, and (iii) the availability of other devices, systems, or elements of design which may be used to conform to standards prescribed under this subsection without causing or contributing to such unreasonable risk. The Administrator shall include in the consideration required by this paragraph all relevant information developed pursuant to section 7548 of this title.

(5)(A) If the Administrator promulgates final regulations which define the degree of control required and the test procedures by which compliance could be determined for gasoline vapor recovery of uncontrolled emissions from the fueling of motor vehicles, the Administrator shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, fill pipe standards for new motor vehicles in order to insure effective connection between such fill pipe and any vapor recovery system which the Administrator determines may be required to comply with such vapor recovery regulations. In promulgating such standards the Administrator shall take into consideration limits on fill pipe diameter, minimum design criteria for nozzle retainer lips, limits on the location of the unleaded fuel restrictors, a minimum access zone surrounding a fill pipe, a minimum pipe or nozzle insertion angle, and such other factors as he deems pertinent.

(B) Regulations prescribing standards under subparagraph (A) shall not become effective until the introduction of the model year for which it would be feasible to implement such standards, taking into consideration the restraints of an adequate leadtime for design and production.

(C) Nothing in subparagraph (A) shall (i) prevent the Administrator from specifying different nozzle and fill neck sizes for gasoline with additives and gasoline without additives or (ii) permit the Administrator to require a specific location, configuration, modeling, or styling of the motor vehicle body with respect to the fuel tank fill neck or fill nozzle clearance envelope.

(D) For the purpose of this paragraph, the term "fill pipe" shall include the fuel tank fill pipe, fill neck, fill inlet, and closure.

(6) The Administrator shall determine the feasibility and desirability of requiring new motor vehicles to utilize onboard hydrocarbon control technology which would avoid the necessity of gasoline vapor recovery of uncontrolled emissions emanating from the fueling of motor vehicles. The Administrator shall compare the costs and effectiveness of such technology to that of implementing and maintaining vapor recovery systems (taking into consideration such factors as fuel economy, economic costs of such technology, administrative burdens, and equitable distribution of costs). If the Administrator finds that it is feasible and desirable to employ such technology, he shall, after consultation with the Secretary of Transportation with respect to motor vehicle safety, prescribe, by regulation, standards requiring the use of onboard hydrocarbon technology which shall not become effective until the introduction to the model year for which it would be feasible to implement such standards, taking into consideration compliance costs and the restraints of an adequate lead time for design and production.

(b) Emissions of carbon monoxide, hydrocarbons, and oxides of nitrogen; annual report to Congress; waiver of emission standards; research objectives

(1)(A) The regulations under subsection (a) of this section applicable to emissions of carbon monoxide and hydrocarbons from light-duty vehicles and engines manufactured during model years 1977 through 1979 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.5 grams per vehicle mile of hydrocarbons and 15.0 grams per vehicle mile of carbon monoxide. The regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during the model year 1980 shall contain standards which provide that such emissions may not exceed 7.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of hydrocarbons from light-duty vehicles and engines manufactured during or after model year 1980 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970. Unless waived as provided in paragraph (5), regulations under subsection (a) of this section applicable to emissions of carbon monoxide from light-duty vehicles and engines manufactured during or after the model year 1981 shall contain standards which require a reduction of at least 90 percent from emissions of such pollutant allowable under the standards under this section applicable to light-duty vehicles and engines manufactured in model year 1970.

(B) The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during model years 1977 through 1980 shall contain standards which provide that such emissions from such vehicles and engines may not exceed 2.0 grams per vehicle mile. The regulations under subsection (a) of this section applicable to emissions of oxides of nitrogen from light-duty vehicles and engines manufactured during the model year 1981 and thereafter shall contain standards which provide that such emissions from such vehicles and engines may not exceed 1.0 gram per vehicle mile. The Administrator shall prescribe standards in lieu of those required by the preceding sentence, which provide that emissions of oxides of nitrogen may not exceed 2.0 grams per vehicle mile for any light-duty vehicle manufactured during model years 1981 and 1982 by any manufacturer whose production, by corporate identity, for calendar year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the Administrator determines that—

(i) the ability of such manufacturer to meet emission standards in the 1975 and subsequent model years was, and is, primarily dependent upon technology developed by other manufacturers and purchased from such manufacturers; and

(ii) such manufacturer lacks the financial resources and technological ability to develop such technology.

(C) Effective with respect to vehicles and engines manufactured after model year 1978 (or in the case of heavy-duty vehicles or engines, such later model year as the Administrator determines is the earliest feasible model year), the test procedure promulgated under paragraph (2) for measurement of evaporative emissions of hydrocarbons shall require that such emissions be measured from the vehicle or engine as a whole. Regulations to carry out this subparagraph shall be promulgated not later than two hundred and seventy days after August 7, 1977.

(2) Emission standards under paragraph (1), and measurement techniques on which such standards are based (if not promulgated prior to December 31, 1970), shall be prescribed by regulation within 180 days after such date.

(3) For purposes of this part—

(A)(i) The term "model year" with reference to any specific calendar year means the manufacturer's annual production period (as determined by the Administrator) which includes January 1 of such calendar year. If the manufacturer has no annual production period, the term "model year" shall mean the calendar year.

(ii) For the purpose of assuring that vehicles and engines manufactured before the beginning of a model year were not manufactured for purposes of circumventing the effective date of a standard required to be prescribed by subsection (b) of this section, the Administrator may prescribe regulations defining "model year" otherwise than as provided in clause (i).

(B) The term "light duty vehicles and engines" means new light duty motor vehicles and new light duty motor vehicle engines, as determined under regulations of the Administrator.

(C) The term "heavy duty vehicle" means a truck, bus, or other vehicle manufactured primarily for use on the public streets, roads, and highways (not including any vehicle operated exclusively on a rail or rails) which has a gross vehicle weight (as determined under regulations promulgated by the Administrator) in excess of six thousand pounds. Such term includes any such vehicle which has special features enabling off-street or off-highway operation and use.

(4) On July 1 of 1971, and of each year thereafter, the Administrator shall report to the Congress with respect to the development of systems necessary to implement the emission standards established pursuant to this section. Such reports shall include information regarding the continuing effects of such air pollutants subject to standards under this section on the public health and welfare, the extent and progress of efforts being made to develop the necessary systems, the costs associated with development and application of such systems, and following such hearings as he may deem advisable, any recommendations for additional congressional action necessary to achieve the purposes of this chapter. In gathering information for the purposes of this paragraph and in connection with any hearing, the provisions of section 7607(a) of this title (relating to subpenas) shall apply.

(5)(A) At any time after August 31, 1978, any manufacturer may file an application requesting the waiver for model years 1981 and 1982 of the effective date of the emission standard required by paragraph (1)(A) for carbon monoxide applicable to any model (as determined by the Administration) of light-duty motor vehicles and engines manufactured in such model years. The Administrator shall make his determination with respect to any such application within sixty days after such application is filed with respect to such model. If he determines, in accordance with the provisions of this paragraph, that such waiver should be granted, he shall simultaneously with such determination prescribe by regulation emission standards which shall apply (in lieu of the standards required to be prescribed by paragraph (1)(A) of this subsection) to emissions of carbon monoxide from such model of vehicles or engines manufactured during model years 1981 and 1982.

(B) Any standards prescribed under this paragraph shall not permit emissions of carbon monoxide from vehicles and engines to which such waiver applies to exceed 7.0 grams per vehicle per mile.

(C) Within sixty days after receipt of the application for any such waiver and after public hearing, the Administrator shall issue a decision granting or refusing such waiver. The Administrator may grant such waiver if he finds that protection of the public health does not require attainment of such 90 percent reduction for carbon monoxide for the model years to which such waiver applies in the case of such vehicles and engines and if he determines that—

(i) such waiver is essential to the public interest or the public health and welfare of the United States;

(ii) all good faith efforts have been made to meet the standards established by this subsection;

(iii) the applicant has established that effective control technology, processes, operating methods, or other alternatives are not available or have not been available with respect to the model in question for a sufficient period of time to achieve compliance prior to the effective date of such standards, taking into consideration costs, driveability, and fuel economy; and

(iv) studies and investigations of the National Academy of Sciences conducted pursuant to subsection (c) of this section and other information available to him has not indicated that technology, processes, or other alternatives are available (within the meaning of clause (iii)) to meet such standards.

(6)(A) Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles or engines manufactured by such manufacturer during any period of up to four model years beginning after the model year 1980 if the manufacturer demonstrates that such waiver is necessary to permit the use of an innovative power train technology, or innovative emission control device or system, in such class or category of vehicles or engines and that such technology or system was not utilized by more than 1 percent of the light-duty vehicles sold in the United States in the 1975 model year. Such waiver may be granted only if the Administrator determines—

(i) that such waiver would not endanger public health,

(ii) that there is a substantial likelihood that the vehicles or engines will be able to comply with the applicable standard under this section at the expiration of the waiver, and

(iii) that the technology or system has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] upon the expiration of the waiver.

No waiver under this subparagraph granted to any manufacturer shall apply to more than 5 percent of such manufacturer's production or more than fifty thousand vehicles or engines, whichever is greater.

(B) Upon the petition of any manufacturer, the Administrator, after notice and opportunity for public hearing, may waive the standard required under subparagraph (B) of paragraph (1) to not to exceed 1.5 grams of oxides of nitrogen per vehicle mile for any class or category of light-duty vehicles and engines manufactured by such manufacturer during the four model year period beginning with the model year 1981 if the manufacturer can show that such waiver is necessary to permit the use of diesel engine technology in such class or category of vehicles or engines. Such waiver may be granted if the Administrator determines—

(i) that such waiver will not endanger public health,

(ii) that such waiver will result in significant fuel savings at least equal to the fuel economy standard applicable in each year under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.], and

(iii) that the technology has a potential for long-term air quality benefit and has the potential to meet or exceed the average fuel economy standard applicable under the Energy Policy and Conservation Act [42 U.S.C. 6201 et seq.] at the expiration of the waiver.

(7) The Congress hereby declares and establishes as a research objective, the development of propulsion systems and emission control technology to achieve standards which represent a reduction of at least 90 per centum from the average emissions of oxides of nitrogen actually measured from light duty motor vehicles manufactured in model year 1971 not subject to any Federal or State emission standard for oxides of nitrogen. The Administrator shall, by regulations promulgated within one hundred and eighty days after August 7, 1977, require each manufacturer whose sales represent at least 0.5 per centum of light duty motor vehicle sales in the United States, to build and, on a regular basis, demonstrate the operation of light duty motor vehicles that meet this research objective, in addition to any other applicable standards or requirements for other pollutants under this chapter. Such demonstration vehicles shall be submitted to the Administrator no later than model year 1979 and in each model year thereafter. Such demonstration shall, in accordance with applicable regulations, to the greatest extent possible, (A) be designed to encourage the development of new powerplant and emission control technologies that are fuel efficient, (B) assure that the demonstration vehicles are or could reasonably be expected to be within the productive capability of the manufacturers, and (C) assure the utilization of optimum engine, fuel, and emission control systems.

(c) Feasibility study and investigation by National Academy of Sciences; reports to Administrator and Congress; availability of information

(1) The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a comprehensive study and investigation of the technological feasibility of meeting the emissions standards required to be prescribed by the Administrator by subsection (b) of this section.

(2) Of the funds authorized to be appropriated to the Administrator by this chapter, such amounts as are required shall be available to

carry out the study and investigation authorized by paragraph (1) of this subsection.

(3) In entering into any arrangement with the National Academy of Sciences for conducting the study and investigation authorized by paragraph (1) of this subsection, the Administrator shall request the National Academy of Sciences to submit semiannual reports on the progress of its study and investigation to the Administrator and the Congress, beginning not later than July 1, 1971, and continuing until such study and investigation is completed.

(4) The Administrator shall furnish to such Academy at its request any information which the Academy deems necessary for the purpose of conducting the investigation and study authorized by paragraph (1) of this subsection. For the purpose of furnishing such information, the Administrator may use any authority he has under this chapter (A) to obtain information from any person, and (B) to require such person to conduct such tests, keep such records, and make such reports respecting research or other activities conducted by such person as may be reasonably necessary to carry out this subsection.

(d) Useful life of vehicles

The Administrator shall prescribe regulations under which the useful life of vehicles and engines shall be determined for purposes of subsection (a)(1) of this section and section 7541 of this title. Such regulations shall provide that useful life shall—

(1) in the case of light duty vehicles and light duty vehicle engines, be a period of use of five years or fifty thousand miles (or the equivalent), whichever first occurs;

(2) in the case of any other motor vehicle or motor vehicle engine (other than motorcycles or motorcycle engines), be a period of use set forth in paragraph (1) unless the Administrator determines that a period of use of greater duration or mileage is appropriate; and

(3) in the case of any motorcycle or motorcycle engine, be a period of use the Administrator shall determine.

(e) New power sources or propulsion systems

In the event of a new power source or propulsion system for new motor vehicles or new motor vehicle engines is submitted for certification pursuant to section 7525(a) of this title, the Administrator may postpone certification until he has prescribed standards for any air pollutants emitted by such vehicle or engine which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger the public health or welfare but for which standards have not been prescribed under subsection (a) of this section.

(f) High altitude regulations

(1) The high altitude regulation in effect with respect to model year 1977 motor vehicles shall not apply to the manufacture, distribution, or sale of 1978 and later model year motor vehicles. Any future regulation affecting the sale or distribution of motor vehicles or engines manufactured before the model year 1984 in high altitude areas of the country shall take effect no earlier than model year 1981.

(2) Any such future regulation applicable to high altitude vehicles or engines shall not require a percentage of reduction in the emissions of such vehicles which is greater than the required percentage of reduction in emissions from motor vehicles as set forth in subsection (b) of this section. This percentage reduction shall be determined by comparing any proposed high altitude emission standards to high altitude emissions from vehicles manufactured during model year 1970. In no event shall regulations applicable to high altitude vehicles manufactured before the model year 1984 establish a numerical standard which is more stringent than that applicable to vehicles certified under non-high altitude conditions.

(3) Section 7607(d) of this title shall apply to any high altitude regulation referred to in paragraph (2) and before promulgating any such regulation, the Administrator shall consider and make a finding with respect to—

(A) the economic impact upon consumers, individual high altitude dealers, and the automobile industry of any such regulation, including the economic impact which was experienced as a result of the regulation imposed during model year 1977 with respect to high altitude certification requirements;

(B) the present and future availability of emission control technology capable of meeting the applicable vehicle and engine emission requirements without reducing model availability; and

(C) the likelihood that the adoption of such a high altitude regulation will result in any significant improvement in air quality in any area to which it shall apply.

(July 14, 1955, ch. 360, title II, § 202, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 499; Dec. 31, 1970, Pub. L. 91-604, § 6(a), 84 Stat. 1690; June 22, 1974, Pub. L. 93-319, § 5, 88 Stat. 258; Aug. 7, 1977, Pub. L. 95-95, title II, §§ 201, 202(b), 213(b), 214(a), 215-217, 224(a), (b), (g), title IV, 401(d), 91 Stat. 751-753, 758-761, 765, 767, 769, 791; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(60)-(65), (b)(5), 91 Stat. 1403, 1405.)

REFERENCES IN TEXT

The Energy Policy and Conservation Act, referred to in subsec. (b)(6)(A)(iii), (B)(ii), (iii), is Pub. L. 94-163, Dec. 22, 1975, 89 Stat. 871, as amended, which is classified principally to chapter 77 (§ 6201 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6201 of this title and Tables.

CODIFICATION

Section was formerly classified to section 1857f-1 of this title.

Section 14(b)(5) of Pub. L. 95-190 amended section 224(g) of Pub. L. 95-95, which had amended subsec. (d) of this section, without affecting the text of this section.

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-190, § 14(a)(60), restructured subsec. by providing for designation of par. to precede "The Administrator" in place of "Except as".

Pub. L. 95-95, § 401(d)(1), substituted "Except as otherwise provided in subsection (b) of this section the

Administrator" for "The Administrator", "cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare" for "causes or contributes to, or is likely to cause or contribute to, air pollution which endangers the public health or welfare", and "useful life (as determined under subsection (d) of this section, relating to useful life of vehicles for purposes of certification), whether such vehicles and engines are designed as complete systems or incorporate devices" for "useful life (as determined under subsection (d) of this section) whether such vehicles and engines are designed as complete systems or incorporated devices".

Subsec. (a)(2). Pub. L. 95-95, § 214(a), substituted "prescribed under paragraph (1) of this subsection" for "prescribed under this subsection".

Subsec. (a)(3). Pub. L. 95-95, § 224(a), added par. (3).

Subsec. (a)(3)(B). Pub. L. 95-190, § 14(a)(61), (62), substituted provisions setting forth applicable periods of from June 1 through Dec. 31, 1978, June 1 through Dec. 31, 1980, and during each period of June 1 through Dec. 31 of each third year thereafter, for provisions setting forth applicable periods of from June 1 through Dec. 31, 1979, and during each period of June 1 through Dec. 31 of each third year after 1979, and substituted "from any" for "of from any".

Subsec. (a)(3)(E). Pub. L. 95-190, § 14(a)(63), substituted "1978, in the case of hydrocarbons and carbon monoxide, and June 1, 1980, in the case of oxides of nitrogen" for "1979,".

Subsec. (a)(4). Pub. L. 95-95, § 214(a), added par. (4).

Subsec. (a)(5). Pub. L. 95-95, § 215, added par. (5).

Subsec. (a)(6). Pub. L. 95-95, § 216, added par. (6).

Subsec. (b)(1)(A). Pub. L. 95-95, § 201(a), substituted provisions setting the standards for emissions from light-duty vehicles and engines manufactured during the model years 1977 through 1980 for provisions which had set the standards for emissions from light-duty vehicles and engines manufactured during the model years 1975 and 1976, substituted "model year 1980" for "model year 1977" in the provisions requiring a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970, and added provisions that, unless waived as provided in par. (5), the standards for vehicles and engines manufactured during or after the model year 1981 represent a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970.

Subsec. (b)(1)(B). Pub. L. 95-190, § 14(a)(64), (65), substituted "calendar year 1976" for "model year 1976" and in cl. (i) substituted "other" for "United States".

Pub. L. 95-95, § 201(b), substituted provisions setting the standards for emissions from light-duty vehicles and engines manufactured during the model years 1977 through 1980 for provisions which had set the standards for emissions from light-duty vehicles and engines manufactured during the model years 1975 through 1977, substituted provisions that the standards for model years 1981 and after allow emissions of no more than 1.0 gram per vehicle mile for provisions that the standards for model year 1978 and after require a reduction of at least 90 per centum from the average of emissions actually measured from light-duty vehicles manufactured during model year 1971 which were not subject to any Federal or State emission standards for oxides of nitrogen, and added provisions directing the Administrator to prescribe standards separate standards for model years 1981 and 1982 for manufacturers whose production, by corporate identity, for model year 1976 was less than three hundred thousand light-duty motor vehicles worldwide if the manufacturer's capability to meet emission standards depends upon United States technology and if the manufacturer cannot develop one.

Subsec. (b)(1)(C). Pub. L. 95-95, § 217, added subpar. (C).

Subsec. (b)(3)(C). Pub. L. 95-95, § 224(b), added subpar. (C).

Subsec. (b)(5). Pub. L. 95-95, § 201(c), substituted provisions setting up a procedure under which a manufacturer may apply for a waiver for model years 1981 and 1982 of the effective date of the emission standards for carbon-monoxide required by par. (1)(A) for provisions which had set up a procedure under which a manufacturer, after Jan. 1, 1975, could apply for a one-year suspension of the effective date of any emission standard required by par. (1)(A) for model year 1977.

Subsec. (b)(6). Pub. L. 95-95, § 201(c), added par. (6).

Subsec. (b)(7). Pub. L. 95-95, § 202(b), added par. (7).

Subsec. (d)(2). Pub. L. 95-95, § 224(g), added "(other than motorcycles or motorcycle engines)" after "motor vehicle or motor vehicle engine".

Subsec. (d)(3). Pub. L. 95-95, § 224(g), added par. (3).

Subsec. (e). Pub. L. 95-95, § 401(d)(2), substituted "which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger" for "which cause or contribute to, or are likely to cause or contribute to, air pollution which endangers".

Subsec. (f). Pub. L. 95-95, § 213(b), added subsec. (f).

1974—Subsec. (b)(1)(A). Pub. L. 93-319, § 5(a), substituted "model year 1977" for "model year 1975" in provisions requiring a reduction of at least 90 per centum from the emissions allowable under standards for model year 1970 and added provisions covering regulations for model years 1975 and 1976.

Subsec. (b)(1)(B). Pub. L. 93-319, § 5(b), substituted "model year 1978" for "model year 1976" in the provisions requiring a reduction of at least 90 per centum from the average of emissions actually measured from vehicles manufactured during model year 1971 and added provisions covering regulations for model years 1975, 1976, and 1977.

Subsec. (b)(5). Pub. L. 93-319, § 5(c), (d), substituted in subpart. (A), "At any time after January 1, 1975" for "At any time after January 1, 1972", "with respect to such manufacturer for light-duty vehicles and engines manufactured in model year 1977" for "with respect to such manufacturer" "sixty days" for "60 days", "paragraph (1)(A) of this subsection" for "paragraph (1)(A)", and "vehicles and engines manufactured during model year 1977" for "vehicles and engines manufactured during model year 1975", redesignated subpars. (C) to (E) as (B) to (D), respectively, and struck out former subpar. (B) which had allowed manufacturers, at any time after Jan. 1, 1973, to file with the Administrator an application requesting a 1-year suspension of the effective date of any emission standard required by subsec. (b)(1)(B) with respect to such manufacturer.

1970—Subsec. (a) Pub. L. 91-604 redesignated existing provisions as par. (1) and, in par. (1) as so redesignated, substituted Administrator for Secretary as the issuing authority for standards, inserted references to the useful life of engines, and substituted the emission of any air pollutant for the emission of any kind of substance as the subject to be regulated, and added par. (2).

Subsec. (b). Pub. L. 91-604 added subsec. (b). Former subsec. (b) redesignated as par. (2) of subsec. (a).

Subsecs. (c) to (e). Pub. L. 91-604 added subsecs. (c) to (e).

1967—Pub. L. 90-148 reenacted section without change.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Study on Oxides of Nitrogen From Light Duty Vehicles

Section 202(a) of Pub. L. 95-95 provided that: "The Administrator of the Environmental Protection Agency shall conduct a study of the public health implications of attaining an emission standard on oxides of nitrogen from light duty vehicles of 0.4 gram per vehicle mile, the cost and technological capability of attaining such standard, and the need for such a standard to protect public health or welfare. The Administrator shall submit a report of such study to the Congress, together with recommendations not later than July 1, 1980."

STUDY OF CARBON MONOXIDE INTRUSION INTO SUSTAINED USE VEHICLES

Section 226 of Pub. L. 95-95, which provided that the Administrator, in conjunction with the Secretary of Transportation, study the problem of carbon monoxide intrusion into the passenger area of sustained-use motor vehicles and that within one year the Administrator report to the Congress respecting the results of such study, was omitted from the Code as executed.

CONTINUING COMPREHENSIVE STUDIES AND INVESTIGATIONS BY NATIONAL ACADEMY OF SCIENCES

Section 403(f) of Pub. L. 95-95 provided that: "The Administrator of the Environmental Protection Agency shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct continuing comprehensive studies and investigations of the effects on public health and welfare of emissions subject to section 202(a) of the Clean Air Act [subsec. (a) of this section] (including sulfur compounds) and the technological feasibility of meeting emission standards required to be prescribed by the Administrator by section 202(b) of such Act [subsec. (b) of this section]. The Administrator shall report to the Congress within six months of the date of enactment of this section [Aug. 7, 1977] and each year thereafter regarding the status of the contractual arrangements and conditions necessary to implement this paragraph."

STUDY ON EMISSION OF SULFUR-BEARING COMPOUNDS FROM MOTOR VEHICLES AND MOTOR VEHICLE AND AIRCRAFT ENGINES

Section 403(g) of Pub. L. 95-95, which provided that the Administrator of the Environmental Protection Agency conduct a study and report to the Congress by the date one year after Aug. 7, 1977, on the emission of sulfur-bearing compounds from motor vehicles and motor vehicle engines and aircraft engines, was omitted from the Code as executed.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7408, 7417, 7522, 7525, 7541, 7543, 7545, 7546, 7548, 7549, 7550, 7607, 7608, 7617, 7623 of this title; title 15 sections 1410, 2002.

§ 7522. Prohibited acts

(a) Enumerated prohibitions

The following acts and the causing thereof are prohibited—

(1) in the case of a manufacturer of new motor vehicles or new motor vehicle engines for distribution in commerce, the sale or the offering for sale, or the introduction, or delivery for introduction, into commerce, or (in the case of any person, except as provided by regulation of the Administrator), the importation into the United States of any new motor vehicle or new motor vehicle engine, manufactured after the effective date of regulations under this part which are applicable to such vehicle or engine unless such vehicle or engine is covered by a certificate of conformity issued (and in effect) under regulations prescribed under this part (except as provided in subsection (b) of this section);

(2) for any person to fail or refuse to permit access to or copying of records or to fail to make reports or provide information, required under section 7542 of this title or for any person to fail or refuse to permit entry, testing, or inspection authorized under section 7525(c) of this title;

(3)(A) for any person to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter prior to its sale and delivery to the ultimate purchaser, or for any manufacturer or dealer knowingly to remove or render inoperative any such device or element of design after such sale and delivery to the ultimate purchaser; or

(B) for any person engaged in the business of repairing, servicing, selling, leasing, or trading motor vehicles or motor vehicle engines, or who operates a fleet of motor vehicles, knowingly to remove or render inoperative any device or element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter following its sale and delivery to the ultimate purchaser; or

(4) for any manufacturer of a new motor vehicle or new motor vehicle engine subject to standards prescribed under section 7521 of this title—

(A) to sell or lease any such vehicle or engine unless such manufacturer has complied with the requirements of section 7541(a) and (b) of this title with respect to such vehicle or engine, and unless a label or tag is affixed to such vehicle or engine in accordance with section 7541(c)(3) of this title,

(B) to fail or refuse to comply with the requirements of section 7541(c) or (e) of this title,

(C) except as provided in subsection (c)(3) of section 7541 of this title, to provide directly or indirectly in any communication to the ultimate purchaser or any subsequent purchaser that the coverage of any warranty under this chapter is conditioned upon use of any part, component, or system manufactured by such manufacturer or any person acting for such manufacturer or under his control, or conditioned upon service performed by any such person, or

(D) to fail or refuse to comply with the terms and conditions of the warranty under section 7541(a) or (b) of this title with respect to any vehicle.

No action with respect to any element of design referred to in paragraph (3) (including any adjustment or alteration of such element) shall be treated as a prohibited act under such paragraph (3) if such action is in accordance with section 7549 of this title. Nothing in paragraph (3) shall be construed to require the use of manufacturer parts in maintaining or repairing any motor vehicle or motor vehicle engine. For the purposes of the preceding sentence, the term "manufacturer parts" means, with respect to a motor vehicle engine, parts produced or sold by the manufacturer of the motor vehicle or motor vehicle engine.

(b) Exemptions; refusal to admit vehicle or engine into United States; vehicles or engines intended for export

(1) The Administrator may exempt any new motor vehicle or new motor vehicle engine, from subsection (a) of this section, upon such terms and conditions as he may find necessary for the purpose of research, investigations, studies, demonstrations, or training, or for reasons of national security.

(2) A new motor vehicle or new motor vehicle engine offered for importation or imported by any person in violation of subsection (a) of this section shall be refused admission into the United States, but the Secretary of the Treasury and the Administrator may, by joint regulation, provide for deferring final determination as to admission and authorizing the delivery of such a motor vehicle or engine offered for import to the owner or consignee thereof upon such terms and conditions (including the furnishing of a bond) as may appear to them appropriate to insure that any such motor vehicle or engine will be brought into conformity with the standards, requirements, and limitations applicable to it under this part. The Secretary of the Treasury shall, if a motor vehicle or engine is finally refused admission under this paragraph, cause disposition thereof in accordance with the customs laws unless it is exported, under regulations prescribed by such Secretary, within ninety days of the date of notice of such refusal or such additional time as may be permitted pursuant to such regulations, except that disposition in accordance with the customs laws may not be made in such manner as may result, directly or indirectly, in the sale, to the ultimate consumer, of a new motor vehicle or new motor vehicle engine that fails to comply with applicable standards of the Administrator under this part.

(3) A new motor vehicle or new motor vehicle engine intended solely for export, and so labeled or tagged on the outside of the container and on the vehicle or engine itself, shall be subject to the provisions of subsection (a) of this section, except that if the country which is to receive such vehicle or engine has emission standards which differ from the standards prescribed under section 7521 of this title, then such vehicle or engine shall comply with the standards of such country which is to receive such vehicle or engine.

(c) Exemption to permit modification of emission control device or system

Upon application therefore, the Administrator may exempt from subsection (a)(3) of this section any vehicles (or class thereof) manufactured before the 1974 model year from subsection (a)(3) of this section[1] for the purpose of permitting modifications to the emission control device or system of such vehicle in order to use fuels other than those specified in certification testing under section 7525(a)(1) of this title, if the Administrator, on the basis of information submitted by the applicant, finds that such modification will not result in such vehicle or engine not complying with standards under section 7521 of this title applicable to such vehicle or engine. Any such exemption shall identify (1) the vehicle or vehicles so exempted, (2) the specific nature of the modification, and (3) the person or class of persons to whom the exemption shall apply.

(July 14, 1955, ch. 360, title II, § 203, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 993, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 499; Dec. 31, 1970, Pub. L. 91-604, §§ 7(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1693, 1705, 1713; Aug. 7, 1977, Pub. L. 95-95, title II, §§ 206, 211(a), 218(a), (d), 219(a), (b), 91 Stat. 755, 757, 761, 762; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(66)-(68), 91 Stat. 1403.)

CODIFICATION

Section was formerly classified to section 1857f-2 of this title.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-190, § 14(a)(68), in closing material substituted "section 7549 of this title." for "section 7549 of this title".

Pub. L. 95-95, §§ 206, 211(a), 218(a), 219(a), (b), added "or for any person to fail or refuse to permit entry, testing, or inspection authorized under section 7525(c) of this title" in par. (2), designated existing provisions of par. (3) as subpar. (A) and added subpar. (B), added subpars. (C) and (D) in par. (4), and, following par. (4), added provisions that no action with respect to any element of design referred to in par. (3) (including adjustment or alteration of such element) be treated as a prohibited act under par. (3) if the action is in accordance with section 7549 of this title and that nothing in par. (3) be construed to require the use of manufacturer parts in maintaining or repairing motor vehicles or motor vehicle engines.

Subsec. (a)(3)(B). Pub. L. 95-190, § 14(a)(66), substituted "purchaser;" for "purchaser,".

Subsec. (a)(4)(C). Pub. L. 95-190, § 14(a)(67), added "or" following "such person,".

Subsec. (b)(3). Pub. L. 95-95, § 218(d), substituted "section 7521 of this title" for "subsection (a) of this section" and "country which is to receive such vehicle or engine" for "country of export".

1970—Subsec. (a)(1). Pub. L. 91-604, § 7(a)(1), struck out reference to the manufacture of new motor vehicles or new motor vehicle engines for sale, inserted provision for issuance by the Administrator of regulations regarding exceptions in the case of importation of new motor vehicles or new motor vehicle engines, and substituted "importation" into the United States of such units for "importation for sale or resale" into the United States of such units.

Subsec. (a)(2). Pub. L. 91-604, § 7(a)(2), substituted "section 208" for "section 207", both of which, for purposes of codification, are translated as "section 7542 of this title".

Subsec. (a)(3). Pub. L. 91-604, §§ 7(a)(3), 11(a)(2)(A), substituted "part" for "subchapter" and added provisions prohibiting the knowing removal or inoperation by manufacturers or dealers of devices or elements of design after sale and delivery to the ultimate purchaser.

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[1] So in original.

Subsec. (a)(4). Pub. L. 91-604, § 7(a)(4), added par. (4).

Subsec. (b)(1). Pub. L. 91-604, §§ 7(a)(5), 15(c)(2), struck out reference to the exemption of a class of new motor vehicles or new motor vehicle engines, struck out the protection of the public health and welfare from the enumeration of purposes for which exemptions may be made, and substituted "Administrator" for "Secretary".

Subsec. (b)(2). Pub. L. 91-604, §§ 7(a)(6), 11(a)(2)(A), 15(c)(2), substituted "Administrator" for "Secretary of Health, Education, and Welfare", "importation or imported by any person" for "importation by a manufacturer", and "part" for "subchapter".

Subsec. (b)(3). Pub. L. 91-604, § 7(a)(7)(A), added provision that, if the country of export has emission standards which differ from the standards prescribed under subsec. (a), such vehicle or engine must comply with the standards of such country of export.

Subsec. (c). Pub. L. 91-604, § 7(a)(7)(B), added subsec. (c).

1967—Subsec. (a). Pub. L. 90-148 substituted "conformity with regulations prescribed under this subchapter" for "conformity with regulations prescribed under section 7521 of this title" in par. (1).

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Section Referred to in Other Sections

This section is referred to in sections 7523, 7524, 7549, 7550 of this title.

§ 7523. Actions to restrain violations

(a) Jurisdiction

The district courts of the United States shall have jurisdiction to restrain violations of section 7522(a) of this title.

(b) Actions brought by or in name of United States; subpenas

Actions to restrain such violations shall be brought by and in the name of the United States. In any such action, subpenas for witnesses who are required to attend a district court in any district may run into any other district.

(July 14, 1955, ch. 360, title II, § 204, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 994, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 500; Dec. 31, 1970, Pub. L. 91-604, § 7(b), 84 Stat. 1694; Aug. 7, 1977, Pub. L. 95-95, title II, § 218(b), 91 Stat. 761.)

Codification

Section was formerly classified to section 1857f-3 of this title.

Amendments

1977—Subsec. (a). Pub. L. 95-95 struck out "paragraph (1), (2), (3), or (4)" following "restrain violations of".

1970—Subsec. (a). Pub. L. 91-604 inserted reference to par. (4) of section 7522(a) of this title.

1967—Pub. L. 90-148 reenacted section without change.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Pending Actions and Proceedings

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 amendment note under section 7401 of this title.

§ 7524. Penalties

Any person who violates paragraph (1), (2), or (4) of section 7522(a) of this title or any manufacturer, dealer, or other person who violates paragraph (3)(A) of section 7522(a) of this title shall be subject to a civil penalty of not more than $10,000. Any person who violates paragraph (3)(B) of such section 7522(a) shall be subject to a civil penalty of not more than $2,500. Any such violation with respect to paragraph (1), (3), or (4) of section 7522(a) of this title shall constitute a separate offense with respect to each motor vehicle or motor vehicle engine.

(July 14, 1955, ch. 360, title I, § 205, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 994, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 500; Dec. 31, 1970, Pub. L. 91-604, § 7(c), 84 Stat. 1694; Aug. 7, 1977, Pub. L. 95-95, title II, § 219(c), 91 Stat. 762.)

Codification

Section was formerly classified to section 1857f-4 of this title.

Amendments

1977—Pub. L. 95-95 substituted "Any person who violates paragraph (1), (2), or (4) of section 7522(a) of this title, or any manufacturer, dealer, or other person who violates paragraph (3)(A) of section 7522(a) of this title" for "Any person who violates paragraph (1), (2), (3), or (4) of section 7522(a) of this title" in the provisions covering the civil penalty of $10,000, and added provisions for a civil penalty of not more than $2,500 for violations of par. (3)(B) of section 7522(a) of this title.

1970—Pub. L. 91-604 increased the upper limit of the allowable fine from "$1,000" to "$10,000".

1967—Pub. L. 90-148 reenacted section without change.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section

406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7549 of this title.

§ 7525. Motor vehicle and motor vehicle engine compliance testing and certification

(a) Testing and issuance of certificate of conformity

(1) The Administrator shall test, or require to be tested in such manner as he deems appropriate, any new motor vehicle or new motor vehicle engine submitted by a manufacturer to determine whether such vehicle or engine conforms with the regulations prescribed under section 7521 of this title. If such vehicle or engine conforms to such regulations, the Administrator shall issue a certificate of conformity upon such terms, and for such period (not in excess of one year), as he may prescribe. In the case of any manufacturer of vehicles or vehicle engines whose projected sales in the United States for any model year (as determined by the Administrator) will not exceed three hundred, the regulations prescribed by the Administrator concerning testing by the manufacturer for purposes of determining compliance with regulations under section 7521 of this title for the useful life of the vehicle or engine shall not require operation of any vehicle or engine manufactured during such model year for more than five thousand miles or one hundred and sixty hours, respectively, but the Administrator shall apply such adjustment factors as he deems appropriate to assure that each such vehicle or engine will comply during its useful life (as determined under section 7521(d) of this title) with the regulations prescribed under section 7521 of this title.

(2) The Administrator shall test any emission control system incorporated in a motor vehicle or motor vehicle engine submitted to him by any person, in order to determine whether such system enables such vehicle or engine to conform to the standards required to be prescribed under section 7521(b) of this title. If the Administrator finds on the basis of such tests that such vehicle or engine conforms to such standards, the Administrator shall issue a verification of compliance with emission standards for such system when incorporated in vehicles of a class of which the tested vehicle is representative. He shall inform manufacturers and the National Academy of Sciences, and make available to the public, the results of such tests. Tests under this paragraph shall be conducted under such terms and conditions (including requirements for preliminary testing by qualified independent laboratories) as the Administrator may prescribe by regulations.

(3)(A) A certificate of conformity may be issued under this section only if the Administrator determines that the manufacturer (or in the case of a vehicle or engine for import, any person) has established to the satisfaction of the Administrator that any emission control device, system, or element of design installed on, or incorporated in, such vehicle or engine conforms to applicable requirements of section 7521(a)(4) of this title.

(B) The Administrator may conduct such tests and may require the manufacturer (or any such person) to conduct such tests and provide such information as is necessary to carry out subparagraph (A) of this paragraph. Such requirements shall include a requirement for prompt reporting of the emission of any unregulated pollutant from a system, device, or element of design if such pollutant was not emitted, or was emitted in significantly lesser amounts, from the vehicle or engine without use of the system, device, or element of design.

(b) Testing procedures; hearing; judicial review; additional evidence

(1) In order to determine whether new motor vehicles or new motor vehicle engines being manufactured by a manufacturer do in fact conform with the regulations with respect to which the certificate of conformity was issued, the Administrator is authorized to test such vehicles or engines. Such tests may be conducted by the Administrator directly or, in accordance with conditions specified by the Administrator, by the manufacturer.

(2)(A)(i) If, based on tests conducted under paragraph (1) on a sample of new vehicles or engines covered by a certificate of conformity, the Administrator determines that all or part of the vehicles or engines so covered do not conform with the regulations with respect to which the certificate of conformity was issued and with the requirements of section 7521(a)(4) of this title, he may suspend or revoke such certificate in whole or in part, and shall so notify the manufacturer. Such suspension or revocation shall apply in the case of any new motor vehicles or new motor vehicle engines manufactured after the date of such notification (or manufactured before such date if still in the hands of the manufacturer), and shall apply until such time as the Administrator finds that vehicles and engines manufactured by the manufacturer do conform to such regulations and requirements. If, during any period of suspension or revocation, the Administrator finds that a vehicle or engine actually conforms to such regulations and requirements, he shall issue a certificate of conformity applicable to such vehicle or engine.

(ii) If, based on tests conducted under paragraph (1) on any new vehicle or engine, the Administrator determines that such vehicle or engine does not conform with such regulations and requirements, he may suspend or revoke such certificate insofar as it applies to such vehicle or engine until such time as he finds such vehicle or engine actually so conforms with such regulations and requirements, and he shall so notify the manufacturer.

(B)(i) At the request of any manufacturer the Administrator shall grant such manufacturer a hearing as to whether the tests have been properly conducted or any sampling methods have been properly applied, and make a determination on the record with respect to any suspension or revocation under subparagraph (A); but suspension or revocation under subparagraph (A) shall not be stayed by reason of such hearing.

(ii) In any case of actual controversy as to the validity of any determination under clause (i), the manufacturer may at any time prior to the 60th day after such determination is made file a petition with the United States court of appeals for the circuit wherein such manufacturer resides or has his principal place of business for a judicial review of such determination. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Administrator or other officer designated by him for that purpose. The Administrator thereupon shall file in the court the record of the proceedings on which the Administrator based his determination, as provided in section 2112 of title 28.

(iii) If the petitioner applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(iv) Upon the filing of the petition referred to in clause (ii), the court shall have jurisdiction to review the order in accordance with chapter 7 of title 5 and to grant appropriate relief as provided in such chapter.

(c) Inspection

For purposes of enforcement of this section, officers or employees duly designated by the Administrator, upon presenting appropriate credentials to the manufacturer or person in charge, are authorized (1) to enter, at reasonable times, any plant or other establishment of such manufacturer, for the purpose of conducting tests of vehicles or engines in the hands of the manufacturer, or (2) to inspect at reasonable times, records, files, papers, processes, controls, and facilities used by such manufacturer in conducting tests under regulations of the Administrator. Each such inspection shall be commenced and completed with reasonable promptness.

(d) Rules and regulations

The Administrator shall by regulation establish methods and procedures for making tests under this section.

(e) Publication of test results

The Administrator shall announce in the Federal Register and make available to the public the results of his tests of any motor vehicle or motor vehicle engine submitted by a manufacturer under subsection (a) of this section as promptly as possible after December 31, 1970, and at the beginning of each model year which begins thereafter. Such results shall be described in such nontechnical manner as will reasonably disclose to prospective ultimate purchasers of new motor vehicles and new motor vehicle engines the comparative performance of the vehicles and engines tested in meeting the standards prescribed under section 7521 of this title.

(f) High altitude regulations

(1) All light duty vehicles and engines manufactured during or after model year 1984 shall comply with the requirements of section 7521 of this title regardless of the altitude at which they are sold.

(2) By October 1, 1978, the Administrator shall report to the Congress on the economic impact and technological feasibility of the requirements found in subparagraph (1) of this subsection. The report is also to evaluate the technological feasibility and the health consequences of separate proportional emission standards for light duty vehicles and engines in high altitude areas that would reflect a comparable percentage of reduction in emissions to that achieved by light duty vehicles and engines in low altitude areas.

(g) Nonconformance penalty

(1) In the case of any class or category of heavy-duty vehicles or engines to which a standard promulgated under section 7521(a) of this title applies, except as provided in paragraph (2), a certificate of conformity shall be issued under subsection (a) of this section and shall not be suspended or revoked under subsection (b) of this section for such vehicles or engines manufactured by a manufacturer notwithstanding the failure of such vehicles or engines to meet such standard if such manufacturer pays a nonconformance penalty as provided under regulations promulgated by the Administrator after notice and opportunity for public hearing. In the case of motorcycles to which such a standard applies, such a certificate may be issued notwithstanding such failure if the manufacturer pays such a penalty.

(2) No certificate of conformity may be issued under paragraph (1) with respect to any class or category of vehicle or engine if the degree by which the manufacturer fails to meet any standard promulgated under section 7521(a) of this title with respect to such class or category exceeds the percentage determined under regulations promulgated by the Administrator to be practicable. Such regulations shall require such testing of vehicles or engines being produced as may be necessary to determine the percentage of the classes or categories of vehicles or engines which are not in compliance with the regulations with respect to which a certificate of conformity was issued and shall be promulgated not later than one year after August 7, 1977.

(3) The regulations promulgated under paragraph (1) shall, not later than one year after August 7, 1977, provide for nonconformance penalties in amounts determined under a formula established by the Administrator. Such penalties under such formula—

(A) may vary from pollutant-to-pollutant;

(B) may vary by class or category or vehicle or engine;

(C) shall take into account the extent to which actual emissions of any air pollutant exceed allowable emissions under the standards promulgated under section 7521 of this title;

(D) shall be increased periodically in order to create incentives for the development of production vehicles or engines which achieve the required degree of emission reduction; and

(E) shall remove any competitive disadvantage to manufacturers whose engines or vehicles achieve the required degree of emission reduction (including any such disadvantage arising from the application of paragraph (4)).

(4) In any case in which a certificate of conformity has been issued under this subsection, any warranty required under section 7541(b)(2) of this title and any action under section 7541(c) of this title shall be required to be effective only for the emission levels which the Administrator determines that such certificate was issued and not for the emission levels required under the applicable standard.

(5) The authorities of section 7542(a) of this title shall apply, subject to the conditions of section 7542(b) of this title, for purposes of this subsection.

(July 14, 1955, ch. 360, title II, § 206, as added Dec. 31, 1970, Pub. L. 91-604, § 8(a), 84 Stat. 1694, and amended Aug. 7, 1977, Pub. L. 95-95, title II, §§ 213(a), 214(b), (c), 220, 224(e), 91 Stat. 758-760, 762, 768; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(69), 91 Stat. 1403.)

CODIFICATION

Section was formerly classified to section 1857f-5 of this title.

PRIOR PROVISIONS

A prior section 206 of Act July 14, 1955, which was classified to a prior section 1857f-5 of this title and related to the testing of motor vehicles and motor vehicle engines, was repealed by Pub. L. 91-604.

AMENDMENTS

1977—Subsec. (a)(1). Pub. L. 95-95, § 220, added provisions covering testing by small manufacturers.

Subsec. (a)(3). Pub. L. 95-95, § 214(b), added par. (3).

Subsec. (b)(2)(A)(i). Pub. L. 95-95, § 214(c)(1), (2), substituted "certificate of conformity was issued and with the requirements of section 7521(a)(4) of this title, he may suspend" for "certificate of conformity was issued, he may suspend" and "such regulations and requirements" for "such regulations".

Subsec. (b)(2)(A)(ii). Pub. L. 95-95, § 214(c)(2), substituted "such regulations and requirements" for "such regulations".

Subsec. (f). Pub. L. 95-95, § 213(a), added subsec. (f).

Subsec. (g). Pub. L. 95-95, § 224(e), added subsec. (g).

Subsec. (g)(3)(D). Pub. L. 95-190 added "shall" preceding "be".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

EFFECTIVE DATE

Section 8(b) of Pub. L. 91-604 provided that: "The amendments made by this section [enacting this section and section 7541 of this title] shall not apply to vehicles or engines imported into the United States before the sixtieth day after the date of enactment of this Act [Dec. 31, 1970]."

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7414, 7521, 7522, 7541, 7545, 7550, 7607 of this title; title 15 sections 2003, 2702; title 26 section 4064.

§ 7541. Compliance by vehicles and engines in actual use

(a) Warranty; certification; payment of replacement costs of parts, devices, or components designed for emission control

(1) Effective with respect to vehicles and engines manufactured in model years beginning more than 60 days after December 31, 1970, the manufacturer of each new motor vehicle and new motor vehicle engine shall warrant to the ultimate purchaser and each subsequent purchaser that such vehicle or engine is (A) designed, built, and equipped so as to conform at the time of sale with applicable regulations under section 7521 of this title, and (B) free from defects in materials and workmanship which cause such vehicle or engine to fail to conform with applicable regulations for its useful life (as determined under section 7521(d) of this title).

(2) In the case of a motor vehicle part or motor vehicle engine part, the manufacturer or rebuilder of such part may certify that use of such part will not result in a failure of the vehicle or engine to comply with emission standards promulgated under section 7521 of this title. Such certification shall be made only under such regulations as may be promulgated by the Administrator to carry out the purposes of subsection (b) of this section. The Administrator shall promulgate such regulations no later than two years following August 7, 1977.

(3) The cost of any part, device, or component of any light-duty vehicle that is designed for emission control and which in the instructions issued pursuant to subsection (c)(3) of this section is scheduled for replacement during the useful life of the vehicle in order to maintain compliance with regulations under section 7521 of this title, the failure of which shall not interfere with the normal performance of the vehicle, and the expected retail price of which, including installation costs, is greater than 2 percent of the suggested retail price of such vehicle, shall be borne or reimbursed at the time of replacement by the vehicle manufacturer and such replacement shall be provided without cost to the ultimate purchaser, subsequent purchaser, or dealer. The term "designed for emission control" as used in the preceding sentence means a catalytic converter, thermal reactor, or

other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions (not including those vehicle components which were in general use prior to model year 1968 and the primary function of which is not related to emission control).

(b) Testing methods and procedures

If the Administrator determines that (i) there are available testing methods and procedures to ascertain whether, when in actual use throughout its useful life (as determined under section 7521(d) of this title), each vehicle and engine to which regulations under section 7521 of this title apply complies with the emission standards of such regulations, (ii) such methods and procedures are in accordance with good engineering practices, and (iii) such methods and procedures are reasonably capable of being correlated with tests conducted under section 7525(a)(1) of this title, then—

(1) he shall establish such methods and procedures by regulation, and

(2) at such time as he determines that inspection facilities or equipment are available for purposes of carrying out testing methods and procedures established under paragraph (1), he shall prescribe regulations which shall require manufacturers to warrant the emission control device or system of each new motor vehicle or new motor vehicle engine to which a regulation under section 7521 of this title applies and which is manufactured in a model year beginning after the Administrator first prescribes warranty regulations under this paragraph (2). The warranty under such regulations shall run to the ultimate purchaser and each subsequent purchaser and shall provide that if—

(A) the vehicle or engine is maintained and operated in accordance with instructions under subsection (c)(3) of this section,

(B) it fails to conform at any time during its useful life (as determined under section 7521(d) of this title) to the regulations prescribed under section 7521 of this title, and

(C) such nonconformity results in the ultimate purchaser (or any subsequent purchaser) of such vehicle or engine having to bear any penalty or other sanction (including the denial of the right to use such vehicle or engine) under State or Federal law,

then such manufacturer shall remedy such nonconformity under such warranty with the cost thereof to be borne by the manufacturer. No such warranty shall be invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if such part was certified as provided under subsection (a)(2) of this section.

For purposes of the warranty under this subsection, for the period after twenty-four months or twenty-four thousand miles (whichever first occurs) the term "emission control device or system" means a catalytic converter, thermal reactor, or other component installed on or in a vehicle for the sole or primary purpose of reducing vehicle emissions. Such term shall not include those vehicle components which were in general use prior to model year 1968.

(c) Nonconforming vehicles; plan for remedying nonconformity; instructions for maintenance and use; label or tag

Effective with respect to vehicles and engines manufactured during model years beginning more than 60 days after December 31, 1970—

(1) If the Administrator determines that a substantial number of any class or category of vehicles or engines, although properly maintained and used, do not conform to the regulations prescribed under section 7521 of this title, when in actual use throughout their useful life (as determined under section 7521(d) of this title), he shall immediately notify the manufacturer thereof of such nonconformity, and he shall require the manufacturer to submit a plan for remedying the nonconformity of the vehicles or engines with respect to which such notification is given. The plan shall provide that the nonconformity of any such vehicles or engines which are properly used and maintained will be remedied at the expense of the manufacturer. If the manufacturer disagrees with such determination of nonconformity and so advises the Administrator, the Administrator shall afford the manufacturer and other interested persons an opportunity to present their views and evidence in support thereof at a public hearing. Unless, as a result of such hearing the Administrator withdraws such determination of nonconformity, he shall, within 60 days after the completion of such hearing, order the manufacturer to provide prompt notification of such nonconformity in accordance with paragraph (2).

(2) Any notification required by paragraph (1) with respect to any class or category of vehicles or engines shall be given to dealers, ultimate purchasers, and subsequent purchasers (if known) in such manner and containing such information as the Administrator may by regulation require.

(3)(A) The manufacturer shall furnish with each new motor vehicle or motor vehicle engine written instructions for the proper maintenance and use of the vehicle or engine by the ultimate purchaser and such instructions shall correspond to regulations which the Administrator shall promulgate. The manufacturer shall provide in boldface type on the first page of the written maintenance instructions notice that maintenance, replacement, or repair of the emission control devices and systems may be performed by any automotive repair establishment or individual using any automotive part which has been certified as provided in subsection (a)(2) of this section.

(B) The instruction under subparagraph (A) of this paragraph shall not include any condition on the ultimate purchaser's using, in connection with such vehicle or engine, any component or service (other than a component or service provided without charge under the terms of the purchase agreement) which is identified by brand, trade, or corporate name; or directly or indirectly distinguishing between service performed by the franchised dealers of such manufacturer or any other service establishments with which such man-

ufacturer has a commercial relationship, and service performed by independent automotive repair facilities with which such manufacturer has no commercial relationship; except that the prohibition of this subsection may be waived by the Administrator if—

(i) the manufacturer satisfies the Administrator that the vehicle or engine will function properly only if the component or service so identified is used in connection with such vehicle or engine, and

(ii) the Administrator finds that such a waiver is in the public interest.

(C) In addition, the manufacturer shall indicate by means of a label or tag permanently affixed to such vehicle or engine that such vehicle or engine is covered by a certificate of conformity issued for the purpose of assuring achievement of emissions standards prescribed under section 7521 of this title. Such label or tag shall contain such other information relating to control of motor vehicle emissions as the Administrator shall prescribe by regulation.

(d) Dealer costs borne by manufacturer

Any cost obligation of any dealer incurred as a result of any requirement imposed by subsection (a), (b), or (c) of this section shall be borne by the manufacturer. The transfer of any such cost obligation from a manufacturer to any dealer through franchise or other agreement is prohibited.

(e) Cost statement

If a manufacturer includes in any advertisement a statement respecting the cost or value of emission control devices or systems, such manufacturer shall set forth in such statement the cost or value attributed to such devices or systems by the Secretary of Labor (through the Bureau of Labor Statistics). The Secretary of Labor, and his representatives, shall have the same access for this purpose to the books, documents, papers, and records of a manufacturer as the Comptroller General has to those of a recipient of assistance for purposes of section 7611 of this title.

(f) Inspection after sale to ultimate purchaser

Any inspection of a motor vehicle or a motor vehicle engine for purposes of subsection (c)(1) of this section, after its sale to the ultimate purchaser, shall be made only if the owner of such vehicle or engine voluntarily permits such inspection to be made, except as may be provided by any State or local inspection program.

(g) Replacement and maintenance costs borne by owner

For the purposes of this section, the owner of any motor vehicle or motor vehicle engine warranted under this section is responsible in the proper maintenance of such vehicle or engine to replace and to maintain, at his expense at any service establishment or facility of his choosing, such items as spark plugs, points, condensers, and any other part, item, or device related to emission control (but not designed for emission control under the terms of the last three sentences of subsection (a)(1) of this section), unless such part, item, or device is covered by any warranty not mandated by this chapter.

(h) Dealer certification

(1) Upon the sale of each new light-duty motor vehicle by a dealer, the dealer shall furnish to the purchaser a certificate that such motor vehicle conforms to the applicable regulations under section 7521 of this title, including notice of the purchaser's rights under paragraph (2).

(2) If at any time during the period for which the warranty applies under subsection (b) of this section, a motor vehicle fails to conform to the applicable regulations under section 7521 of this title as determined under subsection (b) of this section such nonconformity shall be remedied by the manufacturer at the cost of the manufacturer pursuant to such warranty as provided in subsection (b)(2) of this section (without regard to subparagraph (C) thereof).

(3) Nothing in section 7543(a) of this title shall be construed to prohibit a State from testing, or requiring testing of, a motor vehicle after the date of sale of such vehicle to the ultimate purchaser (except that no new motor vehicle manufacturer or dealer may be required to conduct testing under this paragraph).

(July 14, 1955, ch. 360, title II, § 207, as added Dec. 31, 1970, Pub. L. 91-604, § 8(a), 84 Stat. 1696, and amended Aug. 7, 1977, Pub. L. 95-95, title II, §§ 205, 208-210, 212, 91 Stat. 754-756, 758; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(70)-(72), 91 Stat. 1403.)

CODIFICATION

Section was formerly classified to section 1857f-5a of this title.

PRIOR PROVISIONS

A prior section 207 of act July 14, 1955, was renumbered section 208 by Pub. L. 91-604 and is set out as section 7542 of this title.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-190, § 14(a)(70), designated provisions contained in cl. (3) of subsec. (a), formerly set out as containing cls. (1), (2), and (3), to be par. (3) of subsec. (a) after the amendment by Pub. L. 95-95, § 209(b), which designated provisions of former subsec. (a) as par. (1) and former cls. (1) and (2) as (A) and (B) of par. (1) and added a new par. (2).

Pub. L. 95-95, § 205, added cl. (3).

Subsec. (b). Pub. L. 95-95, § 209(a), (c), added provisions to par. (2) that no warranty be held invalid on the basis of any part used in the maintenance or repair of a vehicle or engine if the part was certified as provided in subsec. (a)(2) of this section, and, following par. (2), added provisions defining the term "emission control device or system".

Subsec. (c)(3). Pub. L. 95-95, § 208, designated existing provisions as subpars. (A) and (C), added requirement for the bold face printing of a required notice on the first page of the written maintenance instructions in subpar. (A) as so designated, and added subpar. (B).

Subsec. (f). Pub. L. 95-190, § 14(a)(71), redesignated subsec. (f) as added by Pub. L. 95-95, § 212, as (h).

Subsec. (g). Pub. L. 95-95, § 210, added subsec. (g).

Subsec. (h). Pub. L. 95-190, § 14(a)(71), redesignated subsec. (f) as added by Pub. L. 95-95, § 212, as (h).

Subsec. (h)(2). Pub. L. 95-190, § 14(a)(72), substituted "determined under" for "determined and".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section

406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

EFFECTIVE DATE

Section not applicable to vehicles or engines imported into the United States before the sixtieth day after Dec. 31, 1970, see section 8(b) of Pub. L. 91-604, set out as an Effective Date note under section 7525 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7521, 7522, 7525, 7543, 7550, 7607 of this title.

§ 7542. Records and reports

(a) Manufacturer's responsibility

Every manufacturer shall establish and maintain such records, make such reports, and provide such information, as the Administrator may reasonably require to enable him to determine whether such manufacturer has acted or is acting in compliance with this part and regulations thereunder and shall, upon request of an officer or employee duly designated by the Administrator, permit such officer or employee at reasonable times, to have access to and copy such records.

(b) Availability to public; trade secrets

Any records, reports or information obtained under subsection (a) of this section shall be available to the public, except that upon a showing satisfactory to the Administrator by any person that records, reports, or information, or particular part thereof (other than emission data), to which the Administrator has access under this section if made public, would divulge methods or processes entitled to protection as trade secrets of such person, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such record, report, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter or when relevant in any proceeding under this chapter. Nothing in this section shall authorize the withholding of information by the Administrator or any officer or employee under his control, from the duly authorized committees of the Congress.

(July 14, 1955, ch. 360, title II, § 208, formerly § 207, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 994, amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 501, renumbered and amended Dec. 31, 1970, Pub. L. 90-604, §§ 8(a), 10(a), 11(a)(2)(A), 15(c)(a), 84 Stat. 1694, 1700, 1705, 1713.)

CODIFICATION

Section was formerly classified to section 1857f-6 of this title.

PRIOR PROVISIONS

A prior section 208 of Act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 501, was renumbered section 209 by Pub. L. 91-604, and is set out as section 7543 of this title.

A prior section 208 of Act July 14, 1955, forming a part of such Act as originally enacted, was renumbered section 212 by Pub. L. 90-148, renumbered section 213 by Pub. L. 91-604, and renumbered 214 by Pub. L. 93-319, § 10, June 22, 1974, 88 Stat. 261, and is set out as section 7550 of this title.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-604, §§ 11(a)(2)(A), 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing therein and "part" for "subchapter".

Subsec. (b). Pub. L. 91-604, §§ 10(a), 15(c)(2), substituted provisions authorizing the Administrator to make available to the public any records, reports, of information obtained under subsec. (a) of this section, except those shown to the Administrator to be entitled to protection as trade secrets, for provisions that all information reported or otherwise obtained by the Secretary or his representative pursuant to subsec. (a) of this section, which information contains or relates to a trade secret or other matter referred to in section 1905 of title 18, be considered confidential for the purpose of such section 1905, and substituted "Administrator" for "Secretary".

1967—Pub. L. 90-148 reenacted section without change.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7414, 7522, 7525, 7550 of this title.

§ 7543. State standards

(a) Prohibition

No State or any political subdivision thereof shall adopt or attempt to enforce any standard relating to the control of emissions from new motor vehicles or new motor vehicle engines subject to this part. No State shall require certification, inspection, or any other approval relating to the control of emissions from any new motor vehicle or new motor vehicle engine as condition precedent to the initial retail sale, titling (if any), or registration of such motor vehicle, motor vehicle engine, or equipment.

(b) Waiver

(1) The Administrator shall, after notice and opportunity for public hearing, waive application of this section to any State which has adopted standards (other than crankcase emission standards) for the control of emissions from new motor vehicles or new motor vehicle engines prior to March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards. No such waiver shall be granted if the Administrator finds that—

(A) the determination of the State is arbitrary and capricious,

(B) such State does not need such State standards to meet compelling and extraordinary conditions, or

(C) such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title.

(2) If each State standard is at least as stringent as the comparable applicable Federal standard, such State standard shall be deemed to be at least as protective of health and welfare as such Federal standards for purposes of paragraph (1).

(3) In the case of any new motor vehicle or new motor vehicle engine to which State standards apply pursuant to a waiver granted under paragraph (1), compliance with such State standards shall be treated as compliance with applicable Federal standards for purposes of this subchapter.

(c) Certification of vehicle parts or engine parts

Whenever a regulation with respect to any motor vehicle part or motor vehicle engine part is in effect under section 7541(a)(2) of this title, no State or political subdivision thereof shall adopt or attempt to enforce any standard or any requirement of certification, inspection, or approval which relates to motor vehicle emissions and is applicable to the same aspect of such part. The preceding sentence shall not apply in the case of a State with respect to which a waiver is in effect under subsection (b) of this section.

(d) Control, regulation, or restrictions on registered or licensed motor vehicles

Nothing in this part shall preclude or deny to any State or political subdivision thereof the right otherwise to control, regulate, or restrict the use, operation, or movement of registered or licensed motor vehicles.

(July 14, 1955, ch. 306, title II, § 209, formerly § 208, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 501, renumbered and amended Dec. 31, 1970, Pub. L. 91-604, §§ 8(a), 11(a)(2)(A), 15(c)(2), 84 Stat. 1694, 1705, 1713; Aug. 7, 1977, Pub. L. 95-95, title II, §§ 207, 221, 91 Stat. 755, 762.)

CODIFICATION

Section was formerly classified to section 1857f-6a of this title.

PRIOR PROVISIONS

A prior section 209 of Act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 502, was renumbered section 210 by Pub. L. 91-604 and is set out as section 7544 of this title.

A prior section 209 of Act July 14, 1955, ch. 360, title II, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 995, relating to appropriations for the fiscal years ending June 30, 1966, 1967, 1968, and 1969, was set out as section 1857f-8 of this title and was repealed by Pub. L. 89-675, § 2(b) Oct. 15, 1966, 80 Stat. 954.

AMENDMENTS

1977—Subsec. (b). Pub. L. 95-95, § 207, designated existing provisions as par. (1), substituted "March 30, 1966, if the State determines that the State standards will be, in the aggregate, at least as protective of public health and welfare as applicable Federal standards" for "March 30, 1966, unless he finds that such State does not require standards more stringent than applicable Federal standards to meet compelling the extraordinary conditions or that such State standards and accompanying enforcement procedures are not consistent with section 7521(a) of this title" in par. (1) as so designated, added subpars. (A), (B), and (C) in par. (1) as so designated, and added pars. (2) and (3).

Subsec. (c). Pub. L. 95-95, § 221, added subsec. (c). Former subsec. (c) redesignated (d).

Subsec. (d). Pub. L. 95-95, § 221, redesignated subsec. (c) as (d).

1970—Subsec. (a). Pub. L. 91-604, § 11(a)(2)(A), substituted "part" for "subchapter".

Subsec. (b). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary".

Subsec. (c). Pub. L. 91-604, § 11(a)(2)(A), substituted "part" for "subchapter".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7416, 7507, 7541, 7545 of this title; title 15 section 2002.

§ 7544. State grants

The Administrator is authorized to make grants to appropriate State agencies in an amount up to two-thirds of the cost of developing and maintaining effective vehicle emission devices and systems inspection and emission testing and control programs, except that—

(1) no such grant shall be made for any part of any State vehicle inspection program which does not directly relate to the cost of the air pollution control aspects of such a program;

(2) no such grant shall be made unless the Secretary of Transportation has certified to the Administrator that such program is consistent with any highway safety program developed pursuant to section 402 of title 23; and

(3) no such grant shall be made unless the program includes provisions designed to insure that emission control devices and systems on vehicles in actual use have not been discontinued or rendered inoperative.

Grants may be made under this section by way of reimbursement in any case in which amounts have been expended by the State before the date on which any such grant was made.

(July 14, 1955, ch. 306, title II, § 210, formerly § 209, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 502, and renumbered and amended Dec. 31, 1970, Pub. L. 91-604, §§ 8(a), 10(b), 84 Stat. 1694, 1700; Aug. 7, 1977, Pub. L. 95-95, title II, § 204, 91 Stat. 754.)

CODIFICATION

Section was formerly classified to section 1857f-6b of this title.

PRIOR PROVISIONS

A prior section 210 of Act July 14, 1955, was renumbered section 211 by Pub. L. 91-604 and is set out as section 7545 of this title.

AMENDMENTS

1977—Pub. L. 95-95 added provision allowing grants to be made by way of reimbursement in any case in which amounts have been expended by States before the date on which the grants were made.

1970—Pub. L. 91-604, § 10(b), substituted provisions authorizing the Administrator to make grants to appropriate State agencies for the development and maintenance of effective vehicle emission devices and systems inspection and emission testing and control programs, for provisions authorizing the Secretary to make grants to appropriate State air pollution control agencies for the development of meaningful uniform motor vehicle emission device inspection and emission testing programs.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7545. Regulation of fuels

(a) Authority of Administrator to regulate

The Administrator may by regulation designate any fuel or fuel additive and, after such date or dates as may be prescribed by him, no manufacturer or processor of any such fuel or additive may sell, offer for sale, or introduce into commerce such fuel or additive unless the Administrator has registered such fuel or additive in accordance with subsection (b) of this section.

(b) Registration requirement

(1) For the purpose of registration of fuels and fuel additives, the Administrator shall require—

(A) the manufacturer of any fuel to notify him as to the commercial identifying name and manufacturer of any additive contained in such fuel; the range of concentration of any additive in the fuel; and the purpose-in-use of any such additive; and

(B) the manufacturer of any additive to notify him as to the chemical composition of such additive.

(2) For the purpose of registration of fuels and fuel additives, the Administrator may also require the manufacturer of any fuel or fuel additive—

(A) to conduct tests to determine potential public health effects of such fuel or additive (including, but not limited to, carcinogenic, teratogenic, or mutagenic effects), and

(B) to furnish the description of any analytical technique that can be used to detect and measure any additive in such fuel, the recommended range of concentration of such additive, and the recommended purpose-in-use of such additive, and such other information as is reasonable and necessary to determine the emissions, resulting from the use of the fuel or additive contained in such fuel, the effect of such fuel or additive on the emission control performance of any vehicle or vehicle engine, or the extent to which such emissions affect the public health or welfare.

Tests under subparagraph (A) shall be conducted in conformity with test procedures and protocols established by the Administrator. The result of such tests shall not be considered confidential.

(3) Upon compliance with the provision of this subsection, including assurances that the Administrator will receive changes in the information required, the Administrator shall register such fuel or fuel additive.

(c) Offending fuels and fuel additives; control; prohibition

(1) The Administrator may, from time to time on the basis of information obtained under subsection (b) of this section or other information available to him, by regulation, control or prohibit the manufacture, introduction into commerce, offering for sale, or sale of any fuel or fuel additive for use in a motor vehicle or motor vehicle engine (A) if in the judgment of the Administrator any emission product of such fuel or fuel additive causes, or contributes, to air pollution which may reasonably be anticipated to endanger the public health or welfare, or (B) if emission products of such fuel or fuel additive will impair to a significant degree the performance of any emission control device or system which is in general use, or which the Administrator finds has been developed to a point where in a reasonable time it would be in general use were such regulation to be promulgated.

(2)(A) No fuel, class of fuels, or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (A) of paragraph (1) except after consideration of all relevant medical and scientific evidence available to him, including consideration of other technologically or economically feasible means of achieving emission standards under section 7521 of this title.

(B) No fuel or fuel additive may be controlled or prohibited by the Administrator pursuant to clause (B) of paragraph (1) except after consideration of available scientific and economic data, including a cost benefit analysis comparing emission control devices or systems which are or will be in general use and require the proposed control or prohibition with emission control devices or systems which are or will be in general use and do not require the proposed control or prohibition. On request of a manufacturer of motor vehicles, motor vehicle engines, fuels, or fuel additives submitted within 10 days of notice of proposed rulemaking, the Administrator shall hold a public hearing and publish findings with respect to any matter he is required to consider under this subparagraph. Such findings shall be published at the time of promulgation of final regulations.

(C) No fuel or fuel additive may be prohibited by the Administrator under paragraph (1) unless he finds, and publishes such finding, that in his judgment such prohibition will not cause the use of any other fuel or fuel additive which will produce emissions which will endanger the public health or welfare to the same or greater degree than the use of the fuel or fuel additive proposed to be prohibited.

(3)(A) For the purpose of obtaining evidence and data to carry out paragraph (2), the Administrator may require the manufacturer of any motor vehicle or motor vehicle engine to furnish any information which has been developed concerning the emissions from motor vehicles resulting from the use of any fuel or fuel additive, or the effect of such use on the performance of any emission control device or system.

(B) In obtaining information under subparagraph (A), section 7607(a) of this title (relating to subpenas) shall be applicable.

(4)(A) Except as otherwise provided in subparagraph (B) or (C), no State (or political subdivision thereof) may prescribe or attempt to enforce, for purposes of motor vehicle emission control, any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle or motor vehicle engine—

(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the Federal Register, or

(ii) if the Administrator has prescribed under paragraph (1) a control or prohibition applicable to such fuel or fuel additive, unless State prohibition or control is identical to the prohibition or control prescribed by the Administrator.

(B) Any State for which application of section 7543(a) of this title has at any time been waived under section 7543(b) of this title may at any time prescribe and enforce, for the purpose of motor vehicle emission control, a control or prohibition respecting any fuel or fuel additive.

(C) A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under section 7410 of this title so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements.

(d) Penalty

Any person who violates subsection (a) or (f) of this section or the regulations prescribed under subsection (c) of this section or who fails to furnish any information required by the Administrator under subsection (b) of this section shall forfeit and pay to the United States a civil penalty of $10,000 for each and every day of the continuance of such violation, which shall accrue to the United States and be recovered in a civil suit in the name of the United States, brought in the district where such person has his principal office or in any district in which he does business. The Administrator may, upon application therefor, remit or mitigate any forfeiture provided for in this subsection and he shall have authority to determine the facts upon all such applications.

(e) Testing of fuels and fuel additives

(1) Not later than one year after August 7, 1977, and after notice and opportunity for a public hearing, the Administrator shall promulgate regulations which implement the authority under subsection (b)(2)(A) and (B) of this section with respect to each fuel or fuel additive which is registered on the date of promulgation of such regulations and with respect to each fuel or fuel additive for which an application for registration is filed thereafter.

(2) Regulations under subsection (b) of this section to carry out this subsection shall require that the requisite information be provided to the Administrator by each such manufacturer—

(A) prior to registration, in the case of any fuel or fuel additive which is not registered on the date of promulgation of such regulations; or

(B) not later than three years after the date of promulgation of such regulations, in the case of any fuel or fuel additive which is registered on such date.

(3) In promulgating such regulations, the Administrator may—

(A) exempt any small business (as defined in such regulations) from or defer or modify the requirements of, such regulations with respect to any such small business;

(B) provide for cost-sharing with respect to the testing of any fuel or fuel additive which is manufactured or processed by two or more persons or otherwise provide for shared responsibility to meet the requirements of this section without duplication; or

(C) exempt any person from such regulations with respect to a particular fuel or fuel additive upon a finding that any additional testing of such fuel or fuel additive would be duplicative of adequate existing testing.

(f) New fuels and fuel additives

(1) Effective upon March 31, 1977, it shall be unlawful for any manufacturer of any fuel or fuel additive to first introduce into commerce, or to increase the concentration in use of, any fuel or fuel additive for general use in light duty motor vehicles manufactured after model year 1974 which is not substantially similar to any fuel or fuel additive utilized in the certification of any model year 1975, or subsequent model year, vehicle or engine under section 7525 of this title.

(2) Effective November 30, 1977, it shall be unlawful for any manufacturer of any fuel to introduce into commerce any gasoline which contains a concentration of manganese in excess of .0625 grams per gallon of fuel, except as otherwise provided pursuant to a waiver under paragraph (4).

(3) Any manufacturer of any fuel or fuel additive which prior to March 31, 1977, and after January 1, 1974, first introduced into commerce or increased the concentration in use of a fuel or fuel additive that would otherwise have been prohibited under paragraph (1) if introduced

on or after March 31, 1977 shall, not later than September 15, 1978, cease to distribute such fuel or fuel additive in commerce. During the period beginning 180 days after August 7, 1977, and before September 15, 1978, the Administrator shall prohibit, or restrict the concentration of any fuel additive which he determines will cause or contribute to the failure of an emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified under section 7525 of this title.

(4) The Administrator, upon application of any manufacturer of any fuel or fuel additive, may waive the prohibitions established under paragraph (1) or (3) of this subsection or the limitation specified in paragraph (2) of this subsection, if he determines that the applicant has established that such fuel or fuel additive or a specified concentration thereof, and the emission products of such fuel or additive or specified concentration thereof, will not cause or contribute to a failure of any emission control device or system (over the useful life of any vehicle in which such device or system is used) to achieve compliance by the vehicle with the emission standards with respect to which it has been certified pursuant to section 7525 of this title. If the Administrator has not acted to grant or deny an application under this paragraph within one hundred and eighty days of receipt of such application, the waiver authorized by this paragraph shall be treated as granted.

(5) No action of the Administrator under this section may be stayed by any court pending judicial review of such action.

(g) Small refineries

(1) For the purposes of this subsection:

(A) The terms "gasoline" and "refinery" have the meaning provided under regulations of the Administrator promulgated under this section.

(B) The term "small refinery" means a refinery or a portion of refinery producing gasoline—

(i) the gasoline producing capacity of which was in operation or under construction at any time during the one-year period immediately preceding October 1, 1976, and

(ii) which has a crude oil or bona fide feed stock capacity (as determined by the Administrator) of 50,000 barrels per day or less, and

(iii) which is owned or controlled by a refiner with a total combined crude oil or bona fide feed stock capacity (as determined by the Administrator) of 137,500 barrels per day or less.

(2) No regulations of the Administrator under this section (or any amendment or revision thereof) respecting the control or prohibition of lead additives in gasoline shall require a small refinery prior to October 1, 1982, to reduce the average lead content per gallon of gasoline refined at such refinery below the applicable amount specified in the table below:

If the average gasoline production of the small refinery for the immediately preceding calendar year (or, in the case of refineries under construction, half the designed crude oil capacity) was (in barrels per day):	The applicable amount is (in grams per gallon)
5,000 or under	2.65.
5,001 to 10,000	2.15.
10,001 to 15,000	1.65.
15,001 to 20,000	1.30.
20,001 to 25,000	.80.
25,001 or over	As prescribed by the Administrator, but not greater than 0.80.

The Administrator may promulgate such regulations as he deems appropriate with respect to the reduction of the average lead content of gasoline refined by small refineries on and after October 1, 1982, taking into account the experience under the preceding provisions of this paragraph.

(3) Effective on August 7, 1977, the regulations of the Administrator under this section respecting fuel additives (40 CFR part 80) shall be deemed amended to comply with the requirement contained in paragraph (2).

(4) Nothing in this section shall be construed to preempt the right of any State to take action as permitted by subsection (c)(4) of this section.

(July 14, 1955, ch. 360, title II, § 211, formerly § 210, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 502, and renumbered and amended Dec. 31, 1970, Pub. L. 91-604, §§ 8(a), 9(a), 84 Stat. 1694, 1698; Nov. 18, 1971, Pub. L. 92-157, title III, § 302(d), (e), 85 Stat. 464; Aug. 7, 1977, Pub. L. 95-95, title II, §§ 222, 223, title IV, § 401(e), 91 Stat. 762, 764, 791; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(73), (74), 91 Stat. 1403, 1404.)

CODIFICATION

Section was formerly classified to section 1857f-6c of this title.

PRIOR PROVISIONS

A prior section 211 of act July 14, 1955, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 503, providing for a national emissions standards study, was set out as section 1857f-6d of this title and was repealed by section 8(a) of Pub. L. 91-604.

AMENDMENTS

1977—Subsec. (c)(1)(A). Pub. L. 95-95, § 401(e), substituted "if in the judgment of the Administrator any emission product of such fuel or fuel additive causes, or contributes, to air pollution which may reasonably be anticipated to endanger" for "if any emission products of such fuel or fuel additive will endanger".

Subsec. (d). Pub. L. 95-95, § 222(b), added "or (f)" following "Any person who violates subsection (a)".

Subsecs. (e), (f). Pub. L. 95-95, § 222(a), added subsecs. (e) and (f).

Subsec. (f)(2). Pub. L. 95-190, § 14(a)(73), added provision relating to waiver under par. (4) of this subsec., and struck out "first" preceding "introduce".

Subsec. (f)(4). Pub. L. 95-190, § 14(a)(74), added provision relating to applicability of limitation specified under par. (2) of this subsection.

Subsec. (g). Pub. L. 95-95, § 223, added subsec. (g).

1971—Subsec. (c)(3)(A). Pub. L. 92-157, § 302(d), substituted "purpose of obtaining" for "purpose of".

Subsec. (d). Pub. L. 92-157, § 302(e), substituted "subsection (b)" for "subsection (c)" where appearing the second time.

1970—Subsec. (a). Pub. L. 91-604, § 9(a), substituted "Administrator" for "Secretary" as the registering authority, added references to fuel additives, and substituted the selling, offering for sale, and introduction into commerce of fuel or fuel additives, for the delivery for introduction into interstate commerce or delivery to another person who can reasonably be expected to deliver fuel into interstate commerce.

Subsec. (b). Pub. L. 91-604, § 9(a), designated existing provisions as pars. (1) and (3), added par. (2), and substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (c). Pub. L. 91-604, § 9(a), substituted provisions covering the control or prohibition of offending fuels and fuel additives, for provisions covering trade secrets and substituted "Administrator" for "Secretary" wherever appearing.

Subsec. (d). Pub. L. 91-604, § 9(a), added references to failure to obey regulations prescribed under subsec. (c) and failure to furnish information required by the Administrator under subsec. (c), increased the daily civil penalty from $1,000 to $10,000 and substituted "Administrator" for "Secretary".

Subsec. (e). Pub. L. 91-604, § 9(a), struck out subsec. (e) which directed the various United States Attorneys to prosecute for the recovery of forfeitures.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7416, 7604, 7607, 7617 of this title.

§ 7546. Low-emission vehicles

(a) Definitions

For the purpose of this section—

(1) The term "Board" means the Low-Emission Vehicle Certification Board.

(2) The term "Federal Government" includes the legislative, executive, and judicial branches of the Government of the United States, and the government of the District of Columbia.

(3) The term "motor vehicle" means any self-propelled vehicle designed for use in the United States on the highways, other than a vehicle designed or used for military field training, combat, or tactical purposes.

(4) The term "low-emission vehicle" means any motor vehicle which—

(A) emits any air pollutant in amounts significantly below new motor vehicle standards applicable under section 7521 of this title at the time of procurement to that type of vehicle; and

(B) with respect to all other air pollutants meets the new motor vehicle standards applicable under section 7521 of this title at the time of procurement to that type of vehicle.

(5) The term "retail price" means (A) the maximum statutory price applicable to any class or model of motor vehicle; or (B) in any case where there is no applicable maximum statutory price, the most recent procurement price paid for any class or model of motor vehicle.

(b) Low-Emission Vehicle Certification Board

(1) There is established a Low-Emission Vehicle Certification Board to be composed of the Administrator or his designee, the Secretary of Transportation or his designee, the Chairman of the Council on Environmental Quality or his designee, the Director of the National Highway Traffic Safety Administration in the Department of Transportation, the Administrator of General Services, and two members appointed by the President. The President shall designate one member of the Board as Chairman.

(2) Any member of the Board not employed by the United States may receive compensation at the rate of $125 for each day such member is engaged upon work of the Board. Each member of the Board shall be reimbursed for travel expenses, including per diem in lieu of subsistence as authorized by section 5703 of title 5 for persons in the Government service employed intermittently.

(3)(A) The Chairman, with the concurrence of the members of the Board, may employ and fix the compensation of such additional personnel as may be necessary to carry out the functions of the Board, but no individual so appointed shall receive compensation in excess of the rate authorized for GS-18 by section 5332 of title 5.

(B) The Chairman may fix the time and place of such meetings as may be required, but a meeting of the Board shall be called whenever a majority of its members so request.

(C) The Board is granted all other power necessary for meeting its responsibilities under this section.

(c) Determination of qualifying vehicles

The Administrator shall determine which models or classes of motor vehicles qualify as low-emission vehicles in accordance with the provisions of this section.

(d) Certification

(1) The Board shall certify any class or model of motor vehicles—

(A) for which a certification application has been filed in accordance with paragraph (3) of this subsection;

(B) which is a low-emission vehicle as determined by the Administrator; and

(C) which it determines is suitable for use as a substitute for a class or model of vehicles at that time in use by agencies of the Federal Government.

The Board shall specify with particularity the class or model of vehicles for which the class or model of vehicles described in the application is a suitable substitute. In making the determination under this subsection the Board shall consider the following criteria:

(i) the safety of the vehicle;

(ii) its performance characteristics;

(iii) its reliability potential;

(iv) its serviceability;

(v) its fuel availability;

(vi) its noise level; and

(vii) its maintenance costs as compared with the class or model of motor vehicle for which it may be a suitable substitute.

(2) Certification under this section shall be effective for a period of one year from the date of issuance.

(3)(A) Any party seeking to have a class or model of vehicle certified under this section shall file a certification application in accordance with regulations prescribed by the Board.

(B) The Board shall publish a notice of each application received in the Federal Register.

(C) The Administrator and the Board shall make determinations for the purpose of this section in accordance with procedures prescribed by regulation by the Administrator and the Board, respectively.

(D) The Administrator and the Board shall conduct whatever investigation is necessary, including actual inspection of the vehicle at a place designated in regulations prescribed under subparagraph (A).

(E) The Board shall receive and evaluate written comments and documents from interested parties in support of, or in opposition to, certification of the class or model of vehicle under consideration.

(F) Within 90 days after the receipt of a properly filed certification application, the Administrator shall determine whether such class or model of vehicle is a low-emission vehicle, and within 180 days of such determination, the Board shall reach a decision by majority vote as to whether such class or model of vehicle, having been determined to be a low-emission vehicle, is a suitable substitute for any class or classes of vehicles presently being purchased by the Federal Government for use by its agencies.

(G) Immediately upon making any determination or decision under subparagraph (F), the Administrator and the Board shall each publish in the Federal Register notice of such determination or decision, including reasons therefor and in the case of the Board any dissenting views.

(e) Acquisition by Federal government in lieu of other vehicles; procurement costs; contract provisions

(1) Certified low-emission vehicles shall be acquired by purchase or lease by the Federal Government for use by the Federal Government in lieu of other vehicles if the Administrator of General Services determines that such certified vehicles have procurement costs which are no more than 150 per centum of the retail price of the least expensive class or model of motor vehicle for which they are certified substitutes.

(2) In order to encourage development of inherently low-polluting propulsion technology, the Board may, at its discretion, raise the premium set forth in paragraph (1) of this subsection to 200 per centum of the retail price of any class or model of motor vehicle for which a certified low-emission vehicle is a certified substitute, if the Board determines that the certified low-emission vehicle is powered by an inherently low-polluting propulsion system.

(3) Data relied upon by the Board and the Administrator in determining that a vehicle is a certified low-emission vehicle shall be incorporated in any contract for the procurement of such vehicle.

(f) Priority for purchase by procuring agency

The procuring agency shall be required to purchase available certified low-emission vehicles which are eligible for purchase to the extent they are available before purchasing any other vehicles for which any low-emission vehicle is a certified substitute. In making purchasing selections between competing eligible certified low-emission vehicles, the procuring agency shall give priority to (1) any class or model which does not require extensive periodic maintenance to retain its low-polluting qualities or which does not require the use of fuels which are more expensive than those of the classes or models of vehicles for which it is a certified substitute; and (2) passenger vehicles other than buses.

(g) Waiver of statutory price limitations

For the purpose of procuring certified low-emission vehicles any statutory price limitations shall be waived.

(h) Testing of emissions from certified low-emission vehicles purchased by the Federal government; procedure; recertification

The Administrator shall, from time to time as the Board deems appropriate, test the emissions from certified low-emission vehicles purchased by the Federal Government. If at any time he finds that the emission rates exceed the rates on which certification under this section was based, the Administrator shall notify the Board. Thereupon the Board shall give the supplier of such vehicles written notice of this finding, issue public notice of it, and give the supplier an opportunity to make necessary repairs, adjustments, or replacements. If no such repairs, adjustments, or replacements are made within a period to be set by the Board, the Board may order the supplier to show cause why the vehicle involved should be eligible for recertification.

(i) Authorization of appropriations

There are authorized to be appropriated for paying additional amounts for motor vehicles pursuant to, and for carrying out the provisions of, this section, $5,000,000 for the fiscal year ending June 30, 1971, and $25,000,000 for each of the four succeeding fiscal years.

(j) Promulgation by Board of implementing procedures

The Board shall promulgate the procedures required to implement this section within one hundred and eighty days after December 31, 1970.

(July 14, 1955, title II, § 212, as added Dec. 31, 1970, Pub. L. 91-604, § 10(c), 84 Stat. 1700, and amended Dec. 31, 1970, Pub. L. 91-605, § 202(a), 84 Stat. 1739; Apr. 9, 1973, Pub. L. 93-15, § 1(b), 87 Stat. 11; June 22, 1974, Pub. L. 93-319, § 13(b), 88 Stat. 265.)

CODIFICATION

Section was formerly classified to section 1857f-6e of this title.

PRIOR PROVISIONS

A prior section 212 of act July 14, 1955, was renumbered section 213 by Pub. L. 91-604 and renumbered 214 by Pub. L. 93-319, § 10, and is set out as section 7550 of this title.

AMENDMENTS

1974—Subsec. (i). Pub. L. 93-319 substituted "four" for "three" succeeding fiscal years and thus authorized appropriation of $25,000,000 for fiscal year ending June 30, 1975.

1973—Subsec. (i). Pub. L. 93-15 substituted "three" for "two" succeeding fiscal years and thus authorized appropriation of $25,000,000 for fiscal year ending June 30, 1974.

CHANGE OF NAME

National Highway Traffic Safety Administration was substituted in subsec. (b)(1) for "National Highway Safety Bureau" on authority of section 202(a) of Pub. L. 91-605.

§ 7547. Fuel economy improvement from new motor vehicles

(a)(1)[1] The Administrator and the Secretary of Transportation shall conduct a joint study, and shall report to the Committee on Interstate and Foreign Commerce of the United States House of Representatives and the Committees on Environment and Public Works and Commerce, Science, and Transportation of the United States Senate within one hundred and twenty days following June 22, 1974, concerning the practicability of establishing a fuel economy improvement standard of 20 per centum for new motor vehicles manufactured during and after model year 1980. Such study and report shall include, but not be limited to the technological problems of meeting any such standard, including the leadtime involved; the test procedures required to determine compliance; the economic costs associated with such standard, including any beneficial economic impact; the various means of enforcing such standard; the effect on consumption of natural resources, including energy consumed; and the impact of applicable safety and emission standards. In the course of performing such study, the Administrator and the Secretary of Transportation shall utilize the research previously performed in the Department of Transportation, and the Administrator and the Secretary shall consult with the Federal Energy Administrator, the Chairman of the Council on Environmental Quality, and the Secretary of the Treasury. The Office of Management and Budget may review such report before its submission to such committees of the Congress, but such Office may not revise the report or delay its submission beyond the date prescribed for its submission, and may submit to Congress its comments respecting such report. In connection with such study, the Administrator may utilize the authority provided in section 7607(a) of this title to obtain necessary information.

(2) For the purpose of this section, the term "fuel economy improvement standard" means a requirement of a percentage increase in the number of miles of transportation provided by a manufacturer's entire annual production of new motor vehicles per unit of fuel consumed, as determined for such manufacturer in accordance with test procedures established by the Administrator pursuant to this chapter. Such term shall not include any requirement for any design standard or any other requirement specifying or otherwise limiting the manufacturer's discretion in deciding how to comply with the fuel economy improvement standard by any lawful means.

(July 14, 1955, ch. 360, title II, § 213, as added June 22, 1974, Pub. L. 93-319, § 10, 88 Stat. 261, and amended S. Res. 4, Feb. 4, 1977.)

CODIFICATION

Section was formerly classified to section 1857f-6f of this title.

CHANGE OF NAME

The Committee on Public Works and the Committee on Commerce of the Senate were abolished and replaced by the Committee on Environment and Public Works and the Committee on Commerce, Science, and Transportation of the Senate, respectively, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

FEDERAL ENERGY ADMINISTRATOR

The "Federal Energy Administrator", for purposes of this chapter, to mean the Administrator of the Federal Energy Administration established by Pub. L. 93-275, May 7, 1974, 88 Stat. 97, set out as section 761 et seq. of Title 15, Commerce and Trade, but with the term to mean any officer of the United States designated as such by the President until the Federal Energy Administrator takes office and after the Federal Energy Administration ceases to exist, see section 798 of Title 15, Commerce and Trade.

The Federal Energy Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

§ 7548. Study of particulate emissions from motor vehicles

(a) Study and analysis

(1) The Administrator shall conduct a study concerning the effects on health and welfare of particulate emissions from motor vehicles or motor vehicle engines to which section 7521 of this title applies. Such study shall characterize and quantify such emissions and analyze the relationship of such emissions to various fuels and fuel additives.

(2) The study shall also include an analysis of particulate emissions from mobile sources which are not related to engine emissions (including, but not limited to tire debris, and asbestos from brake lining).

(b) Report to Congress

The Administrator shall report to the Congress the findings and results of the study conducted under subsection (a) of this section not later than two years after August 7, 1977. Such report shall also include recommendations for standards or methods to regulate particulate emissions described in paragraph (2) of subsection (a) of this section.

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[1] So in original. No subsec. (b) has been enacted.

(July 14, 1955, ch. 360, title II, § 214, as added Aug. 7, 1977, Pub. L. 95-95, title II, § 224(d), 91 Stat. 767.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY ON SUSPENDED PARTICULATE MATTER

Section 403(a) of Pub. L. 95-95, which provided that not later than 18 months after Aug. 7, 1977, the Administrator of the Environmental Protection Agency, in cooperation with the National Academy of Sciences, study and report to Congress on the relationship between the size, weight, and chemical composition of suspended particulate matter and the nature and degree of the endangerment to public health or welfare presented by such particulate matter and the availability of technology for controlling such particulate matter, was omitted from the Code as executed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7521 of this title.

§ 7549. High altitude performance adjustments

(a) Instruction of the manufacturer

(1) Any action taken with respect to any element of design installed on or in a motor vehicle or motor vehicle engine in compliance with regulations under this subchapter (including any alteration or adjustment of such element), shall be treated as not in violation of section 7522(a) of this title if such action is performed in accordance with high altitude adjustment instructions provided by the manufacturer under subsection (b) of this section and approved by the Administrator.

(2) If the Administrator finds that adjustments or modifications made pursuant to instructions of the manufacturer under paragraph (1) will not insure emission control performance with respect to each standard under section 7521 of this title at least equivalent to that which would result if no such adjustments or modifications were made, he shall disapprove such instructions. Such finding shall be based upon minimum engineering evaluations consistent with good engineering practice.

(b) Regulations

(1) Instructions respecting each class or category of vehicles or engines to which this title applies providing for such vehicle and engine adjustments and modifications as may be necessary to insure emission control performance at different altitudes shall be submitted by the manufacturer to the Administrator pursuant to regulations promulgated by the Administrator.

(2) Any knowing violation by a manufacturer of requirements of the Administrator under paragraph (1) shall be treated as a violation by such manufacturer of section 7522(a)(3) of this title for purposes of the penalties contained in section 7524 of this title.

(3) Such instructions shall provide, in addition to other adjustments, for adjustments for vehicles moving from high altitude areas to low altitude areas after the initial registration of such vehicles.

(c) Manufacturer parts

No instructions under this section respecting adjustments or modifications may require the use of any manufacturer parts (as defined in section 7522(a) of this title) unless the manufacturer demonstrates to the satisfaction of the Administrator that the use of such manufacturer parts is necessary to insure emission control performance.

(d) State inspection and maintenance programs

Before January 1, 1981 the authority provided by this section shall be available in any high altitude State (as determined under regulations of the Administrator under regulations promulgated before August 7, 1977) but after December 31, 1980, such authority shall be available only in any such State in which an inspection and maintenance program for the testing of motor vehicle emissions has been instituted for the portions of the State where any national ambient air quality standard for auto-related pollutants has not been attained.

(July 14, 1955, ch. 360, title II, § 215, as added Aug. 7, 1977, Pub. L. 95-95, title II, § 211(b), 91 Stat. 757, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(75), 91 Stat. 1404.)

CODIFICATION

In subsec. (d), "August 7, 1977" was substituted for "the date of enactment of this Act" to reflect the probable intent of Congress that such date of enactment meant the date of enactment of Pub. L. 95-95.

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-190 substituted "December 31, 1980" for "December 31, 1981".

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7522 of this title.

§ 7550. Definitions

As used in this part—

(1) The term "manufacturer" as used in sections 7521, 7522, 7525, 7541, and 7542 of this title means any person engaged in the manufacturing or assembling of new motor vehicles or new motor vehicle engines, or importing such vehicles or engines for resale, or who acts for and is under the control of any such person in connection with the distribution of new motor vehicles or new motor vehicle engines, but shall not include any dealer with respect to new motor vehicles or new motor vehicle engines received by him in commerce.

(2) The term "motor vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

(3) Except with respect to vehicles or engines imported or offered for importation, the term "new motor vehicle" means a motor vehicle the equitable or legal title to which has never been transferred to an ultimate purchaser; and the term "new motor vehicle engine" means an engine in a new motor vehicle or a motor vehicle engine the equitable or legal title to which has never been transferred to the ultimate purchaser; and with respect to imported vehicles or engines, such terms mean a motor vehicle and engine, respectively, manufactured after the effective date of a regulation issued under section 7521 of this title which is applicable to such vehicle or engine (or which would be applicable to such vehicle or engine had it been manufactured for importation into the United States).

(4) The term "dealer" means any person who is engaged in the sale or the distribution of new motor vehicles or new motor vehicle engines to the ultimate purchaser.

(5) The term "ultimate purchaser" means, with respect to any new motor vehicle or new motor vehicle engine, the first person who in good faith purchases such new motor vehicle or new engine for purposes other than resale.

(6) The term "commerce" means (A) commerce between any place in any State and any place outside thereof; and (B) commerce wholly within the District of Columbia.

(July 14, 1955, ch. 360, title II, § 216, formerly § 208, as added Oct. 20, 1965, Pub. L. 89-272, title I, § 101(8), 79 Stat. 994, renumbered § 212, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 503, renumbered § 213, and amended Dec. 31, 1970, Pub. L. 91-604, §§ 8(a), 10(d), 11(a)(2)(A), 84 Stat. 1694, 1703, 1705, renumbered § 214, June 22, 1974, Pub. L. 93-319, § 10, 88 Stat. 261, renumbered § 216, Aug. 7, 1977, Pub. L. 95-95, title II, § 224(d), 91 Stat. 767.)

CODIFICATION

Section was formerly classified to section 1857f-7 of this title.

AMENDMENTS

1970—Pub. L. 91-604, § 11(a)(2)(A), substituted "part" for "subchapter".

Par. (1). Pub. L. 91-604, § 10(d)(1), added reference to section 7521 of this title.

Par. (3). Pub. L. 91-604, § 10(d)(2), added the provisions which defined such terms with respect to imported vehicles or engines.

1967—Pub. L. 90-148 inserted "as used in sections 7522, 7525, 7541, and 7542 of this title" following "manufacturer" in par. (1).

§ 7551. Study and report on fuel consumption

(a) Report by Administrator of Environmental Protection Agency

Following each motor vehicle model year, the Administrator of the Environmental Protection Agency shall report to the Congress respecting the motor vehicle fuel consumption associated with the standards applicable for the immediately preceding model year.

(b) Reports by Secretary of Transportation and Secretary of Energy

The Secretary of Transportation and the Secretary of Energy shall each submit to Congress, as promptly as practicable following submission by the Administrator of the fuel consumption report referred to in subsection (a) of this section, separate reports respecting such fuel consumption.

(Pub. L. 95-95, title II, § 203, Aug. 7, 1977, 91 Stat. 754.)

CODIFICATION

Section was enacted as part of Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685, known as the Clean Air Act Amendments of 1977, and not as part of act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685, known as the Clean Air Act, which comprises this chapter.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

PART B—AIRCRAFT EMISSION STANDARDS

§ 7571. Establishment of standards

(a) Study; proposed standards; hearings; issuance of regulations

(1) Within 90 days after December 31, 1970, the Administrator shall commence a study and investigation of emissions of air pollutants from aircraft in order to determine—

(A) the extent to which such emissions affect air quality in air quality control regions throughout the United States, and

(B) the technological feasibility of controlling such emissions.

(2) The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare.

(3) The Administrator shall hold public hearings with respect to such proposed standards. Such hearings shall, to the extent practicable, be held in air quality control regions which are most seriously affected by aircraft emissions. Within 90 days after the issuance of such proposed regulations, he shall issue such regulations with such modifications as he deems appropriate. Such regulations may be revised from time to time.

(b) Effective date of regulations

Any regulation prescribed under this section (and any revision thereof) shall take effect after such period as the Administrator finds necessary (after consultation with the Secretary of Transportation) to permit the development and application of the requisite technology, giving appropriate consideration to the cost of compliance within such period.

(c) Regulations which create hazards to aircraft safety

Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety. Any such finding shall include a reasonably specific statement of the basis upon which the finding was made.

(July 14, 1955, ch. 360, title II, § 231, as added Dec. 31, 1970, Pub. L. 91-604, § 11(a)(1), 84 Stat. 1703, and amended Aug. 7, 1977, Pub. L. 95-95, title II, § 225, title IV, § 401(f), 91 Stat. 769, 791.)

CODIFICATION

Section was formerly classified to section 1857f-9 of this title.

AMENDMENTS

1977—Subsec. (a)(2). Pub. L. 95-95, § 401(f), substituted "The Administrator shall, from time to time, issue proposed emission standards applicable to the emission of any air pollutant from any class or classes of aircraft engines which in his judgment causes, or contributes to, air pollution which may reasonably be anticipated to endanger public health or welfare" for "Within 180 days after commencing such study and investigation, the Administrator shall publish a report of such study and investigation and shall issue proposed emission standards applicable to emissions of any air pollutant from any class or classes of aircraft or aircraft engines which in his judgment cause or contribute to or are likely to cause or contribute to air pollution which endangers the public health or welfare".

Subsec. (c). Pub. L. 95-95, § 225, substituted "Any regulations in effect under this section on August 7, 1977, or proposed or promulgated thereafter, or amendments thereto, with respect to aircraft shall not apply if disapproved by the President, after notice and opportunity for public hearing, on the basis of a finding by the Secretary of Transportation that any such regulation would create a hazard to aircraft safety" for "Any regulations under this section, or amendments thereto, with respect to aircraft, shall be prescribed only after consultation with the Secretary of Transportation in order to assure appropriate consideration for aircraft safety" and added provision that findings include a reasonably specific statement of the basis upon which the finding was made.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7458, 7572, 7607, 7617 of this title; title 49 section 1421.

§ 7572. Enforcement of standards

(a) Regulations to insure compliance with standards

The Secretary of Transportation, after consultation with the Administrator, shall prescribe regulations to insure compliance with all standards prescribed under section 7571 of this title by the Administrator. The regulations of the Secretary of Transportation shall include provisions making such standards applicable in the issuance, amendment, modification, suspension, or revocation of any certificate authorized by the Federal Aviation Act [49 U.S.C. 1301 et seq.] or the Department of Transportation Act [49 U.S.C. 1651 et seq.]. Such Secretary shall insure that all necessary inspections are accomplished, and,[1] may execute any power or duty vested in him by any other provision of law in the execution of all powers and duties vested in him under this section.

(b) Notice and appeal rights

In any action to amend, modify, suspend, or revoke a certificate in which violation of an emission standard prescribed under section 7571 of this title or of a regulation prescribed under subsection (a) of this section is at issue, the certificate holder shall have the same notice and appeal rights as are prescribed for such holders in the Federal Aviation Act of 1958 [49 U.S.C. 1301 et seq.] or the Department of Transportation Act [49 U.S.C. 1651 et seq.], except that in any appeal to the National Transportation Safety Board, the Board may amend, modify, or revoke the order of the Secretary of Transportation only if it finds no violation of such standard or regulation and that such amendment, modification, or revocation is consistent with safety in air transportation.

(July 14, 1955, ch. 360, title II, § 232, as added Dec. 31, 1970, Pub. L. 91-604, § 11(a)(1), 84 Stat. 1704.)

REFERENCES IN TEXT

The Federal Aviation Act, referred to in subsec. (a), probably means Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731, as amended, known as the Federal Aviation Act of 1958, which is classified principally to chapter 20 (§ 1301 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1301 of Title 49 and Tables.

The Federal Aviation Act of 1958, referred to in subsec. (b), is Pub. L. 85-726, Aug. 23, 1958, 72 Stat. 731. For classification see paragraph set out above.

The Department of Transportation Act, referred to in subsecs. (a) and (b), is Pub. L. 89-670, Oct. 15, 1966, 80 Stat. 931, as amended, and is classified principally to chapter 23 (§ 1651 et seq.) of Title 49, Transportation. For complete classification of this Act to the Code, see Short Title note set out under section 1651 of Title 49 and Tables.

CODIFICATION

Section was formerly classified to section 1857f-10 of this title.

§ 7573. State standards and controls

No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part.

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[1] So in original. The comma probably should not have appeared.

(July 14, 1955, ch. 360, title II, § 233, as added Dec. 31, 1970, Pub. L. 91-604, § 11(a)(1), 84 Stat. 1704.)

CODIFICATION

Section was formerly classified to section 1857f-11 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7416 of this title.

§ 7574. Definitions

Terms used in this part (other than Administrator) shall have the same meaning as such terms have under section 1301 of title 49.

(July 14, 1955, ch. 360, title II, § 234, as added Dec. 31, 1970, Pub. L. 91-604, § 11(a)(1), 84 Stat. 1705.)

CODIFICATION

Section was formerly classified to section 1857f-12 of this title.

SUBCHAPTER III—GENERAL PROVISIONS

§ 7601. Administration

(a) Regulations; delegation of powers and duties; regional officers and employees

(1) The Administrator is authorized to prescribe such regulations as are necessary to carry out his functions under this chapter. The Administrator may delegate to any officer or employee of the Environmental Protection Agency such of his powers and duties under this chapter, except the making of regulations, as he may deem necessary or expedient.

(2) Not later than one year after August 7, 1977, the Administrator shall promulgate regulations establishing general applicable procedures and policies for regional officers and employees (including the Regional Administrator) to follow in carrying out a delegation under paragraph (1), if any. Such regulations shall be designed—

(A) to assure fairness and uniformity in the criteria, procedures, and policies applied by the various regions in implementing and enforcing the chapter;

(B) to assure at least an adequate quality audit of each State's performance and adherence to the requirements of this chapter in implementing and enforcing the chapter, particularly in the review of new sources and in enforcement of the chapter; and

(C) to provide a mechanism for identifying and standardizing inconsistent or varying criteria, procedures, and policies being employed by such officers and employees in implementing and enforcing the chapter.

(b) Detail of Environmental Protection Agency personnel to air pollution control agencies

Upon the request of an air pollution control agency personnel of the Environmental Protection Agency may be detailed to such agency for the purpose of carrying out the provisions of this chapter.

(c) Payments under grants; installments; advances or reimbursements

Payments under grants made under this chapter may be made in installments, and in advance or by way of reimbursement, as may be determined by the Administrator.

(July 14, 1955, ch. 360, title III, § 301, formerly § 8, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 400, renumbered Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 504; Dec. 31, 1970, Pub. L. 91-604, §§ 3(b)(2), 15(c)(2), 84 Stat. 1677, 1713; Aug. 7, 1977, Pub. L. 95-95, title III, § 305(e), 91 Stat. 776.)

CODIFICATION

Section was formerly classified to section 1857g of this title.

PRIOR PROVISIONS

A prior section 8 of act July 14, 1955, ch. 360, as added Sept. 22, 1959, Pub. L. 86-365, § 2, 73 Stat. 646, which was classified to a prior section 1857g of this title prior to the general amendment of this chapter by Pub. L. 88-206, provided for cooperative effort.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-95 designated existing provisions as par. (1) and added par. (2).

1970—Subsec. (a). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary" and "Environmental Protection Agency" for "Department of Health, Education, and Welfare".

Subsec. (b). Pub. L. 91-604, § 3(b)(2), substituted "Environmental Protection Agency" for "Public Health Service" and struck out provisions covering the payment of salaries and allowances.

Subsec. (c). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary".

1967—Pub. L. 90-148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7405 of this title.

§ 7602. Definitions

When used in this chapter—

(a) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(b) The term "air pollution control agency" means any of the following:

(1) A single State agency designated by the Governor of that State as the official State air pollution control agency for purposes of this chapter;

(2) An agency established by two or more States and having substantial powers or duties pertaining to the prevention and control of air pollution;

(3) A city, county, or other local government health authority, or, in the case of any city, county, or other local government in which there is an agency other than the health authority charged with responsibility for enforcing ordinances or laws relating to the prevention and control of air pollution, such other agency; or

(4) An agency of two or more municipalities located in the same State or in different States and having substantial powers or duties pertaining to the prevention and control of air pollution.

(c) The term "interstate air pollution control agency" means—

(1) an air pollution control agency established by two or more States, or

(2) an air pollution control agency of two or more municipalities located in different States.

(d) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa and includes the Commonwealth of the Northern Mariana Islands.

(e) The term "person" includes an individual, corporation, partnership, association, State, municipality, political subdivision of a State, and any agency, department, or instrumentality of the United States and any officer, agent, or employee thereof.

(f) The term "municipality" means a city, town, borough, county, parish, district, or other public body created by or pursuant to State law.

(g) The term "air pollutant" means any air pollution agent or combination of such agents, including any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air.

(h) All language referring to effects on welfare includes, but is not limited to, effects on soils, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, and hazards to transportation, as well as effects on economic values and on personal comfort and well-being.

(i) The term "Federal land manager" means, with respect to any lands in the United States, the Secretary of the department with authority over such lands.

(j) Except as otherwise expressly provided, the terms "major stationary source" and "major emitting facility" mean any stationary facility or source of air pollutants which directly emits, or has the potential to emit, one hundred tons per year or more of any air pollutant (including any major emitting facility or source of fugitive emissions of any such pollutant, as determined by rule by the Administrator).

(k) The terms "emission limitation" and "emission standard" mean a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(*l*) The term "standard of performance" means a requirement of continuous emission reduction, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction.

(m) The term "means of emission limitation" means a system of continuous emission reduction (including the use of specific technology or fuels with specified pollution characteristics).

(n) The term "primary standard attainment date" means the date specified in the applicable implementation plan for the attainment of a national primary ambient air quality standard for any air pollutant.

(*o*) The term "delayed compliance order" means an order issued by the State or by the Administrator to an existing stationary source, postponing the date required under an applicable implementation plan for compliance by such source with any requirement of such plan.

(p) The term "schedule and timetable of compliance" means a schedule of required measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

(July 14, 1955, ch. 360, title III, § 302, formerly § 9, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 400, renumbered Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 504; Dec. 31, 1970, Pub. L. 91-604, § 15(a)(1), (c)(1), 84 Stat. 1710, 1713; Aug. 7, 1977, Pub. L. 95-95, title II, § 218(c), title III, § 301, 91 Stat. 761, 769; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(76), 91 Stat. 1404.)

CODIFICATION

Section was formerly classified to section 1857h of this title.

PRIOR PROVISIONS

Provisions similar to subsecs. (b) and (d) of this section were contained in a prior section 1857e, act July 14, 1955, ch. 360, § 6, 69 Stat. 323, prior to the general amendment of this chapter by Pub. L. 88-206.

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-95 § 218(c), added "and includes the Commonwealth of the Northern Mariana Islands" following "American Samoa".

Subsec. (e). Pub. L. 95-190 substituted "individual, corporation" for "individual corporation".

Pub. L. 95-95, § 301(b), expanded the definition of "person" to include agencies, departments, and instrumentalities of the United States and officers, agents, and employees thereof.

Subsec. (g). Pub. L. 95-95, § 301(c), expanded the definition of "air pollutant" so as, expressly, to include physical, chemical, biological, and radioactive substances or matter emitted into or otherwise entering the ambient air.

Subsecs. (l) to (p). Pub. L. 95-95, § 301(a), added subsecs. (l) to (p).

1970—Subsec. (a). Pub. L. 91-604, § 15(c)(1), substituted a definition of "Administrator" as meaning the Administrator of the Environmental Protection Agency for a definition of "Secretary" as meaning the Secretary of Health, Education, and Welfare.

Subsec. (g). Pub. L. 91-604, § 15(a)(1), added subsec. (g) defining "air pollutant". Former subsec. (g) redesignated as subsec. (h) and amended.

Subsec. (h). Pub. L. 91-604, § 15(a)(1), redesignated subsec. (g) as subsec. (h) and, in subsec. (h) as so redesignated, substituted references to effects on soil, water, crops, vegetation, manmade materials, animals, wildlife, weather, visibility, and climate for references to injury to agricultural crops and livestock, and inserted references to effects on economic values and on personal comfort and well being.

1967—Pub. L. 90-148 reenacted section without change.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7405, 7413, 8302 of this title; title 26 section 169.

§ 7603. Emergency powers

(a) Suits in United States district court; emergency orders; consultation

Notwithstanding any other provision of this chapter, the Administrator, upon receipt of evidence that a pollution source or combination of sources (including moving sources) is presenting an imminent and substantial endangerment to the health of persons, and that appropriate State or local authorities have not acted to abate such sources, may bring suit on behalf of the United States in the appropriate United States district court to immediately restrain any person causing or contributing to the alleged pollution to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources). Prior to taking any action under this section, the Administrator shall consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking. Such order shall be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period. Whenever the Administrator brings such an action within such period, such order shall be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter.

(b) Willful violation or failure or refusal to comply with orders

Any person who willfully violates, or fails or refuses to comply with, any order issued by the Administrator under subsection (a) of this section may, in an action brought in the appropriate United States district court to enforce such order, be fined not more than $5,000 for each day during which such violation occurs or failure to comply continues.

(July 14, 1955, ch. 360, title III, § 303, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1705, and amended Aug. 7, 1977, Pub. L. 95-95, title III, § 302(a), 91 Stat. 770.)

CODIFICATION

Section was formerly classified to section 1857h-1 of this title.

PRIOR PROVISIONS

A prior section 303 of act July 14, 1955, was renumbered section 310 by Pub. L. 91-604, and is set out as section 7610 of this title.

AMENDMENTS

1977—Subsec. (a). Pub. L. 95-95 designated existing provisions as subsec. (a) and, in subsec. (a) as so designated, added provisions that, if it is not practicable to assure prompt protection of the health of persons solely by commencement of a civil action, the Administrator may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source (or sources), that, prior to taking any action under this section, the Administrator consult with the State and local authorities in order to confirm the correctness of the information on which the action proposed to be taken is based and to ascertain the action which such authorities are, or will be, taking, that the order be effective for a period of not more than twenty-four hours unless the Administrator brings an action under the first sentence of this subsection before the expiration of such period, and that, whenever the Administrator brings such an action within such period, such order be effective for a period of forty-eight hours or such longer period as may be authorized by the court pending litigation or thereafter.

Subsec. (b). Pub. L. 95-95 added subsec. (b).

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L.

95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7410, 7458, 7613 of this title; title 15 section 7172.

§ 7604. Citizen suits

(a) Authority to bring civil action; jurisdiction

Except as provided in subsection (b) of this section, any person may commence a civil action on his own behalf—

(1) against any person (including (i) the United States, and (ii) any other governmental instrumentality or agency to the extent permitted by the Eleventh Amendment to the Constitution) who is alleged to be in violation of (A) an emission standard or limitation under this chapter or (B) an order issued by the Administrator or a State with respect to such a standard or limitation,

(2) against the Administrator where there is alleged a failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator, or

(3) against any person who proposes to construct or constructs any new or modified major emitting facility without a permit required under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment) or who is alleged to be in violation of any condition of such permit.

The district courts shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such an emission standard or limitation, or such an order, or to order the Administrator to perform such act or duty, as the case may be.

(b) Notice

No action may be commenced—

(1) under subsection (a)(1) of this section—

(A) prior to 60 days after the plaintiff has given notice of the violation (i) to the Administrator, (ii) to the State in which the violation occurs, and (iii) to any alleged violator of the standard, limitation, or order, or

(B) if the Administrator or State has commenced and is diligently prosecuting a civil action in a court of the United States or a State to require compliance with the standard, limitation, or order, but in any such action in a court of the United States any person may intervene as a matter of right.

(2) under subsection (a)(2) of the section prior to 60 days after the plaintiff has given notice of such action to the Administrator.

except that such action may be brought immediately after such notification in the case of an action under this section respecting a violation of section 7412(c)(1)(B) of this title or an order issued by the Administrator pursuant to section 7413(a) of this title. Notice under this subsection shall be given in such manner as the Administrator shall prescribe by regulation.

(c) Venue; intervention by Administrator

(1) Any action respecting a violation by a stationary source of an emission standard or limitation or an order respecting such standard or limitation may be brought only in the judicial district in which such source is located.

(2) In such action under this section, the Administrator, if not a party, may intervene as a matter of right.

(d) Award of costs; security

The court, in issuing any final order in any action brought pursuant to subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate. The court may, if a temporary restraining order or preliminary injunction is sought, require the filing of a bond or equivalent security in accordance with the Federal Rules of Civil Procedure.

(e) Nonrestriction of other rights

Nothing in this section shall restrict any right which any person (or class of persons) may have under any statute or common law to seek enforcement of any emission standard or limitation or to seek any other relief (including relief against the Administrator or a State agency). Nothing in this section or in any other law of the United States shall be construed to prohibit, exclude, or restrict any State, local, or interstate authority from—

(1) bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court, or

(2) bringing any administrative enforcement action or obtaining any administrative remedy or sanction in any State or local administrative agency, department or instrumentality,

against the United States, any department, agency, or instrumentality thereof, or any officer, agent, or employee thereof under State or local law respecting control and abatement of air pollution. For provisions requiring compliance by the United States, departments, agencies, instrumentalities, officers, agents, and employees in the same manner as nongovernmental entities, see section 7418 of this title.

(f) Definition

For purposes of this section, the term "emission standard or limitation under this chapter" means—

(1) a schedule or timetable of compliance, emission limitation, standard of performance or emission standard,

(2) a control or prohibition respecting a motor vehicle fuel or fuel additive, or

(3) any condition or requirement of a permit under part C of subchapter I of this chapter (relating to significant deterioration of air quality) or part D of subchapter I of this chapter (relating to nonattainment), any condition or requirement of section 7413(d) of this title (relating to certain enforcement orders), section 7419 of this title (relating to

primary nonferrous smelter orders), any condition or requirement under an applicable implementation plan relating to transportation control measures, air quality maintenance plans, vehicle inspection and maintenance programs or vapor recovery requirements, section 7545(e) and (f) of this title (relating to fuels and fuel additives), section 7491 of this title (relating to visibility protection), any condition or requirement under part B of subchapter I of this chapter (relating to ozone protection), or any requirement under section 7411 or 7412 of this title (without regard to whether such requirement is expressed as an emission standard or otherwise),

which is in effect under this chapter (including a requirement applicable by reason of section 7418 of this title) or under an applicable implementation plan.

(July 14, 1955, ch. 360, title II, § 304, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1706, and amended Aug. 7, 1977, Pub. L. 95-95, title III, § 303(a)-(c), 91 Stat. 771, 772; Nov. 16, 1977, Pub. L. 95-190, § 14(a) (77), (78), 91 Stat. 1404.)

References in Text

The Federal Rules of Civil Procedure, referred to in subsec. (d), are set out in the Appendix to Title 28, Judiciary and Judicial Procedure.

Codification

Section was formerly classified to section 1857h-2 of this title.

Prior Provisions

A prior section 304 of act July 14, 1955, was renumbered section 311 by Pub. L. 91-604, and is set out as section 7611 of this title.

Amendments

1977—Subsec. (a)(3). Pub. L. 95-190, § 14(a)(77), added "or modified" following "new".

Pub. L. 95-95, § 303(a), added subsec. (a)(3).

Subsec. (e). Pub. L. 95-95, § 303(c), added provisions which prohibited any construction of this section or any other law of the United States which would prohibit, exclude, or restrict any State, local, or interstate authority from bringing any enforcement action or obtaining any judicial remedy or sanction in any State or local court against the United States or bringing any administrative enforcement action or obtaining any administrative remedy or sanction against the United States in any State or local administrative agency, department, or instrumentality under State or local law.

Subsec. (f)(3). Pub. L. 95-190, § 14(a)(78), added ", or" following "(relating to ozone protection)", substituted "any condition or requirement under an" for "requirements under an", and struck out "or" preceding "section 7491".

Pub. L. 95-95, § 303(b), added subsec. (f)(3).

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Pending Actions and Proceedings

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Section Referred to in Other Sections

This section is referred to in sections 7413, 7419, 7491, 7617 of this title.

§ 7605. Representation in litigation

(a) Attorney General; attorneys appointed by Administrator

The Administrator shall request the Attorney General to appear and represent him in any civil action instituted under this chapter to which the Administrator is a party. Unless the Attorney General notifies the Administrator that he will appear in such action, within a reasonable time, attorneys appointed by the Administrator shall appear and represent him.

(b) Memorandum of understanding regarding legal representation

In the event the Attorney General agrees to appear and represent the Administrator in any such action, such representation shall be conducted in accordance with, and shall include participation by, attorneys appointed by the Administrator to the extent authorized by, the memorandum of understanding between the Department of Justice and the Environmental Protection Agency, dated June 13, 1977, respecting representation of the agency by the department in civil litigation.

(July 14, 1955, ch. 360, title III, § 305, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1707, and amended Aug. 7, 1977, Pub. L. 95-95, title III, § 304(a), 91 Stat. 772.)

Codification

Section was formerly classified to section 1857h-3 of this title.

Prior Provisions

A prior section 305 of act July 14, 1955, was renumbered section 312 by Pub. L. 91-604, and is set out as section 7612 of this title.

Amendments

1977—Subsec. (a). Pub. L. 95-95 designated existing provisions as subsec. (a).

Subsec. (b). Pub. L. 95-95 added subsec. (b).

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section

406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

PENDING ACTIONS AND PROCEEDINGS

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7606. Federal procurement

(a) Contracts with violators prohibited

No Federal agency may enter into any contract with any person who is convicted of any offense under section 7413(c)(1) of this title for the procurement of goods, materials, and services to perform such contract at any facility at which the violation which gave rise to such conviction occurred if such facility is owned, leased, or supervised by such person. The prohibition in the preceding sentence shall continue until the Administrator certifies that the condition giving rise to such a conviction has been corrected.

(b) Notification procedures

The Administrator shall establish procedures to provide all Federal agencies with the notification necessary for the purposes of subsection (a) of this section.

(c) Federal agency contracts

In order to implement the purposes and policy of this chapter to protect and enhance the quality of the Nation's air, the President shall, not more than 180 days after December 31, 1970, cause to be issued an order (1) requiring each Federal agency authorized to enter into contracts and each Federal agency which is empowered to extend Federal assistance by way of grant, loan, or contract to effectuate the purpose and policy of this chapter in such contracting or assistance activities, and (2) setting forth procedures, sanctions, penalties, and such other provisions, as the President determines necessary to carry out such requirement.

(d) Exemptions; notification to Congress

The President may exempt any contract, loan, or grant from all or part of the provisions of this section where he determines such exemption is necessary in the paramount interest of the United States and he shall notify the Congress of such exemption.

(e) Annual report to Congress

The President shall annually report to the Congress on measures taken toward implementing the purpose and intent of this section, including but not limited to the progress and problems associated with implementation of this section.

(July 14, 1955, ch. 360, title III, § 306, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1707.)

CODIFICATION

Section was formerly classified to section 1857h-4 of this title.

PRIOR PROVISIONS

A prior section 306 of act July 14, 1955, ch. 360, title III, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506, renumbered section 313 Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1705, which related to additional reports to Congress, is set out as section 7613 of this title.

EXECUTIVE ORDER NO. 11602

Ex. Ord. No. 11602, June 29, 1971, 36 F.R. 12475, formerly set out as a note under this section, which related to the administration of the Clean Air Act with respect to Federal contracts, grants, or loans, was superseded by Ex. Ord. No. 11738, Sept. 10, 1973, 38 F.R. 25161, set out as a note below.

EX. ORD. NO. 11738. ADMINISTRATION OF THE CLEAN AIR ACT AND THE FEDERAL WATER POLLUTION CONTROL ACT WITH RESPECT TO FEDERAL CONTRACTS, GRANTS, OR LOANS

Ex. Ord. No. 11738, Sept. 10, 1973, 38 F.R. 25161, provided:

By virtue of the authority vested in me by the provisions of the Clean Air Act, as amended (42 U.S.C. 1857 et seq.) [now 42 U.S.C. 7401 et seq.], particularly section 306 of that Act as added by the Clean Air Amendments of 1970 (Public Law 91-604), [this section], and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), particularly section 508 of that Act as added by the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500) [33 U.S.C. 1368], it is hereby ordered as follows:

SECTION 1. *Policy.* It is the policy of the Federal Government to improve and enhance environmental quality. In furtherance of that policy, the program prescribed in this Order is instituted to assure that each Federal agency empowered to enter into contracts for the procurement of goods, materials, or services and each Federal agency empowered to extend Federal assistance by way of grant, loan, or contract shall undertake such procurement and assistance activities in a manner that will result in effective enforcement of the Clean Air Act [this chapter] (hereinafter referred to as "the Air Act") and the Federal Water Pollution Control Act (hereinafter referred to as "the Water Act") [33 U.S.C. 1251 et seq.].

SEC. 2. *Designation of Facilities.* (a) The Administrator of the Environmental Protection Agency (hereinafter referred to as "the Administrator") shall be responsible for the attainment of the purposes and objectives of this Order.

(b) In carrying out his responsibilities under this Order, the Administrator shall, in conformity with all applicable requirements of law, designate facilities which have given rise to a conviction for an offense under section 113(c)(1) of the Air Act [42 U.S.C. 7413(c)(1)] or section 309(c) of the Water Act [33 U.S.C. 1319(c)]. The Administrator shall, from time to time, publish and circulate to all Federal agencies lists of those facilities, together with the names and addresses of the persons who have been convicted of such offenses. Whenever the Administrator determines that the condition which gave rise to a conviction has been corrected, he shall promptly remove the facility and the name and address of the person concerned from the list.

SEC. 3. *Contracts, Grants, or Loans.* (a) Except as provided in section 8 of this Order, no Federal agency shall enter into any contract for the procurement of goods, materials, or services which is to be performed in whole or in part in a facility then designated by the Administrator pursuant to section 2.

(b) Except as provided in section 8 of this Order, no Federal agency authorized to extend Federal assistance by way of grant, loan, or contract shall extend such assistance in any case in which it is to be used to support any activity or program involving the use of a facility then designated by the Administrator pursuant to section 2.

SEC. 4. *Procurement, Grant, and Loan Regulations.* The Federal Procurement Regulations, the Armed Services Procurement Regulations, and to the extent necessary, any supplemental or comparable regulations issued by any agency of the Executive Branch shall, following consultation with the Administrator, be amended to require, as a condition of entering into, renewing, or extending any contract for the procurement of goods, materials, or services or extending any assistance by way of grant, loan, or contract, inclusion of a provision requiring compliance with the Air Act, the Water Act, and standards issued pursuant thereto in the facilities in which the contract is to be performed, or which are involved in the activity or program to receive assistance.

SEC. 5. *Rules and Regulations.* The Administrator shall issue such rules, regulations, standards, and guidelines as he may deem necessary or appropriate to carry out the purposes of this Order.

SEC. 6. *Cooperation and Assistance.* The head of each Federal agency shall take such steps as may be necessary to insure that all officers and employees of this agency whose duties entail compliance or comparable functions with respect to contracts, grants, and loans are familiar with the provisions of this Order. In addition to any other appropriate action, such officers and employees shall report promptly any condition in a facility which may involve noncompliance with the Air Act or the Water Act or any rules, regulations, standards, or guidelines issued pursuant to this Order to the head of the agency, who shall transmit such reports to the Administrator.

SEC. 7. *Enforcement.* The Administrator may recommend to the Department of Justice or other appropriate agency that legal proceedings be brought or other appropriate action be taken whenever he becomes aware of a breach of any provision required, under the amendments issued pursuant to section 4 of this Order, to be included in a contract or other agreement.

SEC. 8. *Exemptions—Reports to Congress.* (a) Upon a determination that the paramount interest of the United States so requires—

(1) The head of a Federal agency may exempt any contract, grant, or loan, and, following consultation with the Administrator, any class of contracts, grants or loans from the provisions of this Order. In any such case, the head of the Federal agency granting such exemption shall (A) promptly notify the Administrator of such exemption and the justification therefor; (B) review the necessity for each such exemption annually; and (C) report to the Administrator annually all such exemptions in effect. Exemptions granted pursuant to this section shall be for a period not to exceed one year. Additional exemptions may be granted for periods not to exceed one year upon the making of a new determination by the head of the Federal agency concerned.

(2) The Administrator may, by rule or regulation, exempt any or all Federal agencies from any or all of the provisions of this Order with respect to any class or classes of contracts, grants, or loans, which (A) involve less than specified dollar amounts, or (B) have a minimal potential impact upon the environment, or (C) involve persons who are not prime contractors or direct recipients of Federal assistance by way of contracts, grants, or loans.

(b) Federal agencies shall reconsider any exemption granted under subsection (a) whenever requested to do so by the Administrator.

(c) The Administrator shall annually notify the President and the Congress of all exemptions granted, or in effect, under this Order during the preceding year.

SEC. 9. *Related Actions.* The imposition of any sanction or penalty under or pursuant to this Order shall not relieve any person of any legal duty to comply with any provisions of the Air Act or the Water Act.

SEC. 10. *Applicability.* This Order shall not apply to contracts, grants, or loans involving the use of facilities located outside the United States.

SEC. 11. *Uniformity.* Rules, regulations, standards, and guidelines issued pursuant to this order and section 508 of the Water Act [33 U.S.C. 1368] shall, to the maximum extent feasible, be uniform with regulations issued pursuant to this order, Executive Order No. 11602 of June 29, 1971 [set out as a note above], and section 306 of the Air Act [this section].

SEC. 12. *Order Superseded.* Executive Order No. 11602 of June 29, 1971 [set out as a note above], is hereby superseded.

RICHARD NIXON.

§ 7607. Administrative proceedings and judicial review

(a) Administrative subpenas; confidentiality; witnesses

(1)[1] In connection with any determination under section 7410(f) or section 7521(b)(5) of this title, or for purposes of obtaining information under section 7521(b)(4) or 7545(c)(3) of this title, the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books, and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, to persons carrying out the National Academy of Sciences' study and investigation provided for in section 7521(c) of this title, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of contumacy or refusal to obey a subpena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

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[1] So in original. Subsec. (a) enacted without a par. (2).

(b) Judicial review

(1) A petition for review of action of the Administrator in promulgating any national primary or secondary ambient air quality standard, any emission standard or requirement under section 7412 of this title, any standard of performance or requirement under section 7411 of this title, any standard under section 7521 of this title (other than a standard required to be prescribed under section 7521(b)(1) of this title), any determination under section 7521(b)(5) of this title, any control or prohibition under section 7545 of this title, any standard under section 7571 of this title, any rule issued under section 7413, 7419, or under section 7420 of this title, or any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter may be filed only in the United States Court of Appeals for the District of Columbia. A petition for review of the Administrator's action in approving or promulgating any implementation plan under section 7410 of this title or section 7411(d) of this title, any order under section 7411(j) of this title, under section 7412(c) of this title, under section 7413(d) of this title, under section 7419 of this title, or under section 7420 of this title, or his action under section 1857c-10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977) or under regulations thereunder, or any other final action of the Administrator under this chapter (including any denial or disapproval by the Administrator under subchapter I of this chapter) which is locally or regionally applicable may be filed only in the United States Court of Appeals for the appropriate circuit. Notwithstanding the preceding sentence a petition for review of any action referred to in such sentence may be filed only in the United States Court of Appeals for the District of Columbia if such action is based on a determination of nationwide scope or effect and if in taking such action the Administrator finds and publishes that such action is based on such a determination. Any petition for review under this subsection shall be filed within sixty days from the date notice of such promulgation, approval, or action appears in the Federal Register, except that if such petition is based solely on grounds arising after such sixtieth day, then any petition for review under this subsection shall be filed within sixty days after such grounds arise.

(2) Action of the Administrator with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in civil or criminal proceedings for enforcement.

(c) Additional evidence

In any judicial proceeding in which review is sought of a determination under this chapter required to be made on the record after notice and opportunity for hearing, if any party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the Administrator, the court may order such additional evidence (and evidence in rebuttal thereof) to be taken before the Administrator, in such manner and upon such terms and conditions as to[1] the court may deem proper. The Administrator may modify his findings as to the facts, or make new findings, by reason of the additional evidence so taken and he shall file such modified or new findings, and his recommendation, if any, for the modification or setting aside of his original determination, with the return of such additional evidence.

(d) Rulemaking

(1) This subsection applies to—

(A) the promulgation or revision of any national ambient air quality standard under section 7409 of this title,

(B) the promulgation or revision of an implementation plan by the Administrator under section 7410(c) of this title,

(C) the promulgation or revision of any standard of performance under section 7411 of this title or emission standard under section 7412 of this title,

(D) the promulgation or revision of any regulation pertaining to any fuel or fuel additive under section 7545 of this title,

(E) the promulgation or revision of any aircraft emission standard under section 7571 of this title,

(F) promulgation or revision of regulations pertaining to orders for coal conversion under section 7413(d)(5) of this title (but not including orders granting or denying any such orders),

(G) promulgation or revision of regulations pertaining to primary nonferrous smelter orders under section 7419 of this title (but not including the granting or denying of any such order),

(H) promulgation or revision of regulations under part B of subchapter I of this chapter (relating to stratosphere and ozone protection),

(I) promulgation or revision of regulations under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality and protection of visibility),

(J) promulgation or revision of regulations under section 7521 of this title and test procedures for new motor vehicles or engines under section 7525 of this title and the revision of a standard under section 7521(a)(3) of this title,

(K) promulgation or revision of regulations for noncompliance penalties under section 7420 of this title,

(L) promulgation or revision of any regulations promulgated under section 7541 of this title (relating to warranties and compliance by vehicles in actual use),

(M) action of the Administrator under section 7426 of this title (relating to interstate pollution abatement), and

(N) such other actions as the Administrator may determine.

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[1] So in original. The word "to" probably should not appear.

The provisions of section 553 through 557 and section 706 of title 5 shall not, except as expressly provided in this subsection, apply to actions to which this subsection applies. This subsection shall not apply in the case of any rule or circumstance, referred to in subparagraphs (A) or (B) of subsection 553(b) of title 5.

(2) Not later than the date of proposal of any action to which this subsection applies, the Administrator shall establish a rulemaking docket for such action (hereinafter in this subsection referred to as a "rule"). Whenever a rule applies only within a particular State, a second (identical) docket shall be simultaneously established in the appropriate regional office of the Environmental Protection Agency.

(3) In the case of any rule to which this subsection applies, notice of proposed rulemaking shall be published in the Federal Register, as provided under section 553(b) of title 5, shall be accompanied by a statement of its basis and purpose and shall specify the period available for public comment (hereinafter referred to as the "comment period"). The notice of proposed rulemaking shall also state the docket number, the location or locations of the docket, and the times it will be open to public inspection. The statement of basis and purpose shall include a summary of—

(A) the factual data on which the proposed rule is based;

(B) the methodology used in obtaining the data and in analyzing the data; and

(C) the major legal interpretations and policy considerations underlying the proposed rule.

The statement shall also set forth or summarize and provide a reference to any pertinent findings, recommendations, and comments by the Scientific Review Committee established under section 7409(d) of this title and the National Academy of Sciences, and, if the proposal differs in any important respect from any of these recommendations, an explanation of the reasons for such differences. All data, information, and documents referred to in this paragraph on which the proposed rule relies shall be included in the docket on the date of publication of the proposed rule.

(4)(A) The rulemaking docket required under paragraph (2) shall be open for inspection by the public at reasonable times specified in the notice of proposed rulemaking. Any person may copy documents contained in the docket. The Administrator shall provide copying facilities which may be used at the expense of the person seeking copies, but the Administrator may waive or reduce such expenses in such instances as the public interest requires. Any person may request copies by mail if the person pays the expenses, including personnel costs to do the copying.

(B)(i) Promptly upon receipt by the agency, all written comments and documentary information on the proposed rule received from any person for inclusion in the docket during the comment period shall be placed in the docket. The transcript of public hearings, if any, on the proposed rule shall also be included in the docket promptly upon receipt from the person who transcribed such hearings. All documents which become available after the proposed rule has been published and which the Administrator determines are of central relevance to the rulemaking shall be placed in the docket as soon as possible after their availability.

(ii) The drafts of proposed rules submitted by the Administrator to the Office of Management and Budget for any interagency review process prior to proposal of any such rule, all documents accompanying such drafts, and all written comments thereon by other agencies and all written responses to such written comments by the Administrator shall be placed in the docket no later than the date of proposal of the rule. The drafts of the final rule submitted for such review process prior to promulgation and all such written comments thereon, all documents accompanying such drafts, and written responses thereto shall be placed in the docket no later than the date of promulgation.

(5) In promulgating a rule to which this subsection applies (i) the Administrator shall allow any person to submit written comments, data, or documentary information; (ii) the Administrator shall give interested persons an opportunity for the oral presentation of data, views, or arguments, in addition to an opportunity to make written submissions; (iii) a transcript shall be kept of any oral presentation; and (iv) the Administrator shall keep the record of such proceeding open for thirty days after completion of the proceeding to provide an opportunity for submission of rebuttal and supplementary information.

(6)(A) The promulgated rule shall be accompanied by (i) a statement of basis and purpose like that referred to in paragraph (3) with respect to a proposed rule and (ii) an explanation of the reasons for any major changes in the promulgated rule from the proposed rule.

(B) The promulgated rule shall also be accompanied by a response to each of the significant comments, criticisms, and new data submitted in written or oral presentations during the comment period.

(C) The promulgated rule may not be based (in part or whole) on any information or data which has not been placed in the docket as of the date of such promulgation.

(7)(A) The record for judicial review shall consist exclusively of the material referred to in paragraph (3), clause (i) of paragraph (4)(B), and subparagraphs (A) and (B) of paragraph (6).

(B) Only an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment (including any public hearing) may be raised during judicial review. If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. If the Administrator refuses to convene such a proceeding, such person may seek review of such refusal in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section). Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

(8) The sole forum for challenging procedural determinations made by the Administrator under this subsection shall be in the United States court of appeals for the appropriate circuit (as provided in subsection (b) of this section) at the time of the substantive review of the rule. No interlocutory appeals shall be permitted with respect to such procedural determinations. In reviewing alleged procedural errors, the court may invalidate the rule only if the errors were so serious and related to matters of such central relevance to the rule that there is a substantial likelihood that the rule would have been significantly changed if such errors had not been made.

(9) In the case of review of any action of the Administrator to which this subsection applies, the court may reverse any such action found to be—

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right; or

(D) without observance of procedure required by law, if (i) such failure to observe such procedure is arbitrary or capricious, (ii) the requirement of paragraph (7)(B) has been met, and (iii) the condition of the last sentence of paragraph (8) is met.

(10) Each statutory deadline for promulgation of rules to which this subsection applies which requires promulgation less than six months after date of proposal may be extended to not more than six months after date of proposal by the Administrator upon a determination that such extension is necessary to afford the public, and the agency, adequate opportunity to carry out the purposes of this subsection.

(11) The requirements of this subsection shall take effect with respect to any rule the proposal of which occurs after ninety days after August 7, 1977.

(e) Other methods of judicial review not authorized

Nothing in this chapter shall be construed to authorize judicial review of regulations or orders of the Administrator under this chapter, except as provided in this section.

(f) Costs

In any judicial proceeding under this section, the court may award costs of litigation (including reasonable attorney and expert witness fees) whenever it determines that such award is appropriate.

(g) Stay, injunction, or similar relief in proceedings relating to noncompliance penalties

In any action respecting the promulgation of regulations under section 7420 of this title or the administration or enforcement of section 7420 of this title no court shall grant any stay, injunctive, or similar relief before final judgment by such court in such action.

(July 14, 1955, ch. 360, title III, § 307, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1707, and amended Nov. 18, 1971, Pub. L. 92-157, title III, § 302(a), 85 Stat. 464; June 22, 1974, Pub. L. 93-319, § 6(c), 88 Stat. 259; Aug. 7, 1977, Pub. L. 95-95, title III, §§ 303(d), 305(a), (c), (f)-(h), 91 Stat. 772, 776, 777; Nov. 16, 1977, Pub. L. 95-190, § 14(a)(79), (80), 91 Stat. 1404.)

REFERENCES IN TEXT

Section 1857c-10(c)(2)(A), (B), or (C) of this title (as in effect before August 7, 1977), referred to in subsec. (b)(1), was in the original "section 119(c)(2)(A), (B), or (C) (as in effect before the date of enactment of the Clean Air Act Amendments of 1977)", meaning section 119 of act July 14, 1955, ch. 360, title I, as added June 22, 1974, Pub. L. 93-319, § 3, 88 Stat. 248, (which was classified to section 1857c-10 of this title) as in effect prior to the enactment of Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 691, effective Aug. 7, 1977. Section 112(b)(1) of Pub. L. 95-95 repealed section 119 of act July 14, 1955, ch. 360, title I, as added by Pub. L. 93-319, and provided that all references to such section 119 in any subsequent enactment which supersedes Pub. L. 93-319 shall be construed to refer to section 113(d) of the Clean Air Act and to paragraph (5) thereof in particular which is classified to subsec. (d)(5) of section 7413 of this title. Section 117(b) of Pub. L. 95-95 added a new section 119 of act July 14, 1955, which is classified to section 7419 of this title.

"Part B of this subchapter" and "part C of this subchapter", referred to in subsec. (d)(1)(H) and (I), respectively, were in the original "subtitle B of title I" and "subtitle C of title I", respectively, and were so translated to reflect the probable intent of Congress.

CODIFICATION

Section was formerly classified to section 1857h-5 of this title.

PRIOR PROVISIONS

A prior section 307 of act July 14, 1955, ch. 360, title III, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506, renumbered § 314, Dec. 31, 1970, Pub. L. 91-604, § 12(a) 84 Stat. 1705, which related to labor standards, is set out as section 7614 of this title.

AMENDMENTS

1977—Subsec. (b)(1). Pub. L. 95-190 in material relating to filing of petitions for review in the United States Court of Appeals for the District of Columbia added provision respecting requirements under sections 7411 and 7412 of this title, and substituted provisions authorizing review of any rule issued under section 7413, 7419, or 7420 of this title, for provisions authorizing review of any rule or order issued under section 7420 of this title, relating to noncompliance penalties, and in material relating to filing of petitions for review in the United States Court of Appeals for the appropriate circuit added provision respecting review under section 7411(j), 7412(c), 7413(d), or 7419 of this title, provision authorizing review under section 1857c-10(c)(2)(A), (B), or (C) to the period prior to Aug. 7, 1977, and provisions authorizing review of denials or disapprovals by the Administrator under subchapter I of this chapter.

Pub. L. 95-95, § 305(c), (h), added rules or orders issued under section 7420 of this title (relating to noncompliance penalties) and any other nationally applicable regulations promulgated, or final action taken, by the Administrator under this chapter to the enumeration of actions of the Administrator for which a petition for review may be filed only in the United

States Court of Appeals for the District of Columbia, added the approval or promulgation by the Administrator of orders under section 7420 of this title, or any other final action of the Administrator under this chapter which is locally or regionally applicable to the enumeration of actions by the Administrator for which a petition for review may be filed only in the United States Court of Appeals for the appropriate circuit, added provision that petitions otherwise capable of being filed in the Court of Appeals for the appropriate circuit may be filed only in the Court of Appeals for the District of Columbia if the action is based on a determination of nationwide scope, and increased from 30 days to 60 days the period during which the petition must be filed.

Subsec. (d). Pub. L. 95-95, § 305(a), added subsec. (d).

Subsec. (e). Pub. L. 95-95, § 303(d), added subsec. (e).

Subsec. (f). Pub. L. 95-95, § 305(f), added subsec. (f).

Subsec. (g). Pub. L. 95-95, § 305(g), added subsec. (g).

1974—Subsec. (b)(1). Pub. L. 93-319 inserted reference to the Administrator's action under section 1857c-10(c)(2)(A), (B), or (C) of this title or under regulations thereunder and substituted reference to the filing of a petition within 30 days from the date of promulgation, approval, or action for reference to the filing of a petition within 30 days from the date of promulgation or approval.

1971—Subsec. (a)(1). Pub. L. 92-157 substituted reference to section "7545(c)(3)" for "7545(c)(4)" of this title.

Effective Date of 1977 Amendment

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Termination of Advisory Committees

Advisory Committees established after Jan. 5, 1973, to terminate not later than the expiration of the two-year period beginning on the date of their establishment, unless, in the case of a committee established by the President or an officer of the Federal Government, such committee is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a committee established by the Congress, its duration is otherwise provided for by law, see section 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 776, set out in the Appendix to Title 5, Government Organization and Employees.

Pending Actions and Proceedings

Suits, actions, and other proceedings lawfully commenced by or against the Administrator or any other officer or employee of the United States in his official capacity or in relation to the discharge of his official duties under act July 14, 1955, the Clean Air Act, as in effect immediately prior to the enactment of Pub. L. 95-95 [Aug. 7, 1977], not to abate by reason of the taking effect of Pub. L. 95-95, see section 406(a) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

Section Referred to in Other Sections

This section is referred to in sections 7413, 7419, 7420, 7521, 7545, 7547, 7617 of this title.

§ 7608. Mandatory licensing

Whenever the Attorney General determines, upon application of the Administrator—

(1) that—

(A) in the implementation of the requirements of section 7411, 7412, or 7521 of this title, a right under any United States letters patent, which is being used or intended for public or commercial use and not otherwise reasonably available, is necessary to enable any person required to comply with such limitation to so comply, and

(B) there are no reasonable alternative methods to accomplish such purpose, and

(2) that the unavailability of such right may result in a substantial lessening of competition or tendency to create a monopoly in any line of commerce in any section of the country,

the Attorney General may so certify to a district court of the United States, which may issue an order requiring the person who owns such patent to license it on such reasonable terms and conditions as the court, after hearing, may determine. Such certification may be made to the district court for the district in which the person owning the patent resides, does business, or is found.

(July 14, 1955, ch. 360, title III, § 308, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1708.)

Codification

Section was formerly classified to section 1857h-6 of this title.

Prior Provisions

A prior section 308 of act July 14, 1955, ch. 360, title III, formerly § 12, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 401, renumbered § 305, Oct. 20, 1965, Pub. L. 89-2 72, title I, § 101(4), 79 Stat. 992, renumbered § 308, Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506, renumbered § 315, Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1705, which related to separability of provisions, is set out as section 7615 of this title.

Modification or Rescission of Rules, Regulations, Orders, Determinations, Contracts, Certifications, Authorizations, Delegations, and Other Actions

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7609. Policy review

(a) Environmental impact

The Administrator shall review and comment in writing on the environmental impact of any matter relating to duties and responsibilities granted pursuant to this chapter or other provisions of the authority of the Administrator, contained in any (1) legislation proposed by any Federal department or agency, (2) newly authorized Federal projects for construction and any major Federal agency action (other than a project for construction) to which section 4332(2)(C) of this title applies, and (3) proposed regulations published by any department or agency of the Federal Government. Such written comment shall be made public at the conclusion of any such review.

(b) Unsatisfactory legislation, action, or regulation

In the event the Administrator determines that any such legislation, action, or regulation is unsatisfactory from the standpoint of public health or welfare or environmental quality, he shall publish his determination and the matter shall be referred to the Council on Environmental Quality.

(July 14, 1955, ch. 360, title III, § 309, as added Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1709.)

CODIFICATION

Section was formerly classified to section 1857h-7 of this title.

PRIOR PROVISIONS

A prior section 309 of act July 14, 1955, ch. 360, title III, formerly § 13, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 401, renumbered § 306, Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), 79 Stat. 992, renumbered § 309, Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506, renumbered § 316, Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1705, which related to appropriations, was classified to section 1857*l* of this title. Similar appropriation provisions are now classified to section 7626 of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7610. Other authority

(a) Authority and responsibilities under other laws not affected

Except as provided in subsection (b) of this section, this chapter shall not be construed as superseding or limiting the authorities and responsibilities, under any other provision of law, of the Administrator or any other Federal officer, department, or agency.

(b) Nonduplication of appropriations

No appropriation shall be authorized or made under section 241, 243, or 246 of this title for any fiscal year after the fiscal year ending June 30, 1964, for any purpose for which appropriations may be made under authority of this chapter.

(July 14, 1955, ch. 360, title III, § 310, formerly § 10, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 401, renumbered § 303, Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 505; renumbered § 310, and amended Dec. 31, 1970, Pub. L. 91-604, §§ 12(a), 15(c)(1), 84 Stat. 1705, 1713.)

CODIFICATION

Section was formerly classified to section 1857i of this title.

PRIOR PROVISIONS

A prior section 310 of act July 14, 1955, ch. 360, title III, formerly § 14, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 401, renumbered § 307, Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), 79 Stat. 992, renumbered § 310, Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506, renumbered § 317, Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1705, is set out as a Short Title note under section 7401 of this title. Provisions similar to those contained in subsec. (a) of this section were contained in a prior section 1857f of this title, act July 14, 1955, ch. 360, § 7, 69 Stat. 323, prior to the general amendment of this chapter by Pub. L. 88-206.

AMENDMENTS

1970—Subsec. (a). Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary".

1967—Subsec. (b). Pub. L. 90-148 substituted reference to section 246 of this title for reference to section 246(c) of this title.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7611. Records and audit

(a) Recipients of assistance to keep prescribed records

Each recipient of assistance under this chapter shall keep such records as the Administrator shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance is given or used, and the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(b) Audits

The Administrator and the Comptroller General of the United States, or any of their duly authorized representatives shall have access for the purpose of audit and examinations to any books, documents, papers, and records of the recipients that are pertinent to the grants received under this chapter.

(July 14, 1955, ch. 360, title III, § 311, formerly § 11, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 401, renumbered § 304, Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), 79 Stat. 992, and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 505, renumbered § 311, and amended Dec. 31, 1970, Pub. L. 91-604, §§ 12(a), 15(c)(a), 84 Stat. 1705, 1713.)

CODIFICATION

Section was formerly classified to section 1857j of this title.

AMENDMENTS

1970—Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary" and "Secretary of Health, Education, and Welfare".

1967—Pub. L. 90-148 reenacted section without change.

MODIFICATION OR RESCISSION OF RULES, REGULATIONS, ORDERS, DETERMINATIONS, CONTRACTS, CERTIFICATIONS, AUTHORIZATIONS, DELEGATIONS, AND OTHER ACTIONS

All rules, regulations, orders, determinations, contracts, certifications, authorizations, delegations, or other actions duly issued, made, or taken by or pursuant to act July 14, 1955, the Clean Air Act, as in effect immediately prior to the date of enactment of Pub. L. 95-95 [Aug. 7, 1977] to continue in full force and effect until modified or rescinded in accordance with act July 14, 1955, as amended by Pub. L. 95-95 [this chapter], see section 406(b) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4905, 7541 of this title.

§ 7612. Cost studies

(a) Detailed cost estimate; comprehensive cost and economic impact studies; annual reevaluation

In order to provide the basis for evaluating programs authorized by this chapter and the development of new programs and to furnish the Congress with the information necessary for authorization of appropriations by fiscal years beginning after June 30, 1969, the Administrator, in cooperation with State, interstate, and local air pollution control agencies, shall make a detailed estimate of the cost of carrying out the provisions of this chapter; a comprehensive study of the cost of program implementation by affected units of government; and a comprehensive study of the economic impact of air quality standards on the Nation's industries, communities, and other contributing sources of pollution, including an analysis of the national requirements for and the cost of controlling emissions to attain such standard of air quality as may be established pursuant to this chapter or applicable State law. The Administrator shall submit such detailed estimate and the results of such comprehensive study of cost for the five-year period beginning July 1, 1969, and the results of such other studies, to the Congress not later than January 10, 1969, and shall submit a reevaluation of such estimate and studies annually thereafter.

(b), (c) Omitted

(July 14, 1955, ch. 360, title III, § 312, formerly § 305, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 505, and renumbered and amended Dec. 31, 1970, Pub. L. 91-604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713; Aug. 7, 1977, Pub. L. 95-95, title II, § 224(c), 91 Stat. 767.)

CODIFICATION

Subsec. (b), which authorized the Administrator to make a complete investigation and study to determine (1) the need for additional trained State and local personnel to carry out programs pursuant to this chapter, (2) the means of using existing Federal training programs to train such personnel, and (3) the need for additional trained personnel to develop, operate, and maintain those pollution control facilities designed and installed to implement air quality standards, and directed him to report the results of this investigation and study to the President and Congress not later than July 1, 1969, was omitted from the Code as executed.

Subsec. (c), which required the Administrator not later than Jan. 1, 1979, to study the possibility of increased use of cost-effectiveness analyses in devising strategies for the control of air pollution and to report its recommendations to Congress, was omitted from the Code as executed.

Section was formerly classified to section 1857j-1 of this title.

AMENDMENTS

1977—Subsec. (c). Pub. L. 95-95 added subsec. (c).

1970—Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary" wherever appearing.

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7613. Additional reports to Congress

Not later than six months after November 21, 1967, and not later than January 10 of each calendar year beginning after such date, the Administrator shall report to the Congress on measures taken toward implementing the purpose and intent of this chapter including, but not limited to, (1) the progress and problems associated with control of automotive exhaust emissions and the research efforts related thereto; (2) the development of air quality criteria and recommended emission control requirements; (3) the status of enforcement actions taken pursuant to this chapter; (4) the status of State ambient air standards setting, including such plans for implementation and enforcement as have been developed; (5) the extent of development and expansion of air pollution monitoring systems; (6) progress and problems related to development of new and improved control techniques; (7) the development of quantitative and qualitative instrumentation to monitor emissions and air quality; (8) standards set or under consideration pursuant to subchapter II of this chapter; (9) the status of State, interstate, and local pollution control programs established pursuant to and assisted by this chapter; (10) the reports and recommendations made by the President's Air Quality Advisory Board; and (11)(A) the status of plan provisions developed by States as required under section 7410(a)(2)(F)(v) of this title, and an accounting of States failing to develop suitable plans; (B) the number of annual incidents of air pollution reaching or exceeding levels determined to present an imminent and substantial endangerment to health (within the meaning of section 7603 of this title) by location, date, pollution source, and the duration of the emergency; (C) measures taken pursuant to section 7410(a)(2)(F)(v) of this title, and an evaluation of their effectiveness in reducing pollution; and (D) an accounting of those instances in which an air pollution alert, warning, or emergency is declared as required under regulations of the Administrator and in which no action is taken by either the Administrator, State, or local officials, together with an explanation for the failure to take action.

(July 14, 1955, ch. 360, title III, § 313, formerly § 306, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506, renumbered and amended Dec. 31, 1970, Pub. L. 91-604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713; Aug. 7, 1977, Pub. L. 95-95, title III, § 302(b), 91 Stat. 771.)

CODIFICATION

Section was formerly classified to section 1857j-2 of this title.

AMENDMENTS

1977—Cl. (11). Pub. L. 95-95 added cl. (11).

1970—Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary".

EFFECTIVE DATE OF 1977 AMENDMENT

Amendment by Pub. L. 95-95 effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

TERMINATION OF ADVISORY BOARDS

Advisory Boards in existence on Jan. 5, 1973, to terminate not later than the expiration of the two-year period following Jan. 5, 1973, unless, in the case of a board established by the President or an officer of the Federal Government, such board is renewed by appropriate action prior to the expiration of such two-year period, or in the case of a board established by the Congress, its duration is otherwise provided by law, see sections 3(2) and 14 of Pub. L. 92-463, Oct. 6, 1972, 86 Stat. 770, 776, set out in the Appendix to Title 5, Government Organization and Employees.

§ 7614. Labor standards

The Administrator shall take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects assisted under this chapter shall be paid wages at rates not less than those prevailing for the same type of work on similar construction in the locality as determined by the Secretary of Labor, in accordance with the Act of March 3, 1931, as amended, known as the Davis-Bacon Act (46 Stat. 1494; 40 U.S.C. 276a—276a-5). The Secretary of Labor shall have, with respect to the labor standards specified in this subsection, the authority and functions set forth in Reorganization Plan Numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267) and section 276c of title 40.

(July 14, 1955, ch. 360, title III, § 314, formerly § 307, as added Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506, renumbered and amended Dec. 31, 1970, Pub. L. 91-604, §§ 12(a), 15(c)(2), 84 Stat. 1705, 1713.)

REFERENCES IN TEXT

The Davis-Bacon Act, referred to in text, is act Mar. 3, 1931, ch. 411, 46 Stat. 1494, as amended, which is classified generally to sections 276a to 276a-5 of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 276a of Title 40 and Tables.

Reorganization Plan Numbered 14 of 1950, referred to in text, is set out in the Appendix to Title 5, Government Organization and Employees.

CODIFICATION

Section was formerly classified to section 1857j-3 of this title.

AMENDMENTS

1970—Pub. L. 91-604, § 15(c)(2), substituted "Administrator" for "Secretary" meaning the Secretary of Health, Education, and Welfare.

§ 7615. Separability of provisions

If any provision of this chapter, or the application of any provision of this chapter to any person or circumstance, is held invalid, the application of such provision to other persons or circumstances, and the remainder of this chapter shall not be affected thereby.

(July 14, 1955, ch. 360, title III, § 315, formerly § 12, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 401, renumbered § 305, Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), 79 Stat. 992, amended and renumbered § 308, Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506, and renumbered § 315, Dec. 31, 1970, Pub. L. 91-604, § 12(a), 84 Stat. 1705.)

CODIFICATION

Section was formerly classified to section 1857k of this title.

AMENDMENTS

1967—Pub. L. 90-148 reenacted section without change.

§ 7616. Sewage treatment grants

(a) Construction

No grant which the Administrator is authorized to make to any applicant for construction of sewage treatment works in any area in any State may be withheld, conditioned, or restricted by the Administrator on the basis of any requirement of this chapter except as provided in subsection (b) of this section.

(b) Withholding, conditioning, or restriction of construction grants

The Administrator may withhold, condition, or restrict the making of any grant for construction referred to in subsection (a) of this section only if he determines that—

(1) such treatment works will not comply with applicable standards under section 7411 or 7412 of this title,

(2) the State does not have in effect, or is not carrying out, a State implementation plan approved by the Administrator which expressly quantifies and provides for the increase in emissions of each air pollutant (from stationary and mobile sources in any area to which either part C or part D of subchapter I of this chapter applies for such pollutant) which increase may reasonably be anticipated to result directly or indirectly from the new sewage treatment capacity which would be created by such construction.

(3) the construction of such treatment works would create new sewage treatment capacity which—

(A) may reasonably be anticipated to cause or contribute to, directly or indirectly, an increase in emissions of any air pollutant in excess of the increase provided for under the provisions referred to in paragraph (2) for any such area, or

(B) would otherwise not be in conformity with the applicable implementation plan, or

(4) such increase in emissions would interfere with, or be inconsistent with, the applicable implementation plan for any other State.

In the case of construction of a treatment works which would result, directly or indirectly, in an increase in emissions of any air pollutant from stationary and mobile sources in an area to which part D of subchapter I of this chapter applies, the quantification of emissions referred to in paragraph (2) shall include the emissions of any such pollutant resulting directly or indirectly from areawide and nonmajor stationary source growth (mobile and stationary) for each such area.

(c) National Environmental Policy Act

Nothing in this section shall be construed to amend or alter any provision of the National Environmental Policy Act [42 U.S.C. 4321 et seq.] or to affect any determination as to whether or not the requirements of such Act have been met in the case of the construction of any sewage treatment works.

(July 14, 1955, ch. 360, title III, § 316, as added Aug. 7, 1977, Pub. L. 95-95, title III, § 306, 91 Stat. 777.)

REFERENCES IN TEXT

The National Environmental Policy Act, referred to in subsec. (c), probably means the National Environmental Policy Act of 1969, Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

PRIOR PROVISIONS

A prior section 316 of act July 14, 1955, ch. 360, title III, formerly § 13, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 401, renumbered § 306 and amended Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89-675, § 2(a), 80 Stat. 954, renumbered § 309 and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506, and renumbered § 316 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 12(a), 13(b), 84 Stat. 1705, 1709; Apr. 9, 1973, Pub. L. 93-15, § 1(c), 87 Stat. 11; June 22, 1974, Pub. L. 93-319, § 13(c), 88 Stat. 265, which authorized appropriations for air pollution control, was repealed by section 306 of Pub. L. 95-95. See now section 7626 of this title.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7617. Economic impact assessment

(a) Notice of proposed rulemaking; substantial revisions

This section applies to action of the Administrator in promulgating or revising—

(1) any new source standard of performance under section 7411 of this title,

(2) any regulation under section 7411(d) of this title,

(3) any regulation under part B of subchapter I of this chapter (relating to ozone and stratosphere protection),

(4) any regulation under part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality),

(5) any regulation establishing emission standards under section 7521 of this title and any other regulation promulgated under that section,

(6) any regulation controlling or prohibiting any fuel or fuel additive under section 7545(c) of this title, and

(7) any aircraft emission standard under section 7571 of this title.

Nothing in this section shall apply to any standard or regulation described in paragraphs (1) through (7) of this subsection unless the notice of proposed rulemaking in connection with such standard or regulation is published in the Federal Register after the date ninety days after August 7, 1977. In the case of revisions of such standards or regulations, this section shall apply only to revisions which the Administrator determines to be substantial revisions.

(b) Preparation of assessment by Administrator

Before publication of notice of proposed rulemaking with respect to any standard or regulation to which this section applies, the Administrator shall prepare an economic impact assessment respecting such standard or regulation. Such assessment shall be included in the docket required under section 7607(d)(2) of this title and shall be available to the public as provided in section 7607(d)(4) of this title. Notice of proposed rulemaking shall include notice of such availability together with an explanation of the extent and manner in which the Administrator has considered the analysis contained in such economic impact assessment in proposing the action. The Administrator shall also provide such an explanation in his notice of promulgation of any regulation or standard referred to in subsection (a) of this section. Each such explanation shall be part of the statements of basis and purpose required under sections 7607(d)(3) and 7607(d)(6) of this title.

(c) Analysis

Subject to subsection (d) of this section, the assessment required under this section with respect to any standard or regulation shall contain an analysis of—

(1) the costs of compliance with any such standard or regulation, including extent to which the costs of compliance will vary depending on (A) the effective date of the standard or regulation, and (B) the development of less expensive, more efficient means

or methods of compliance with the standard or regulation;

(2) the potential inflationary or recessionary effects of the standard or regulation;

(3) the effects on competition of the standard or regulation with respect to small business;

(4) the effects of the standard or regulation on consumer costs; and

(5) the effects of the standard or regulation on energy use.

Nothing in this section shall be construed to provide that the analysis of the factors specified in this subsection affects or alters the factors which the Administrator is required to consider in taking any action referred to in subsection (a) of this section.

(d) Extensiveness of assessment

The assessment required under this section shall be as extensive as practicable, in the judgment of the Administrator taking into account the time and resources available to the Environmental Protection Agency and other duties and authorities which the Administrator is required to carry out under this chapter.

(e) Limitations on construction of section

Nothing in this section shall be construed—

(1) to alter the basis on which a standard or regulation is promulgated under this chapter;

(2) to preclude the Administrator from carrying out his responsibility under this chapter to protect public health and welfare; or

(3) to authorize or require any judicial review of any such standard or regulation, or any stay or injunction of the proposal, promulgation, or effectiveness of such standard or regulation on the basis of failure to comply with this section.

(f) Citizen suits

The requirements imposed on the Administrator under this section shall be treated as nondiscretionary duties for purposes of section 7604(a)(2) of this title, relating to citizen suits. The sole method for enforcement of the Administrator's duty under this section shall be by bringing a citizen suit under such section 7604(a)(2) for a court order to compel the Administrator to perform such duty. Violation of any such order shall subject the Administrator to penalties for contempt of court.

(g) Costs

In the case of any provision of this chapter in which costs are expressly required to be taken into account, the adequacy or inadequacy of any assessment required under this section may be taken into consideration, but shall not be treated for purposes of judicial review of any such provision as conclusive with respect to compliance or noncompliance with the requirement of such provision to take cost into account.

(July 14, 1955, ch. 360, title III, § 317, as added Aug. 7, 1977, Pub. L. 95-95, title III, § 307, 91 Stat. 778, and amended Nov. 9, 1978, Pub. L. 95-623, § 13(d), 92 Stat. 3458.)

CODIFICATION

Another section 317 of act July 14, 1955, is set out as a Short Title note under section 7401 of this title.

AMENDMENTS

1978—Subsec. (a)(1). Pub. L. 95-623 substituted section "7411" for "7411(b)" of this title.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7618. Financial disclosure; conflicts of interest

(a) Statement; filing; availability to public

Each person who—

(1) has any known financial interest in (A) any person subject to this chapter, or (B) any person who applies for or receives any grant, contract, or other form of financial assistance pursuant to this chapter, and

(2) is (A) an officer or employee of the Environmental Protection Agency who performs any function of [1] duty under this chapter, (B) a member of the National Commission on Air Quality appointed as a member of the public, or (C) a member of the scientific review committee under section 7409(d) of this title

shall, beginning six months after August 7, 1977, annually file with the Administrator a written statement concerning all such interests held by such officer, employee, or member during the preceding calendar year. Such statement shall be available to the public.

(b) Known financial interest; monitoring and enforcement of requirement; annual report to Congress

The Administrator shall—

(1) act within ninety days after August 7, 1977—

(A) to define the term "known financial interest" for purposes of subsection (a) of this section;

(B) to establish the methods by which the requirement to file written statements specified in subsection (a) of this section will be monitored and enforced, including appropriate provisions for the filing by such officers, employees and members of such statements and the review by the Administrator (or the Commission in the case of members of the Commission) of such statements; and

(2) report to the Congress on June 1 of each calendar year with respect to such statements to the Administrator and the actions taken in regard thereto during the preceding calendar year.

(c) Conflict of interest

After the date one year after August 7, 1977, no person who—

(1) is employed by, serves as attorney for, acts as a consultant for, or holds any other official or contractual relationship to—

(A) the owner or operator of any major stationary source or any stationary source which is subject to a standard of performance or emission standard under section 7411 or 7412 of this title,

(B) any manufacturer of any class or category of mobile sources if such mobile sources are subject to regulation under this chapter,

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[1] So in original. Probably should be "or".

(C) any trade or business association of which such owner or operator referred to in subparagraph (A) or such manufacturer referred to in subparagraph (B) is a member[1] or

(D) any organization (whether or not nonprofit) which is a party to litigation, or engaged in political, educational, or informational activities, relating to air quality, or

(2) owns, or has any financial interest in, any stock, bonds, or other financial interest which ownership or interest may be inconsistent with a position as an officer or employee of the Environmental Protection Agency, as determined under regulations of the Administrator,

may concurrently serve as such an officer or employee of the Environmental Protection Agency.

(d) Exemptions; particular ownerships or financial interests

The Administrator shall promulgate rules for purposes of subsections (b) and (c) of this section which—

(1) identify specific offices or positions within such agency which are of a nonregulatory or nonpolicymaking nature and provide that officers or employees occupying such positions shall be exempt from the requirements of this section, and

(2) identify the ownership or financial interests which may be inconsistent with particular regulatory or policymaking offices or positions within the Environmental Protection Agency.

(e) Penalty

Any officer or employee of the Environmental Protection Agency or member of the National Commission on Air Quality or of the scientific review committee under section 7409(d) of this title who is subject to, and knowingly violates, this section or any regulation issued thereunder, shall be fined not more than $2,500 or imprisoned not more than one year, or both.

(f) Disclosure or conflict of interest under other Federal statutes; generally applicable requirements

Nothing in this section shall be construed to affect or impair any other Federal statutory requirements respecting disclosure or conflict of interest applicable to the Environmental Protection Agency. Subsections (c) and (d) of this section shall not apply after the effective date of any such requirements respecting conflicts of interest which are generally applicable to departments, agencies, and instrumentalities of the United States.

(July 14, 1955, ch. 360, title III, § 318, as added Aug. 7, 1977, Pub. L. 95-95, title III, § 308, 91 Stat. 780.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7619. Air quality monitoring

Not later than one year after August 7, 1977, and after notice and opportunity for public hearing, the Administrator shall promulgate regulations establishing an air quality monitoring system throughout the United States which—

(1) utilizes uniform air quality monitoring criteria and methodology and measures such air quality according to a uniform air quality index,

(2) provides for air quality monitoring stations in major urban areas and other appropriate areas throughout the United States to provide monitoring such as will supplement (but not duplicate) air quality monitoring carried out by the States required under any applicable implementation plan,

(3) provides for daily analysis and reporting of air quality based upon such uniform air quality index, and

(4) provides for recordkeeping with respect to such monitoring data and for periodic analysis and reporting to the general public by the Administrator with respect to air quality based upon such data.

The operation of such air quality monitoring system may be carried out by the Administrator or by such other departments, agencies, or entities of the Federal Government (including the National Weather Service) as the President may deem appropriate. Any air quality monitoring system required under any applicable implementation plan under section 7410 of this title shall, as soon as practicable following promulgation of regulations under this section, utilize the standard criteria and methodology, and measure air quality according to the standard index, established under such regulations.

(July 14, 1955, ch. 360, title III, § 319, as added Aug. 7, 1977, Pub. L. 95-95, title III, § 309, 91 Stat. 781.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7620. Standardized air quality modeling

(a) Conferences

Not later than six months after August 7, 1977, and at least every three years thereafter, the Administrator shall conduct a conference on air quality modeling. In conducting such conference, special attention shall be given to appropriate modeling necessary for carrying out part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality).

(b) Conferees

The conference conducted under this section shall provide for participation by the National Academy of Sciences, representatives of State and local air pollution control agencies, and appropriate Federal agencies, including the National Science Foundation; the National Oceanic and Atmospheric Administration, and the National Bureau of Standards.

(c) Comments; transcripts

Interested persons shall be permitted to submit written comments and a verbatim transcript of the conference proceedings shall be maintained.

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[1] So in original. Probably should be followed by a comma.

(d) Promulgation and revision of regulations relating to air quality modeling

The comments submitted and the transcript maintained pursuant to subsection (c) of this section shall be included in the docket required to be established for purposes of promulgating or revising any regulation relating to air quality modeling under part C of subchapter I of this chapter.

(July 14, 1955, ch. 360, title III, § 320, as added Aug. 7, 1977, Pub. L. 95-95, title III, § 310, 91 Stat. 782.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7621. Employment effects

(a) Continuous evaluation of potential loss or shifts of employment

The Administrator shall conduct continuing evaluations of potential loss or shifts of employment which may result from the administration or enforcement of the provision of this chapter and applicable implementation plans, including where appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such administration or enforcement.

(b) Request for investigation; hearings; record; report

Any employee, or any representative of such employee, who is discharged or laid off, threatened with discharge or layoff, or whose employment is otherwise adversely affected or threatened to be adversely affected because of the alleged results of any requirement imposed or proposed to be imposed under this chapter, including any requirement applicable to Federal facilities and any requirement imposed by a State or political subdivision thereof, may request the Administrator to conduct a full investigation of the matter. Any such request shall be reduced to writing, shall set forth with reasonable particularity the grounds for the request, and shall be signed by the employee, or representative of such employee, making the request. The Administrator shall thereupon investigate the matter and, at the request of any party, shall hold public hearings on not less than five days' notice. At such hearings, the Administrator shall require the parties, including the employer involved, to present information relating to the actual or potential effect of such requirements on employment and the detailed reasons or justification therefor. If the Administrator determines that there are no reasonable grounds for conducting a public hearing he shall notify (in writing) the party requesting such hearing of such a determination and the reasons therefor. If the Administrator does convene such a hearing, the hearing shall be on the record. Upon receiving the report of such investigation, the Administrator shall make findings of fact as to the effect of such requirements on employment and on the alleged actual or potential discharge, layoff, or other adverse effect on employment, and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public.

(c) Subpenas; confidential information; witnesses; penalty

In connection with any investigation or public hearing conducted under subsection (b) of this section or as authorized in section 7419 of this title (relating to primary nonferrous smelter orders), the Administrator may issue subpenas for the attendance and testimony of witnesses and the production of relevant papers, books and documents, and he may administer oaths. Except for emission data, upon a showing satisfactory to the Administrator by such owner or operator that such papers, books, documents, or information or particular part thereof, if made public, would divulge trade secrets or secret processes of such owner, or operator, the Administrator shall consider such record, report, or information or particular portion thereof confidential in accordance with the purposes of section 1905 of title 18, except that such paper, book, document, or information may be disclosed to other officers, employees, or authorized representatives of the United States concerned with carrying out this chapter, or when relevant in any proceeding under this chapter. Witnesses summoned shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In cases of contumacy or refusal to obey a subpena served upon any person under this subparagraph, the district court of the United States for any district in which such person is found or resides or transacts business, upon application by the United States and after notice to such person, shall have jurisdiction to issue an order requiring such person to appear and give testimony before the Administrator, to appear and produce papers, books, and documents before the Administrator, or both, and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) Limitations on construction of section

Nothing in this section shall be construed to require or authorize the Administrator, the States, or political subdivisions thereof, to modify or withdraw any requirement imposed or proposed to be imposed under this chapter.

(July 14, 1955, ch. 360, title III, § 321, as added Aug. 7, 1977, Pub. L. 95-95, title III, § 311, 91 Stat. 782.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

STUDY OF POTENTIAL DISLOCATION OF EMPLOYEES

Section 403(e) of Pub. L. 95-95, which provided that the Secretary of Labor, in consultation with the Administrator, conduct a study of potential dislocation of employees due to implementation of laws administered by the Administrator and that the Secretary submit to Congress the results of the study not more than one year after Aug. 7, 1977, was omitted from the Code as executed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7419 of this title.

§ 7622. Employee protection

(a) Discharge or discrimination prohibited

No employer may discharge any employee or otherwise discriminate against any employee with respect to his compensation, terms, conditions, or privileges of employment because the employee (or any person acting pursuant to a request of the employee)—

(1) commenced, caused to be commenced, or is about to commence or cause to be commenced a proceeding under this chapter or a proceeding for the administration or enforcement of any requirement imposed under this chapter or under any applicable implementation plan,

(2) testified or is about to testify in any such proceeding, or

(3) assisted or participated or is about to assist or participate in any manner in such a proceeding or in any other action to carry out the purposes of this chapter.

(b) Complaint charging unlawful discharge or discrimination; investigation; order

(1) Any employee who believes that he has been discharged or otherwise discriminated against by any person in violation of subsection (a) of this section may, within thirty days after such violation occurs, file (or have any person file on his behalf) a complaint with the Secretary of Labor (hereinafter in this subsection referred to as the "Secretary") alleging such discharge or discrimination. Upon receipt of such a complaint, the Secretary shall notify the person named in the complaint of the filing of the complaint.

(2)(A) Upon receipt of a complaint filed under paragraph (1), the Secretary shall conduct an investigation of the violation alleged in the complaint. Within thirty days of the receipt of such complaint, the Secretary shall complete such investigation and shall notify in writing the complainant (and any person acting in his behalf) and the person alleged to have committed such violation of the results of the investigation conducted pursuant to this subparagraph. Within ninety days of the receipt of such complaint the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary and the person alleged to have committed such violation, issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint. An order of the Secretary shall be made on the record after notice and opportunity for public hearing. The Secretary may not enter into a settlement terminating a proceeding on a complaint without the participation and consent of the complainant.

(B) If, in response to a complaint filed under paragraph (1), the Secretary determines that a violation of subsection (a) of this section has occurred, the Secretary shall order the person who committed such violation to (i) take affirmative action to abate the violation, and (ii) reinstate the complainant to his former position together with the compensation (including back pay), terms, conditions, and privileges of his employment, and the Secretary may order such person to provide compensatory damages to the complainant. If an order is issued under this paragraph, the Secretary, at the request of the complainant, shall assess against the person against whom the order is issued a sum equal to the aggregate amount of all costs and expenses (including attorneys' and expert witness fees) reasonably incurred, as determined by the Secretary, by the complainant for, or in connection with, the bringing of the complaint upon which the order was issued.

(c) Review

(1) Any person adversely affected or aggrieved by an order issued under subsection (b) of this section may obtain review of the order in the United States court of appeals for the circuit in which the violation, with respect to which the order was issued, allegedly occurred. The petition for review must be filed within sixty days from the issuance of the Secretary's order. Review shall conform to chapter 7 of title 5. The commencement of proceedings under this subparagraph shall not, unless ordered by the court, operate as a stay of the Secretary's order.

(2) An order of the Secretary with respect to which review could have been obtained under paragraph (1) shall not be subject to judicial review in any criminal or other civil proceeding.

(d) Enforcement of order by Secretary

Whenever a person has failed to comply with an order issued under subsection (b)(2) of this section, the Secretary may file a civil action in the United States district court for the district in which the violation was found to occur to enforce such order. In actions brought under this subsection, the district courts shall have jurisdiction to grant all appropriate relief including, but not limited to, injunctive relief, compensatory, and exemplary damages.

(e) Enforcement of order by person on whose behalf order was issued

(1) Any person on whose behalf an order was issued under paragraph (2) of subsection (b) of this section may commence a civil action against the person to whom such order was issued to require compliance with such order. The appropriate United States district court shall have jurisdiction, without regard to the amount in controversy or the citizenship of the parties, to enforce such order.

(2) The court, in issuing any final order under this subsection, may award costs of litigation (including reasonable attorney and expert witness fees) to any party whenever the court determines such award is appropriate.

(f) Mandamus

Any nondiscretionary duty imposed by this section shall be enforceable in a mandamus proceeding brought under section 1361 of title 28.

(g) Deliberate violation by employee

Subsection (a) of this section shall not apply with respect to any employee who, acting without direction from his employer (or the employer's agent), deliberately causes a violation of any requirement of this chapter.

(July 14, 1955, ch. 360, title III, § 322, as added Aug. 7, 1977, Pub. L. 95-95, title III, § 312, 91 Stat. 783.)

Effective Date

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7623. National Commission on Air Quality

(a) Establishment; reports to Congress

There is established a National Commission on Air Quality which shall study and report to the Congress on—

(1) available alternatives, including enforcement mechanisms to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and to achieve the other purposes of the chapter, including achievement and maintenance of national ambient air quality standards and in accordance with subsection (b)(2) of this section the prevention of significant deterioration of air quality;

(2) the economic, technology, and environmental consequences of achieving or not achieving the purposes of this chapter and programs authorized by it;

(3) the technological capability of achieving and the economic, energy, and environmental and health effects of achieving or not achieving required emission control levels for mobile sources of oxides of nitrogen in relation to and independent of regulation of emissions of oxides of nitrogen from stationary sources;

(4) air pollutants not presently regulated, which pose or may in the future pose a threat to public health or public welfare and options available to regulate emissions of such pollutants;

(5) the adequacy of research, development, and demonstrations being carried out by Federal, State, local, and nongovernmental entities to protect and enhance air quality;

(6) the ability of (including financial resources, manpower, and statutory authority) Federal, State, and local institutions to implement the purposes of the chapter;

(7) the extent to which the reduction of hydrocarbon emissions is an adequate or appropriate method to achieve primary standards for photochemical oxidants. Such study shall include—

(A) a description and analysis of the various pollutants which are commonly referred to as "photochemical oxidants" or chemical precursers to photochemical oxidants;

(B) an analysis of any pollutants or combination of pollutants which need to be reduced to achieve any photochemical oxidant standard, and the amount of such reduction;

(C) the relationship between the reductions of hydrocarbons, oxides of nitrogen, and any other pollutants and the achievement of applicable standards for photochemical oxidants;

(D) the degree to which background or natural sources and long-range transportation of pollutants contribute to measured ambient levels of photochemical oxidants;

(E) any other oxidant-related issues which the Commission determines to be appropriate; and

(8)(A) the special problems of small businesses and government agencies in obtaining reductions of emissions from existing sources in order to offset increases in emissions from new sources for the purposes of this chapter; and

(B) alternative strategies for permitting, without impending the achievement of national ambient air quality standards as expeditiously as possible, the construction of new facilities and the modification of existing facilities in air quality control regions exceeding the national ambient air quality standard for any pollutant regulated under the chapter.

The Commission's study and report under paragraph (4) shall include analysis of the health effects of pollutants which are derivates of oxides of nitrogen.

(b) Studies and investigations

(1) Studies and investigations conducted pursuant to subsection (a) of this section shall include the effects of existing or proposed national ambient air quality standards on employment, energy, and the economy (including State and local), their relationship to objective scientific and medical data collected to determine their validity at existing levels, as well as their other social and environmental effects.

(2) The Commission shall, in carrying out the study authorized under this section, give priority to a study of the implementation of the provisions of part C of subchapter I of this chapter (relating to prevention of significant deterioration of air quality) and its effects on the States and the Federal Government. In carrying out such study, the Commission shall study, among other questions, the following:

(A) whether the provisions relating to the designation of, and protection of air quality in class I areas under part C of subchapter I of this chapter are appropriate to protect the air quality over lands of special national significance, including recommendations for, and methods to (i) add to or delete lands from such designation, and (ii) provide appropriate protection of the air quality over such lands;

(B) whether the provisions of part C of subchapter I of this chapter, including the three-hour and twenty-four-hour increments, (i) affect the location and size of major emitting facilities, and (ii) whether such effects are in conflict or consonance with other national policies regarding the development of such facilities;

(C) whether the technology is available to control emissions from the major emitting facilities which are subject to regulation under part C of subchapter I of this chapter, including an analysis of the costs associated with that technology;

(D) whether the exclusion of nonmajor emitting sources from the regulatory framework under this chapter will affect the protection of air quality in class I and class II regions designated under this chapter;

(E) whether the increments of change of air quality under this chapter are appropriate to prevent significant deterioration of air quality in class I and class II regions designated under part C of subchapter I of this chapter;

(F) whether the choice of predictive air quality models and the assumptions of those models are appropriate to protect air quality in the class I and class II regions designated under part C of subchapter I of this chapter for the pollutants subject to regulation under part C of subchapter I of this chapter; and

(G) the effects of such provisions on employment, energy, the economy (including State and local), the relationship of such policy to the protection of the public health and welfare as well as other national priorities such as economic growth and national defense, and its other social and environmental effects.

(c) Specific identification of loss or irretrievable commitment of resources

The Commission shall, as a part of any study conducted under subsection (b)(2) of this section, specifically identify any loss or irretrievable commitment of resources (taking into account feasibility), including mineral, agricultural and water resources, as well as land surface-use resources.

(d) Membership; appointment; confirmation

Such Commission shall be composed of thirteen members, including the chairman and the ranking minority member of the Senate Committee on Environment and Public Works and the House Committee on Interstate and Foreign Commerce (or delegates of such chairmen or member appointed by them from among representatives of such committees) and nine members of the public appointed by the President. The chairman of the Commission shall be elected from among the members thereof. Not more than one-third of the members of the Commission may have any interest in any business or activity regulated under this chapter.

(e) Cooperation

The heads of the departments, agencies, and instrumentalities of the executive branch of the Federal Government shall cooperate with the Commission in carrying out the requirements of this section, and shall furnish to the Commission such information as the Commission deems necessary to carry out this section.

(f) Timetable of reports

A report, together with any appropriate recommendations, shall be submitted to the Congress on the results of the investigation and study concerning subsection (a)(3) of this section no later than March 1, 1978, and the results of the investigation and study concerning subsection (b)(2) of this section no later than two years after August 7, 1977. A report, together with any appropriate recommendations, shall be submitted to the Congress on the results of the investigation and study concerning paragraphs (3) and (8) of subsection (a) of this section no later than March 1, 1978, in order that Congress may have this information in a timely fashion if it deems further changes are needed in the requirements for control of emissions of oxides of nitrogen under this chapter, and for other purposes. The Administrator shall undertake to enter into appropriate arrangements with the National Academy of Sciences to conduct a study of the same matters required to be studied by the Commission under subsection (b)(2) of this section and to submit such study to the Congress at the same time as required for the report of the Commission concerning such subsection. Funds shall be available in the same manner, and the Administrator shall have the same authorities and duties respecting such study, as provided in the case of the study authorized pursuant to section 7521(c) of this title.

(g) Compensation and travel expenses; termination of Commission

A report shall be submitted with regard to all Commission studies and investigations other than those referred to in subsection (f) of this section, together with any appropriate recommendations, not later than three years after August 7, 1977. Upon submission of such report or upon expiration of such three-year period, whichever is sooner, the Commission shall cease to exist. The members of the Commission who are not officers or employees of the United States, while attending conferences or meetings of the Commission or while otherwise serving at the request of the Chairman shall be entitled to receive compensation at a rate not in excess of the maximum rate of pay for grade GS-18, as provided in the General Schedule under section 5332 of title 5, including traveltime and while away from their homes or regular places of business they may be allowed travel expenses, including per diem in lieu of subsistence as authorized by law (5 U.S.C. 5703) for persons in the Government service employed intermittently.

(h) Appointment and compensation of staff; full public participation

The Commission may appoint and fix the pay of such staff as it deems necessary. In the conduct of the study, the Commission is authorized to contract with nongovermental entities that are competent to perform research or investigations in areas within the Commission's mandate, and to hold public hearings, forums, and workshops to enable full public participation. The Commission may contract with nonprofit technical and scientific organizations, including the National Academy of Sciences, for the purpose of developing necessary technical information for the study authorized by subsection (a)(7) of this section.

(July 14, 1955, ch. 360, title III, § 323, as added Aug. 7, 1977, Pub. L. 95-95, title III, § 313, 91 Stat. 785, and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(81), (82), 91 Stat. 1404; S. Res 4, Feb. 4, 1977.)

CODIFICATION

"5 U.S.C. 5703" was substituted for "5 U.S.C. 73b-2", in subsec. (g), on authority of section 7(b) of Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 631, section 1 of which enacted Title 5, Government Organization and Employees.

In the original, subsec. (h) was designated as (j) and has been editorially redesignated as (h) for purposes of codification in order to reflect the probable intent of Congress.

Amendment by section 14(a)(82) of Pub. L. 95-190 was not executed to section 324(j) of the Clean Air Act, section 7624 of this title, as provided for in the enacting language of section 14(a)(82), but to subsec. (j), now editorially redesignated (h), of this section for purposes of codification, in order to reflect the probable intent of Congress, in view of the fact that section 324 of the Clean Air Act, section 7624 of this title, did not contain a subsec. (j).

AMENDMENTS

1977—Subsec. (d). Pub. L. 95-190, § 14(a)(81), substituted "thirteen" for "eleven" and "nine" for "seven", and struck out requirement for advice and consent of the Senate in appointment of membership.

Subsec. (h). Pub. L. 95-190, § 14(a)(82), added provisions relating to appointment and compensation of staff. See Codification note above.

CHANGE OF NAME

The Committee on Public Works of the Senate, referred to in subsec. (d), was abolished and replaced by the Committee on Environment and Public Works of the Senate, effective Feb. 11, 1977. See Rule XXV of the Standing Rules of the Senate, as amended by Senate Resolution 4 (popularly cited as the "Committee System Reorganization Amendments of 1977"), approved Feb. 4, 1977.

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7626 of this title.

§ 7624. Cost of vapor recovery equipment

(a) Costs to be borne by owner of retail outlet

The regulations under this chapter applicable to vapor recovery with respect to mobile source fuels at retail outlets of such fuels shall provide that the cost of procurement and installation of such vapor recovery shall be borne by the owner of such outlet (as determined under such regulations). Except as provided in subsection (b) of this section, such regulations shall provide that no lease of a retail outlet by the owner thereof which is entered into or renewed after August 7, 1977, may provide for a payment by the lessee of the cost of procurement and installation of vapor recovery equipment. Such regulations shall also provide that the cost of procurement and installation of vapor recovery equipment may be recovered by the owner of such outlet by means of price increases in the cost of any product sold by such owner, notwithstanding any provision of law.

(b) Payment by lessee

The regulations of the Administrator referred to in subsection (a) of this section shall permit a lease of a retail outlet to provide for payment by the lessee of the cost of procurement and installation of vapor recovery equipment over a reasonable period (as determined in accordance with such regulations), if the owner of such outlet does not sell, trade in, or otherwise dispense any product at wholesale or retail at such outlet.

(July 14, 1955, ch. 360, title III, § 324, as added Aug. 7, 1977, Pub. L. 95-95, title III, § 314(a), 91 Stat. 788.)

EFFECTIVE DATE

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7413, 7625a of this title.

§ 7625. Vapor recovery for small business marketers of petroleum products

(a) Marketers of gasoline

The regulations under this chapter applicable to vapor recovery from fueling of motor vehicles at retail outlets of gasoline shall not apply to any outlet owned by an independent small business marketer of gasoline having monthly sales of less than 50,000 gallons. In the case of any other outlet owned by an independent small business marketer, such regulations shall provide, with respect to independent small business marketers of gasoline, for a three-year phase-in period for the installation of such vapor recovery equipment at such outlets under which such marketers shall have—

(1) 33 percent of such outlets in compliance at the end of the first year during which such regulations apply to such marketers,

(2) 66 percent at the end of such second year, and

(3) 100 percent at the end of the third year.

(b) State requirements

Nothing in subsection (a) of this section shall be construed to prohibit any State from adopting or enforcing, with respect to independent small business marketers of gasoline having monthly sales of less than 50,000 gallons, any vapor recovery requirements for mobile source fuels at retail outlets. Any vapor recovery requirement which is adopted by a State and submitted to the Administrator as part of its implementation plan may be approved and enforced by the Administrator as part of the applicable implementation plan for that State.

(c) Refiners

For purposes of this section, an independent small business marketer of gasoline is a person engaged in the marketing of gasoline who would be required to pay for procurement and installation of vapor recovery equipment under section 7624 of this title or under regulations of the Administrator, unless such person—

(1)(A) is a refiner, or

(B) controls, is controlled by, or is under common control with, a refiner,

(C) is otherwise directly or indirectly affiliated (as determined under the regulations of the Administrator) with a refiner or with a person who controls, is controlled by, or is under a common control with a refiner (unless the sole affiliation referred to herein is by means of a supply contract or an agreement or contract to use a trademark, trade name, service mark, or other identifying symbol or name owned by such refiner or any such person), or

(2) receives less than 50 percent of his annual income from refining or marketing of gasoline.

For the purpose of this section, the term "refiner" shall not include any refiner whose total refinery capacity (including the refinery capacity of any person who controls, is controlled by, or is under common control with, such refiner) does not exceed 65,000 barrels per day. For purposes of this section, "control" of a corporation means ownership of more than 50 percent of its stock.

(July 14, 1955, ch. 360, title III, § 325, as added Aug. 7, 1977, Pub. L. 95-95, title III, § 314(b), 91 Stat. 789.)

Effective Date

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

§ 7625a. Statutory construction

The parenthetical cross references in any provision of this chapter to other provisions of the chapter, or other provisions of law, where the words "relating to" or "pertaining to" are used, are made only for convenience, and shall be given no legal effect.

(July 14, 1955, ch. 360, title III, § 326, as added Nov. 16, 1977, Pub. L. 95-190, § 14(a)(84), 91 Stat. 1404.)

§ 7626. Authorization of appropriations

(a) There are authorized to be appropriated to carry out this chapter (other than provisions for which amounts are authorized under subsection (b) of this section), $200,000,000 for the fiscal year 1978 and for each of the three fiscal years beginning thereafter.

(b)(1) There are authorized to be appropriated to carry out section 7505 of this title beginning in fiscal year 1978, $75,000,000 to be available until expended.

(2) There are authorized to be appropriated for use in carrying out section 7623 of this title (relating to National Commission on Air Quality), not to exceed $10,000,000 beginning in fiscal year 1978. For the study authorized under section 7623 of this title there shall be made available by contract to the National Commission on Air Quality from the appropriation to the Environmental Protection Agency for fiscal year 1977 the sum of $1,000,000.

(3) There are authorized to be appropriated to carry out section 7427 of this title (relating to grants for public notification) $4,000,000 for the fiscal year 1978 and each of the three succeeding fiscal years.

(4) For purposes of section 7403(a)(5) of this title, there are authorized to be appropriated $7,500,000 for the fiscal year 1978 and each of the three fiscal years beginning after August 7, 1977.

(5) For the purpose of carrying out the provisions of part B of subchapter I of this chapter relating to studies and reports, there are authorized to be appropriated—

(A) to the National Aeronautics and Space Administration, the National Science Foundation, and the Department of State, such sums as may be necessary for the fiscal year ending September 30, 1977, and the fiscal year ending September 30, 1978;

(B) to the Environmental Protection Agency, $157,000,000 for fiscal year 1978; and

(C) to all other agencies such sums as may be necessary.

(6) There are authorized to be appropriated for carrying out research, development and demonstration under sections 7403 and 7404 of this title $120,000,000 for fiscal year 1978.

(July 14, 1955, ch. 360, title III, § 327, formerly § 325, as added Aug. 7, 1977, Pub. L. 95-95, title III, § 315, 91 Stat. 790, and renumbered and amended Nov. 16, 1977, Pub. L. 95-190, § 14(a)(83), 91 Stat. 1404.)

Prior Provisions

Provisions similar to those comprising this section were contained in section 1857l of this title, act July 14, 1955, ch. 360, title III, § 316, formerly § 13, as added Dec. 17, 1963, Pub. L. 88-206, § 1, 77 Stat. 401, renumbered § 306 and amended Oct. 20, 1965, Pub. L. 89-272, title I, § 101(4), (6), (7), 79 Stat. 992; Oct. 15, 1966, Pub. L. 89-675, § 2(a), 80 Stat. 954, renumbered § 309 and amended Nov. 21, 1967, Pub. L. 90-148, § 2, 81 Stat. 506, and renumbered § 316 and amended Dec. 31, 1970, Pub. L. 91-604, §§ 12(a), 13(b), 84 Stat. 1705, 1709; Apr. 9, 1973, Pub. L. 93-15, § 1(c), 87 Stat. 11; June 22, 1974, Pub. L. 93-319, § 13(c), 88 Stat. 265, prior to its repeal by section 306 of Pub. L. 95-95.

Amendments

1977—Subsec. (b)(4). Pub. L. 95-190 substituted "7403(a)(5)" for "7403(b)(5)".

Effective Date

Section effective Aug. 7, 1977, except as otherwise expressly provided, see section 406(d) of Pub. L. 95-95, set out as an Effective Date of 1977 Amendment note under section 7401 of this title.

SUBCHAPTER IV—NOISE POLLUTION

§ 7641. Noise abatement

(a) Office of Noise Abatement and Control

The Administrator shall establish within the Environmental Protection Agency an Office of Noise Abatement and Control, and shall carry out through such Office a full and complete investigation and study of noise and its effect on the public health and welfare in order to (1) identify and classify causes and sources of noise, and (2) determine—

(A) effects at various levels;

(B) projected growth of noise levels in urban areas through the year 2000;

(C) the psychological and physiological effect on humans;

(D) effects of sporadic extreme noise (such as jet noise near airports) as compared with constant noise;

(E) effect on wildlife and property (including values);

(F) effect of sonic booms on property (including values); and

(G) such other matters as may be of interest in the public welfare.

(b) Investigation techniques; report and recommendations

In conducting such investigation, the Administrator shall hold public hearings, conduct research, experiments, demonstrations, and studies. The Administrator shall report the results of such investigation and study, together with his recommendations for legislation or other action, to the President and the Congress not later than one year after December 31, 1970.

(c) Abatement of noise from Federal activities

In any case where any Federal department or agency is carrying out or sponsoring any activity resulting in noise which the Administrator determines amounts to a public nuisance or is otherwise objectionable, such department or agency shall consult with the Administrator to determine possible means of abating such noise.

(July 14, 1955, ch. 360, title IV, § 402, as added Dec. 31, 1970, Pub. L. 91-604, § 14, 84 Stat. 1709.)

CODIFICATION

Section was formerly classified to section 1858 of this title.

§ 7642. Authorization of appropriations

There is authorized to be appropriated such amount, not to exceed $30,000,000, as may be necessary for the purposes of this subchapter.

(July 14, 1955, ch. 360, title IV, § 403, as added Dec. 31, 1970, Pub. L. 91-604, § 14, 84 Stat. 1710.)

CODIFICATION

Section was formerly classified to section 1858a of this title.

CHAPTER 86—EARTHQUAKE HAZARDS REDUCTION [NEW]

Sec.
7701. Congressional findings.
7702. Congressional statement of purpose.
7703. Definitions.
7704. National earthquake hazards reduction program.
  (a) Establishment.
  (b) Duties of the President: designation of entity for development of plan; submittal of plan; to congressional committees; and designation of entity for development and implementation of program, cooperation and coordination with and assistance to governmental entities of the States, and program staffing.
  (c) Objectives of the program.
    (1) Earthquake resistant construction.
    (2) Earthquake prediction.
    (3) Model codes.
    (4) Earthquake-related issues; understanding.
    (5) Education of the public.
    (6) Research respecting mitigation of earthquake hazards, the varied consequences of earthquake prediction, and assurance of availability of earthquake insurance.
    (7) Basic and applied research for control or alteration of seismic phenomena.
Sec.
  (d) Federal participation.
  (e) Research elements.
  (f) Implementation plan; year-by-year targets; Federal and non-Federal roles; specific provisions; report to congressional committees: explanation of reasons for noninitiation of contemplated or proposed specific action.
  (g) State assistance.
  (h) Non-Federal participation; program plan review; report to Congress; evaluation of non-Federal and Federal prediction activities.
7705. Annual report to congressional committees.
7706. Authorization of appropriations.
  (a) General authorization for the program.
  (b) Geological Survey.
  (c) National Science Foundation.

§ 7701. Congressional findings

The Congress finds and declares the following:

(1) All 50 States are vulnerable to the hazards of earthquakes, and at least 39 of them are subject to major or moderate seismic risk, including Alaska, California, Hawaii, Illinois, Massachusetts, Missouri, Montana, Nevada, New Jersey, New York, South Carolina, Utah, and Washington. A large portion of the population of the United States lives in areas vulnerable to earthquake hazards.

(2) Earthquakes have caused, and can cause in the future, enormous loss of life, injury, destruction of property, and economic and social disruption. With respect to future earthquakes, such loss, destruction, and disruption can be substantially reduced through the development and implementation of earthquake hazards reduction measures, including (A) improved design and construction methods and practices, (B) land-use controls and redevelopment, (C) prediction techniques and early-warning systems, (D) coordinated emergency preparedness plans, and (E) public education and involvement programs.

(3) An expertly staffed and adequately financed earthquake hazards reduction program, based on Federal, State, local, and private research, planning, decisionmaking, and contributions would reduce the risk of such loss, destruction, and disruption in seismic areas by an amount far greater than the cost of such program.

(4) A well-funded seismological research program in earthquake prediction could provide data adequate for the design, of an operational system that could predict accurately the time, place, magnitude, and physical effects of earthquakes in selected areas of the United States.

(5) An operational earthquake prediction system can produce significant social, economic, legal, and political consequences.

(6) There is a scientific basis for hypothesizing that major earthquakes may be moderated, in at least some seismic areas, by application of the findings of earthquake control and seismological research.

(7) The implementation of earthquake hazards reduction measures would, as an added

benefit, also reduce the risk of loss, destruction, and disruption from other natural hazards and manmade hazards, including hurricanes, tornadoes, accidents, explosions, landslides, building and structural cave-ins, and fires.

(8) Reduction of loss, destruction, and disruption from earthquakes will depend on the actions of individuals, and organizations in the private sector and governmental units at Federal, State, and local levels. The current capability to transfer knowledge and information to these sectors is insufficient. Improved mechanisms are needed to translate existing information and research findings into reasonable and usable specifications, criteria, and practices so that individuals, organizations, and governmental units may make informed decisions and take appropriate actions.

(9) Severe earthquakes are a worldwide problem. Since damaging earthquakes occur infrequently in any one nation, international cooperation is desirable for mutual learning from limited experiences.

(10) An effective Federal program in earthquake hazards reduction will require input from and review by persons outside the Federal Government expert in the sciences of earthquake hazards reduction and in the practical application of earthquake hazards reduction measures.

(Pub. L. 95-124, § 2, Oct. 7, 1977, 91 Stat. 1098.

SHORT TITLE

Section 1 of Pub. L. 95-124 provided: "That this Act [enacting this chapter] may be cited as the 'Earthquake Hazards Reduction Act of 1977'."

DELEGATION OF FUNCTIONS

Functions of the President under the Earthquake Hazards Reduction Act of 1977 were delegated, transferred, or reassigned to the Director of the Federal Emergency Management Agency pursuant to sections 1-104 and 4-204 of Ex. Ord. No. 12148, July 20, 1979, 44 F.R. 43239, set out as a note under section 2251 of Title 50 Appendix, War and National Defense.)

§ 7702. Congressional statement of purpose

It is the purpose of the Congress in this chapter to reduce the risks of life and property from future earthquakes in the United States through the establishment and maintenance of an effective earthquake hazards reduction program.

(Pub. L. 95-124, § 3, Oct. 7, 1977, 91 Stat. 1099.)

§ 7703. Definitions

As used in this chapter unless the context otherwise requires:

(1) The term "includes" and variants thereof should be read as if the phrase "but is not limited to" were also set forth.

(2) The term "program" means the earthquake hazards reduction program established under section 7704 of this title.

(3) The term "seismic" and variants thereof mean having to do with, or caused by earthquakes.

(4) The term "State" means each of the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Mariana Islands, and any other territory or possession of the United States.

(5) The term "United States" means, when used in a geographical sense, all of the States as defined in paragraph (4) of this section.

(Pub. L. 95-124, § 4, Oct. 7, 1977, 91 Stat. 1099.)

§ 7704. National earthquake hazards reduction program

(a) Establishment

The President shall establish and maintain, in accordance with the provisions and policy of this chapter, a coordinated earthquake hazards reduction program, which shall—

(1) be designed and administered to achieve the objectives set forth in subsection (c) of this section;

(2) involve, where appropriate, each of the agencies listed in subsection (d) of this section; and

(3) include each of the elements described in subsection (e) of this section; the implementation plan described in subsection (f) of this section; and the assistance to the States specified in subsection (g) of this section.

(b) Duties of the President: designation of entity for development of plan; submittal of plan to congressional committees; and designation of entity for development and implementation of program, cooperation and coordination with and assistance to governmental entities of the States, and program staffing

The President shall—

(1) within 30 days after October 7, 1977, designate the Federal department, agency, or entity responsible for the development of the implementation plan described in subsection (f) of this section;

(2) within 210 days after October 7, 1977, submit to the appropriate authorizing committees of the Congress the implementation plan described in subsection (f) of this section; and

(3) by rule, within 300 days after October 7, 1977—

(A) designate the Federal department, agency, or interagency group which shall have primary responsibility for the development and implementation of the earthquake hazards reduction program;

(B) assign and specify the role and responsibility of each appropriate Federal department, agency, and entity with respect to each object and element of the program;

(C) establish goals, priorities, and target dates for implementation of the program;

(D) provide a method for cooperation and coordination with, and assistance (to the extent of available resources) to, interested governmental entities in all States, particularly those containing areas of high or moderate seismic risk; and

(E) provide for qualified staffing for the program and its components.

(c) Objectives of the program

The objectives of the earthquake hazards reduction program shall include—

(1) Earthquake resistant construction

the development of technologically and economically feasible design and construction methods and procedures to make new and existing structures, in areas of seismic risk, earthquake resistant, giving priority to the development of such methods and procedures for nuclear power generating plants, dams, hospitals, schools, public utilities, public safety structures, high occupancy buildings, and other structures which are especially needed in time of disaster;

(2) Earthquake prediction

the implementation in all areas of high or moderate seismic risk, of a system (including personnel, technology, and procedures) for predicting damaging earthquakes and for identifying, evaluating, and accurately characterizing seismic hazards;

(3) Model codes

the development, publication, and promotion, in conjunction with State and local officials and professional organizations, of model codes and other means to coordinate information about seismic risk with land-use policy decisions and building activity;

(4) Earthquake-related issues; understanding

the development, in areas of seismic risk, of improved understanding of, and capability with respect to, earthquake-related issues, including methods of controlling the risks from earthquakes, planning to prevent such risks, disseminating warnings of earthquakes, organizing emergency services, and planning for reconstruction and redevelopment after an earthquake;

(5) Education of the public

the education of the public, including State and local officials, as to earthquake phenomena, the identification of locations and structures which are especially susceptible to earthquake damage, ways to reduce the adverse consequences of an earthquake, and related matters;

(6) Research respecting mitigation of earthquake hazards, the varied consequences of earthquake prediction, and assurance of availability of earthquake insurance

the development of research on—

(A) ways to increase the use of existing scientific and engineering knowledge to mitigate earthquake hazards;

(B) the social, economic, legal, and political consequences of earthquake prediction; and

(C) ways to assure the availability of earthquake insurance or some functional substitute; and

(7) Basic and applied research for control or alteration of seismic phenomena

the development of basic and applied research leading to a better understanding of the control or alteration of seismic phenomena.

(d) Federal participation

In assigning the role and responsibility of Federal departments, agencies, and entities under subsection (b)(3)(B) of this section, the President shall, where appropriate, include the United States Geological Survey, the National Science Foundation, the Department of Defense, the Department of Housing and Urban Development, the National Aeronautics and Space Administration, the National Oceanic and Atmospheric Administration, the National Bureau of Standards, the Energy Research and Development Administration, the Nuclear Regulatory Commission, and the National Fire Prevention and Control Administration.

(e) Research elements

The research elements of the program shall include—

(1) research into the basic causes and mechanisms of earthquakes;

(2) development of methods to predict the time, place, and magnitude of future earthquakes;

(3) development of an understanding of the circumstances in which earthquakes might be artificially induced by the injection of fluids in deep wells, by the impoundment of reservoirs, or by other means;

(4) evaluation of methods that may lead to the development of a capability to modify or control earthquakes in certain regions;

(5) development of information and guidelines for zoning land in light of seismic risk in all parts of the United States and preparation of seismic risk analyses useful for emergency planning and community preparedness;

(6) development of techniques for the delineation and evaluation of the political effects of earthquakes, and their application on a regional basis;

(7) development of methods for planning, design, construction, rehabilitation, and utilization of manmade works so as to effectively resist the hazards imposed by earthquakes;

(8) exploration of possible social and economic adjustments that could be made to reduce earthquake vulnerability and to exploit effectively existing and developing earthquake mitigation techniques; and

(9) studies of foreign experience with all aspects of earthquakes.

(f) Implementation plan; year-by-year targets; Federal and non-Federal roles; specific provisions; report to congressional committees: explanation of reasons for noninitiation of contemplated or proposed specific action

The President shall develop, through the Federal agency, department, or entity designated under subsection (b)(1) of this section, an implementation plan which shall set year-by-year targets through at least 1980, and shall specify the roles for Federal agencies, and recommended appropriate roles for State and local units of government, individuals, and private organizations, in carrying out the implementation plan. The plan shall provide for—

(1) the development of measures to be taken with respect to preparing for earthquakes, evaluation of prediction techniques and actual predictions of earthquakes, warning the residents of an area that an earthquake may occur, and ensuring that a comprehensive response is made to the occurrence of an earthquake;

(2) the development of ways for State, county, local, and regional governmental units to use existing and developing knowledge about the regional and local variations of seismic risk in making their land use decisions;

(3) the development and promulgation of specifications, building standards, design criteria, and construction practices to achieve appropriate earthquake resistance for new and existing structures;

(4) an examination of alternative provisions and requirements for reducing earthquake hazards through Federal and federally financed construction, loans, loan guarantees, and licenses;

(5) the determination of the appropriate role for insurance, loan programs, and public and private relief efforts in moderating the impact of earthquakes; and

(6) dissemination, on a timely basis, of—

(A) instrument-derived data of interest to other researchers;

(B) design and analysis data and procedures of interest to the design professions and to the construction industry; and

(C) other information and knowledge of interest to the public to reduce vulnerability to earthquake hazards.

When the implementation plan developed by the President under this section contemplates or proposes specific action to be taken by any Federal agency, department, or entity, and, at the end of the 30-day period beginning on the date the President submits such plan to the appropriate authorizing committees of the Congress any such action has not been initiated, the President shall file with such committees a report explaining, in detail, the reasons why such action has not been initiated.

(g) State assistance

In making assistance available to the States under the Disaster Relief Act of 1974 (42 U.S.C. 5121 et seq.), the President may make such assistance available to further the purposes of this chapter, including making available to the States the results of research and other activities conducted under this chapter.

(h) Non-Federal participation; program plan review; report to Congress; evaluation of non-Federal and Federal prediction activities

In carrying out the provisions of this section, the President shall provide an opportunity for participation by the appropriate representatives of State and local governments, and by the public, including representatives of business and industry, the design professions, and the research community, in the formulation and implementation of the program.

Such non-Federal participation shall include periodic review of the program plan, considered in its entirety, by an assembled and adequately staffed group of such representatives. Any comments on the program upon which such group agrees shall be reported to the Congress.

Measures developed pursuant to subsection (f)(1) of this section for the evaluation of prediction techniques and actual predictions of earthquakes shall provide for adequate non-Federal participation. To the extent that such measures include evaluation by Federal employees of non-Federal prediction activities, such measures shall also include evaluation by persons not in full-time Federal employment of Federal prediction activities.

(Pub. L. 95-124, § 5, Oct. 7, 1977, 91 Stat. 1099.)

REFERENCES IN TEXT

The Disaster Relief Act of 1974, referred to in subsec. (g), is Pub. L. 93-288, May 22, 1974, 88 Stat. 143, as amended, which is classified principally to chapter 68 (§ 5121 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 5121 of this title and Tables.

TRANSFER OF FUNCTIONS

The Energy Research and Development Administration was terminated and functions vested by law in the Administrator thereof were transferred to the Secretary of Energy (unless otherwise specifically provided) by sections 7151(a) and 7293 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7703, 7706 of this title.

§ 7705. Annual report to congressional committees

The President shall, within ninety days after the end of each fiscal year, submit an annual report to the appropriate authorizing committees in the Congress describing the status of the program, and describing and evaluating progress achieved during the preceding fiscal year in reducing the risks of earthquake hazards. Each such report shall include any recommendations for legislative and other action the President deems necessary and appropriate.

(Pub. L. 95-124, § 6, Oct. 7, 1977, 91 Stat. 1102.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7706 of this title.

§ 7706. Authorization of appropriations

(a) General authorization for the program

There are authorized to be appropriated to the President to carry out the provisions of sections 7704 and 7705 of this title (in addition to any authorizations for similar purposes included in other Acts and the authorizations set forth in subsections (b) and (c) of this section), not to exceed $1,000,000 for the fiscal year ending September 30, 1978, not to exceed $2,000,000 for the fiscal year ending September 30, 1979, and not to exceed $2,000,000 for the fiscal year ending September 30, 1980.

(b) Geological Survey

There are authorized to be appropriated to the Secretary of the Interior for purposes for carrying out, through the Director of the United States Geological Survey, the responsibilities that may be assigned to the Director under this chapter not to exceed $27,500,000 for the fiscal year ending September 30, 1978; not to exceed $35,000,000 for the fiscal year ending September 30, 1979; and not to exceed $40,000,000 for the fiscal year ending September 30, 1980.

(c) National Science Foundation

To enable the Foundation to carry out responsibilities that may be assigned to it under this chapter, there are authorized to be appropriated to the Foundation not to exceed $27,500,000 for the fiscal year ending September 30, 1978; not to exceed $35,000,000 for the fiscal year ending September 30, 1979; and not to exceed $40,000,000 for the fiscal year ending September 30, 1980.

(Pub. L. 95-124, § 7, Oct. 7, 1977, 91 Stat. 1103.)

CHAPTER 87—WATER RESEARCH AND DEVELOPMENT [NEW]

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7802. Statement of purpose.

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    (b) Duties; scope of activities submission to Secretary of annual programs and reports; cooperation in development of goals and objectives; comment and transmission of proposals to Secretary.
    (c) Information dissemination program.
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7873. Authorization of appropriations under subchapter II of this chapter for research, development and demonstration plants; limit on expenditures for foreign activities.
7874. Authorization of appropriations for subchapters I, II, III, and IV of this chapter other than those for which specific authorizations are made.
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7883. Limit on authority to enter contracts or cooperative agreements and to make payments.

§ 7801. Congressional findings and declarations

The Congress finds and declares that—

(a) providing for the protection of the Nation's water resources, assuring an adequate supply of water of good quality for the production of food, materials, and energy for the Nation's needs, and increasing the efficient use of the Nation's water resources are essential to national economic stability and growth, and to the well-being of our people;

(b) the Nation's capabilities for technological assessment and planning and for policy formulation for water resources must be strengthened at both the Federal and State levels;

(c) there should be a continuing national investment in water-related research and technology which is commensurate with growing national needs; and

(d) the manpower pool of scientists, engineers, and technicians trained in fields related to water resources constitutes an invaluable natural resource which should be increased, fully utilized, and regularly replenished.

(Pub. L. 95-467, § 2, Oct. 17, 1978, 92 Stat. 1305.)

SHORT TITLE

Section 1 of Pub. L. 95-467 provided that: "This Act [enacting this chapter, amending section 7836 of this title, repealing sections 1959 to 1959h, 1961, 1961a to 1961a-5, 1961b, and 1961c to 1961c-8 of this title, and enacting provision set out as a note under section 7836 of this title] may be cited as the 'Water Research and Development Act of 1978'."

§ 7802. Statement of purpose

It is the purpose of this chapter to assist the Nation and the States through water resources science and technology—

(a) to provide a supply of water sufficient in quantity and quality to meet the Nation's expanding needs for the production of food, materials, and energy;

(b) to preserve and enhance our water resources and the water-related environment;

(c) to promote conservation and efficient use of the Nation's water resources;

(d) to promote research and development, demonstration, and technology transfer dealing with both quality and quantity of water resources;

(e) to identify and find practical solutions to the Nation's water and water resources related problems;

(f) to promote the training of scientists, engineers, and other skilled personnel in the fields related to water resources;

(g) to foster and supplement present programs for the conduct of research, technology development and transfer, and innovative water resources management, conservation, and operating practices;

(h) to provide for research, development, technology demonstration, and transfer with respect to converting saline and other impaired waters to waters suitable for municipal, agricultural, industrial, recreational, or other beneficial uses;

(i) to disseminate information through the maintenance of a water resources scientific information center with adequate information bases so that the Nation's water research community, by utilizing the center, can be fully informed of research activities and other types of information necessary for them to effectively conduct their work;

(j) to better coordinate the Nation's water resources and development programs; and

(k) to enhance the capacity of the Federal water establishment, and of water interests nationwide for recommending to the President and the Congress changes in national water resources research and technology policy as appropriate.

(Pub. L. 95-467, § 3, Oct. 17, 1978, 92 Stat. 1305.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-467, Oct. 17, 1978, 92 Stat. 1305, known as the Water Research and Development Act of 1978, which enacted this chapter, amended section 7836 of this title, repealed sections 1959 to 1959h, 1961, 1961a to 1961a-5, 1961b, and 1961c to 1961c-8 of this title, and enacted provisions set out as a note under section 7836 of this title. For complete classification of this Act to the Code, see Short Title note under section 7801 of this title and Tables.

SUBCHAPTER I—WATER RESOURCES RESEARCH AND DEVELOPMENT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 7851, 7874, 7876 of this title.

§ 7811. Research and Technology Institutes

(a) Establishment; designation; interstate or regional institutes; cooperation with state colleges and universities and regional consortia

The Secretary of the Interior (hereafter in this chapter referred to as the "Secretary") is hereby authorized and directed to assist in carrying on the work of a competent and qualified water resources research and technology institute, center, or equivalent agency (hereinafter referred to as "institute") at one college or university in each State, which college or university shall be a college or university established in accordance with the Act approved July 2, 1862 (12 Stat. 503) [7 U.S.C. 301 et seq.], or some other institution designated by Act of the legislature of the State concerned: *Provided*, That (1) if there is more than one such college or university in a State established in accordance with said Act of July 2, 1862, funds under this section shall, in the absence of a designation to the contrary by act of the legislature of the State, be paid to the one such college or university designated by the Governor of the State to receive the same, subject to the Secretary's determination that such college or university has, or may reasonably be expected to have the capability of doing effective work under this subchapter; (2) two or more States may cooperate in the designation of a single institute or regional institute, in which event the sums assignable to all of the cooperating States shall be paid to such institute; (3) the designated State institute shall cooperate closely with other colleges and universities in the State with demonstrated research, information dissemination, and graduate training capabilities in developing a statewide program directed to resolving State and regional water and related land problems; and (4) the designated State institute shall cooperate closely with regional consortia, as may be designated by the Secretary, to increase the effectiveness of the nationwide network of institutes and for the purpose of regional coordination, particularly with river basin commissions and other interagency river basin organizations as may be established by the Congress.

(b) Duties; scope of activities submission to Secretary of annual programs and reports; cooperation in development of goals and objectives; comment and transmission of proposals to Secretary

(1) It shall be the duty of each such institute to plan and conduct and/or arrange for a component or components of the college or university with which it is affiliated or other qualified colleges or universities within the State, to conduct competent research and development including investigations and experiments of either a basic or practical nature, or both, in relation to water resources, to promote dissemination and application of the results of these efforts, and to provide for the training of scientists and engineers through such research, investigations, and experiments.

(2) The research, investigations, experiments, and training may include, without being limited to, aspects of the hydrologic cycle; supply and demand for water; saline water conversion; conservation and best use of available supplies of water and methods of increasing such supplies; water reuse; and economic, legal, social, engineering, recreational, biological, geographic, ecological, and other aspects of water problems; scientific information dissemination activities, including identifying, assembling, and interpreting the results of scientific and engineering research on water resources problems; and providing means for improved communication of research results, having due regard for the varying conditions and needs for the respective States and regions, for water research and development projects now being conducted by agencies of the Federal and State governments, the agricultural and engineering experiment stations, and other university research centers and for the need to avoid undue displacement of scientists and engineers elsewhere engaged in water resources research and development.

(3) The annual program submitted by the State institutes to the Secretary for approval shall include assurances satisfactory to the Secretary, that such programs were developed in close consultation and collaboration with leading water resources officials within the State and region to promote research, training, information dissemination and other work meeting the needs of the State. Additionally, it shall be the duty of each State institute to provide the Secretary with periodic information, at the Secretary's discretion, on water resources research and development activities, needs, and priorities within the State which shall be coordinated with State, local, regional and river basin entities, and to cooperate with the Secretary in preparing periodic reports of ongoing research within the State and its funding by both Federal and non-Federal organizations. Institutes are required to see that notices of research projects are submitted to the center referred to under section 7853 of this title.

(4) The designated State institutes shall cooperate with the Secretary in the development of five-year water resources research and development goals and objectives.

(5) The designated institutes will receive comment on and transmit all research and development proposals from the academic community to the Secretary for consideration and funding.

(c) Information dissemination program

There is further hereby authorized a program of technology transfer and/or information dissemination to be carried out by the State institutes. Such funds, as are appropriated for this purpose, shall be made available on a competitive basis to the State institutes, based on the merit of project or program proposals submitted to the Secretary, for the purpose of transferring research and development results to other organizations for further development, demonstration, and practical application.

(Pub. L. 95-467, title I, § 101, Oct. 17, 1978, 92 Stat. 1306.)

REFERENCES IN TEXT

The Act approved July 2, 1862, referred to in subsec. (a), is act July 2, 1862, ch. 130, 12 Stat. 503, as amended, popularly known as the "Morrill Act" and also as the "First Morrill Act", which is classified generally to subchapter I (§ 301 et seq.) of chapter 13 of Title 7, Agriculture. For complete classification of this Act to the Code, see Short Title note set out under section 301 of Title 7 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7813, 7872, 7880 of this title.

§ 7812. Funds; printing and publishing program results; planning, coordinating and conducting cooperative research

Funds appropriated pursuant to this subchapter, in addition to being available for expenses for research and development experiments, and training conducted under authority of this subchapter, shall also be available for printing and publishing the results thereof in the furtherance of technology transfer and for planning and direction. The institutes are hereby authorized and encouraged to plan and conduct programs financed under this subchapter in cooperation with each other and with such other agencies and individuals as may contribute to the solution of the water problems involved, and funds appropriated pursuant to this subchapter shall be available for paying the necessary expense of planning, coordinating, and conducting such cooperative research.

(Pub. L. 95-467, title I, § 102, Oct. 17, 1978, 92 Stat. 1307.)

§ 7813. Responsibilities of Secretary

(a) Prescription of procedures, rules and policies; effective work requirment; furnishing advice and assistance

The Secretary is hereby charged with the responsibility for the proper administration of this subchapter and, after full consultation with other interested Federal agencies, may prescribe such procedures, rules, and policies as may be necessary to carry out its provisions. He shall require a showing that institutes designated to receive funds have, or may reasonably be expected to have, the capability of doing effective work. He shall furnish such advice and assistance as will best promote the purposes of this subchapter, participate in coordinating research initiated by the institutes under this subchapter, indicate to them such lines of inquiry as to him seem most important, and assist the establishment and maintenance of cooperation among the institutes, other research organizations, the United States Department of the Interior, and other Federal establishments.

(b) Development of five-year program

The Secretary shall develop a five-year water resources research program in cooperation with the institutes and appropriate water entities, indicating goals, objectives, priorities, and funding requirements.

(c) Ascertainment of fulfilled requirements; entitlement to funds; amount of authorization

The Secretary shall annually ascertain that the requirements of section 7811(b) of this title have been met as to each institute, whether it is entitled to receive its share of the annual appropriations for water resources research and development under section 7872(a) of this title and the amount which it is entitled to receive.

(Pub. L. 95-467, title I, § 103, Oct. 17, 1978, 92 Stat. 1308.)

§ 7814. Legal relationship of educational institution and State government; Federal control or direction of education

Nothing in this subchapter shall be construed to impair or modify the legal relation existing between any of the colleges or universities under whose direction an institute is established and the government of the State in which it is located, and nothing in this subchapter shall in any way be construed to authorize Federal control or direction of education at any college or university.

(Pub. L. 95-467, title I, § 104, Oct. 17, 1978, 92 Stat. 1308.)

§ 7815. Grants and contracts; application; basis of approval

(a) The Secretary is authorized to make grants to institutes to match, on a dollar-for-dollar basis, funds available to institutes from non-Federal sources to meet the necessary expenses of specific water and related land resources projects which the institute could not otherwise undertake, including the expenses of planning and coordinating regional projects by two or more institutes. Each application for a grant pursuant to this subsection shall, among other things, state the nature of the project to be undertaken, the period during which it will be pursued, the qualifications of the personnel who will direct and conduct it, the importance of the project to the Nation, region, and State concerned, its relation to other known research projects theretofore pursued or currently being pursued, and the extent to which it will provide opportunity for training of water resources scientists. No grants shall be made under this subsection except for a project approved by the Secretary, and all grants shall be made upon the basis of the merit of the project, the need for the knowledge which it is expected to produce when completed, and the opportunity it provides for the training of water resources scientists.

(b) The Secretary is authorized to make grants to, and finance contracts and matching or other agreements with qualified educational institutions; private foundations or other institutions; and with private firms and individuals whose training, experience, and qualifications are adequate in his judgment for the conduct of water research and development projects; and with local, State, and Federal Government agencies to undertake research and development concerning any aspect of water-related problems which he may deem desirable in the national interest.

(Pub. L. 95-467, title I, § 105, Oct. 17, 1978, 92 Stat. 1308.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7872 of this title.

§ 7816. Range of program issues; priority problems

Water resources research and development programs carried out in accordance with this subchapter may include, without being limited to water use conservation and efficiencies; water and related planning; saline water conversion; water reuse; management and operations; legal systems; protection and enhancement of the water-based environment; institutional arrangements; salinity management; and economic, social, and environmental impact assessment. Due consideration shall be given to priority problems identified by water and related land resources planning, data acquisition, and like studies conducted by other agencies and organizations.

(Pub. L. 95-467, title I, § 106, Oct. 17, 1978, 92 Stat. 1309.)

§ 7817. "State" defined

As used in this subchapter, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(Pub. L. 95-467, title I, § 107, Oct. 17, 1978, 92 Stat. 1309.)

§ 7818. Advance payments of initial expenses

Contracts or other arrangements for water resource work authorized under this subchapter with an institute, educational institution, or nonprofit organization may be undertaken without regard to the provisions of section 529 of title 31 when, in the judgment of the Secretary, advance payments of initial expenses are necessary to facilitate such work.

(Pub. L. 95-467, title I, § 108, Oct. 17, 1978, 92 Stat. 1309.)

§ 7819. Study, design, etc., of water resources programs and activities; report to Congressional committees; proposed contract or agreement

(a) The Secretary is authorized to study, design, implement, operate, and maintain water resources programs and activities demonstrating the technical and economic viability of processes, systems, or techniques for the purpose of improving the water or water-related environment and to demonstrate the application of water resources research and development results and technology for beneficial purposes.

(b)(1) Funds appropriated pursuant to the authority provided by sections 7872(d) and 7874 of this title, for use under this section may not be expended until thirty calendar days (including days on which either the House of Representatives or the Senate are not in session because of an adjournment of more than three calendar days to a day certain) have elapsed following transmittal of a report to the chairman of the Committee on Interior and Insular Affairs and the chairman of the Committee on Science and Technology of the House of Representatives and the chairman of the Committee on Environment and Public Works of the United States Senate.

(2) Such report shall present information that includes, but is not limited to, the location of the demonstration activities, the characteristics of the water and water-related problem, the processes or concepts to be demonstrated, the estimated initial investment cost of the demonstration, the estimated annual operating cost of the demonstration, the source of energy for the demonstration and its cost, environmental consequences of the demonstrations; and the estimated costs associated with the demonstration considering the amortization of all components of the demonstration.

(3) Such report shall also be accompanied by a proposed contract or agreement between the Secretary and a duly authorized Federal or non-Federal public or private entity, in which such entity shall agree to share cost to the extent deemed important to the purposes of the activity as determined by the Secretary. Such proposed contract or agreement may provide that either the contractual entity or the United States will develop the activity described in the report and that the United States will either operate and maintain the activity or may participate in the operation and maintenance during which, in either case, access to the activity and its operating data will not be denied to the Secretary or his representatives.

(4) The Secretary is authorized to include in the proposed contract or agreement a provision for conveying all rights, title, and interests of the Federal Government to the Federal or non-Federal, public or private entity subject to a future right to reenter the activity for the purpose of financing at Federal expense modifications for advanced technology and for its operation and maintenance for a successive term under the same conditions as pertain to the original term.

(Pub. L. 95-467, title I, § 109, Oct. 17, 1978, 92 Stat. 1309.)

Section Referred to in Other Sections

This section is referred to in section 7872 of this title.

SUBCHAPTER II—WATER RESEARCH AND DEVELOPMENT FOR SALINE AND OTHER IMPAIRED WATERS

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 7851, 7873, 7874 of this title.

§ 7831. Congressional findings and declaration of policy

Consistent with the Federal responsibility for water resources development and conservation by means of comprehensive planning, water resources development projects, protection of water quality standards, and other measures for the beneficial use of water from various sources, the Congress finds it necessary to provide for the development of technology for the conversion of saline and other impaired waters for beneficial uses. It is the policy therefore to assist and encourage the development of practical means to utilize saline water technology to convert impaired waters of any type from any source to a quality suitable for municipal, industrial, agricultural, and other beneficial uses to transfer research and development results.

(Pub. L. 95-467, title II, § 200, Oct. 17, 1978, 92 Stat. 1310.)

§ 7832. Functions of Secretary

The Secretary is authorized and directed to—

(a) conduct, encourage, and promote basic scientific research and fundamental studies to develop effective and economical processes and equipment for the purpose of converting impaired water into water suitable for beneficial uses; .

(b) pursue the findings of research and studies authorized by this subchapter having potential practical applications, including application to matters other than water conversion, and to other supply sources such as brackish waters, staged development, and use with energy sources;

(c) conduct engineering and technical work including the design, construction, and testing of various processes, systems, and pilot plants to develop saline water conversion processes to the point of demonstration;

(d) study methods for recovery, beneficial uses and disposal of residuals, and marketing of byproducts resulting from the improvement or conversion of impaired water in an environmentally acceptable manner;

(e) undertake economic studies and surveys to determine present and prospective costs of producing water for beneficial purposes in various parts of the United States by saline water conversion processes and, by means of models, or other methodologies, prepare and maintain information concerning the relation of such conversion processes and systems to other aspects of State, regional, and national comprehensive water resources planning.

(Pub. L. 95-467, title II, § 201, Oct. 17, 1978, 92 Stat. 1310.)

§ 7833. Additional functions of Secretary

(a) Demonstration and prototype plants; preliminary investigations and potential cooperative agreements

The Secretary is authorized to conduct preliminary investigations and explore potential cooperative agreements with non-Federal utilities and governmental entities in order to develop recommendations for Federal participation in the design, construction, operation, and maintenance of demonstration and prototype plants utilizing advanced saline water technologies for the production of water for beneficial use.

(b) Utilization of expertise of Department of Interior and other federal agencies

In carrying out the provisions of this section, the Secretary shall utilize the expertise of the water and power marketing agencies of the Department of the Interior or of other Federal agencies to insure that the recommended project and the supporting agreements are fully integrated and compatible with the water and power systems of the region.

(c) Financial assistance from any State or public agency

The Secretary is authorized to accept financial and other assistance from any State or public agency in connection with studies or surveys relating to impaired water and facilities and to enter into contract with respect to such assistance.

(Pub. L. 95-467, title II, § 202, Oct. 17, 1978, 92 Stat. 1310.)

§ 7834. Rules and regulations

The Secretary may issue rules and regulations to effectuate the purposes of this subchapter.

(Pub. L. 95-467, title II, § 203, Oct. 17, 1978, 92 Stat. 1311.)

§ 7835. Definitions

As used in this subchapter—

(a) the term "saline and other impaired water" includes but is not limited to seawater, brackish water, mineralized ground or surface water, irrigation return flows, and other similarly contaminated waters;

(b) the term "United States" extends to and includes the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands;

(c) the term "pilot plant" means an experimental unit of sufficient size used to evaluate and develop new or improved processes or systems and to obtain technical and engineering data;

(d) the term "demonstration" means a plant of sufficient capacity and reliability to demonstrate on a day-to-day operating basis that the process or system is feasible and that such process or system has potential for application to water system improvement;

(e) the term "prototype" means a full-size, first-of-a-kind production plant used for the development and study of full-sized technology, energy, and process economics.

(Pub. L. 95-467, title II, § 204, Oct. 17, 1978, 92 Stat. 1311.)

§ 7836. Desalting plants

(a) Study, design, construction, etc., of plants demonstrating viability of membrane and phase-change desalting processes

The Secretary of the Interior is authorized and directed to study, design, construct, operate, and maintain desalting plants demonstrating the engineering and economic viability of membrane and phase-change desalting processes at not more than five locations in the United States, including the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands: *Provided*, That at least two such plants shall demonstrate desalting of brackish ground water.

(b) Fund expenditure following transmittal of report to congressional committees; contents of report; proposed contract

Funds appropriated pursuant to the authority provided by this section may not be expended until thirty calendar days (excluding days on which either the House of Representatives or the Senate is not in session because of an adjournment of more than three calendar days to a day certain) have elapsed following transmittal of a report to the chairman of the Committee on Interior and Insular Affairs of the House of Representatives and the chairman of the Committee on Environment and Public Works of the United States Senate. Such report shall present information that includes, but is not limited to, the location of the demonstration plant, the characteristics of the water proposed to be desalted, the process to be utilized, the water supply problems confronting the area in which the plant will be located, alternative sources of water and their probable cost, the capacity of the plant, the initial investment cost of the demonstration plant, the annual operating cost of the demonstration plant, the source of energy for the plant and its cost, the means of reject brine disposal and its environmental consequences, and the unit cost of product water, considering the amortization of all components of the demonstration plant and ancillary facilities. Such report shall also be accompanied by a proposed contract between the Secretary and a duly authorized non-Federal public entity, in which such entity shall agree to furnish, at no cost to the United States, necessary water rights, water supplies, rights-of-way, power source interconnections, and brine disposal facilities: *Provided*, That, the Secretary may waive the obligation of the non-Federal public entity to furnish brine disposal facilities if he finds that such entity is unable financially to bear the cost of such facilities. Such proposed contract will further provide that the United States will construct the plant described in the report at no cost to the non-Federal public entity and that the United States will provide all costs of operation and maintenance of the plant for a term of at least two but not more than five years, during which access to the plant and its operating data will not be denied to the Secretary or his representatives. The Secretary is authorized to include in the proposed contract a provision for conveying all rights, title, and interest of the Federal Government to the non-Federal public entity, subject only to a future right to re-enter the facility for the purpose of financing at Federal expense modifications for advanced technology and for its operation and maintenance for a successive term under the same conditions as pertain to the original term.

(c) Authorization of appropriations

There is authorized to be appropriated, to remain available until expended, for the fiscal year ending September 30, 1978, and thereafter the sum of $40,000,000 to finance the construction of demonstration plants authorized by this section. There are also authorized to be appropriated such additional sums as are necessary to defray operation, maintenance, and energy costs for demonstration plants during the periods of Federal responsibility for such activities, under this section.

(Pub. L. 95-84, § 2, Aug. 2, 1977, 91 Stat. 400, amended Pub. L. 95-467, title II, § 205(a), (b), Oct. 17, 1978, 92 Stat. 1311.)

CODIFICATION

Section was formerly classified to section 1959i of this title.

This section was not enacted as part of the Water Research and Development Act of 1978, which comprises this chapter.

AMENDMENTS

1978—Subsec. (a). Pub. L. 95-467, § 205(a), substituted "five" for "four" and "the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Virgin Islands, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands" for "Puerto Rico, Virgin Islands, and Guam".

Subsec. (b). Pub. L. 95-467, § 205(b), added provision allowing the Secretary to waive the obligation of the non-Federal public entity to furnish brine disposal facilities if he finds that such entity is unable financially to bear the cost of such facilities.

ADDITIONAL AUTHORIZATION OF APPROPRIATIONS

Section 205(c) of Pub. L. 95-467 provided that: "In addition to the sums previously authorized to be appropriated to carry out the purpose of section 2 of the Act of August 2, 1977 (Public Law 95-84) [this section] there is hereby authorized to be appropriated for the fiscal year ending September 30, 1980 and thereafter, the sum of $10,000,000 to remain available until expended."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7882 of this title.

SUBCHAPTER III—TECHNOLOGY TRANSFER AND INFORMATION DISSEMINATION

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 7874 of this title.

§ 7851. Research assessment and technology transfer program; agreements with state and local governments, public and private organizations and individuals; issuance of publications, etc., for the expedition of research results and technology development

The Secretary is authorized to conduct a research assessment and technology transfer program which transfers research and development results to other organizations and individuals for further development and practical application to water and water-related problems. The Secretary may enter into agreements with the State and local governments and with other public and private organizations and individuals, including cost-sharing or cost-participation agreements, for the transfer or application of research results for the solution of water-related problems and to further the transfer developed by programs authorized under this chapter. The Secretary may issue publications and may conduct seminars, conferences, training sessions, or use other such techniques he deems necessary to expedite the transfer of research results and technology development. The technology transfer activities will be coordinated with activities undertaken under subchapters I and II of this chapter.

(Pub. L. 95-467, title III, § 300, Oct. 17, 1978, 92 Stat. 1312.)

§ 7852. National center for information acquisition, processing and dissemination; cooperation of Federal agencies

The Secretary is further authorized to maintain a national center for the acquisition, processing, and dissemination of information dealing with all areas of water resources research, technology development, and demonstration. Each Federal agency engaged in water resources including research, technology development, and demonstration, shall cooperate by providing the center with documents and other pertinent information. The center shall (a) maintain for general use a collection of water resources information provided by Federal and non-Federal government agencies, colleges, universities, private institutions, and individuals; (b) issue publications or utilize other media to disseminate research, technology development, and demonstration information for the purposes of this chapter and enter into agreements with public or private organizations or individuals to stimulate acquisition and dissemination of information, thus contributing to a comprehensive, nationwide program of research and development in water resources and the avoidance of unnecessary duplication of effort; (c) make generally available abstracts and other summary type information concerning water resources activities including research projects accomplished and in progress by all Federal agencies and by non-Federal agencies, private institutions, and individuals, to the extent such information can be obtained, and reports completed on research projects funded under provisions of this chapter; and (d) in carrying out the information dissemination activities authorized by this section, the Secretary shall to the extent feasible use the resources and facilities of other agencies and of the clearinghouse for scientific, technical, and engineering information established in the Department of Commerce pursuant to sections 1151 through 1157 of title 15.

(Pub. L. 95-467, title III, § 301, Oct. 17, 1978, 92 Stat. 1312.)

§ 7853. Center for cataloging scientific research; cooperation of Federal agencies

There shall be established, in such agency and location as the President determines to be desirable, a center for cataloging current scientific research in all fields of water resources. Each Federal agency doing water resources research shall cooperate by providing the cataloging center with information on work underway. The cataloging center shall classify and maintain for general use a file of water resources research and investigation projects in progress or scheduled by all Federal agencies and by such non-Federal agencies of government, colleges, universities, private institutions, firms, and individuals as voluntarily may make such information available.

(Pub. L. 95-467, title III, § 302, Oct. 17, 1978, 92 Stat. 1312.)

Section Referred to in Other Sections

This section is referred to in sections 7811, 7877 of this title.

SUBCHAPTER IV—GENERAL PROVISIONS

Subchapter Referred to in Other Sections

This subchapter is referred to in section 7874 of this title.

§ 7871. "Secretary" defined; powers of Secretary

(a) As used in this chapter, the term "Secretary" means the Secretary of the Interior.

(b) In carrying out his functions under this chapter, the Secretary may:

(1) make grants to educational institutions and scientific organizations, and enter into contracts with institutions and organizations and with industrial or engineering firms;

(2) acquire the services of chemists, physicists, engineers, and other personnel by contract or otherwise;

(3) utilize the facilities of Federal scientific laboratories;

(4) establish and operate necessary facilities and test sites to carry on the continuous research, testing, development, and programing necessary to effectuate the purposes of this subchapter;

(5) acquire processes, technical data, inventions, patent applications, patents, licenses, land and interests in land (including water rights), plants and facilities, and other property or rights by purchase, license, lease, or donation pursuant to the Federal Property and Administrative Services Act (40 U.S.C. 471) as amended, where applicable;

(6) assemble and maintain pertinent and current scientific literature, publications, patents, licenses, land and interests in land (including water rights thereto);

(7) cause onsite inspections to be made of promising projects, domestic and foreign, and in the case of projects located in the United States, cooperate and participate in their development when the purposes of this subchapter will be served thereby;

(8) foster and participate in regional, national, and international conferences relating to water resources;

(9) accept financial and other assistance from any local, State, Federal, or other agency or entity in connection with studies or surveys relating to water problems and facilities and enter into contracts with regard to such assistance;

(10) coordinate, correlate, and publish information with a view to advancing the development of practicable water conversion projects; and

(11) cooperate with other Federal departments and agencies, with State and local departments, agencies, and instrumentalities, and with interested persons, firms, institutions, and organizations.

(Pub. L. 95-467, title IV, § 400, Oct. 17, 1978, 92 Stat. 1313.)

References in Text

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (b)(5), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of that Act relating to procurement are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works, and subchapter IV (§ 251 et seq.) of chapter 4 of Title 41, Public Contracts. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

§ 7872. Authorization of appropriations for sections 7811(a) and (c), 7815(a) and (b) and 7819 of this title

(a)(1) There is hereby authorized to be appropriated for the purpose of carrying out the program described in section 7811(a) of this title an amount sufficient to provide $150,000 to each participating institute, on a cost-sharing basis, for the fiscal year ending September 30, 1979, and an amount sufficient to provide $175,000 to each participating institute on a cost-sharing basis, for the fiscal year ending September 30, 1980.

(2) There is authorized to be appropriated, on a cost-sharing basis, for the purpose of carrying out the provisions of section 7811(c) of this title the sum of $750,000 for the fiscal year ending September 30, 1979, and the sum of $1,350,000 for the fiscal year ending September 30, 1980, all to remain available until expended.

(3) Cost sharing under sections 7811(a) and 7811(c) of this title shall be on the basis of two Federal shares to not less than one non-Federal share. Federal funds made available under this section shall not be used for support of indirect costs as defined by current Federal regulations; however, such indirect costs may be credited as a non-Federal contribution to the total cost of activities to be carried out pursuant to the Federal grant or contract.

(b) There is authorized to be appropriated for purposes of carrying out the provisions of section 7815(a) of this title for the fiscal year ending September 30, 1979, the sum of

$6,000,000, and for the fiscal year ending September 30, 1980, the sum of $8,500,000, all to remain available until expended, to match on a dollar-for-dollar basis, funds made available by non-Federal sources to meet the necessary expenses of specific water resources research and development projects which could not otherwise be undertaken.

(c) There is authorized to be appropriated for purposes of carrying out the provisions of section 7815(b) of this title for the fiscal year ending September 30, 1979, the sum of $5,200,000, and for the fiscal year ending September 30, 1980, the sum of $8,000,000 all to remain available until expended, which shall be available on a competitive basis to any organization or individual to finance grants, contracts, matching grants, or other arrangements which equal 100 per centum, or any lesser per centum of the total cost of the project involved.

(d) There is authorized to be appropriated for purposes of carrying out the provisions of section 7819 of this title for the fiscal year ending September 30, 1980, the sum of $1,000,000 to remain available until expended, which shall be available on a competitive basis to any organization or individual to finance projects pursuant to the terms of said section 7819 of this title.

(Pub. L. 95-467, title IV, § 401, Oct. 17, 1978, 92 Stat. 1313.)

CODIFICATION

Par. (3) of subsec. (a) was, in the original, designated as par. (2) but has been editorially changed to par. (3) to conform to the probable intent of Congress.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7813, 7819 of this title.

§ 7873. Authorization of appropriations under subchapter II of this chapter for research, development and demonstration plants; limit on expenditures for foreign activities

(a) There is authorized to be appropriated to carry out the provisions of subchapter II of this chapter for the fiscal year ending September 30, 1979, the sum of $12,000,000, and for the fiscal year ending September 30, 1980, the sum of $14,000,000, all of which is to remain available until expended. The categories for which such funds are authorized are research, development and demonstration plant studies. The funds appropriated to such authorization shall be distributed to the foregoing categories as determined by prevailing budgetary priorities.

(b) Not more than 5 per centum of the funds to be made available in any fiscal year for research under the authority of this subchapter may be expended for foreign activities subject to the approval of the Secretary of State to assure that such activities are consistent with the foreign policy objectives of the United States, in cooperation with public or private agencies in foreign countries for research useful to the programs in the United States.

(Pub. L. 95-467, title IV, § 402, Oct. 17, 1978, 92 Stat. 1314.)

§ 7874. Authorization of appropriations for subchapters I, II, III, and IV of this chapter other than those for which specific authorizations are made

There is authorized to be appropriated the sum of $4,464,000 for the fiscal year ending September 30, 1979, and the sum of $5,100,000 for the fiscal year ending September 30, 1980, to carry out the sections of subchapters I, II, III, and IV of this chapter other than those for which special specific authorizations are made.

(Pub. L. 95-467, title IV, § 403, Oct. 17, 1978, 92 Stat. 1314.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7819 of this title.

§ 7875. Grant applications; approval by Secretary; basis of approval

Each application for a grant, pursuant to this chapter, shall, among other things, state the nature of the project to be undertaken, the period during which it will be pursued, the water problem it addresses, the qualifications of the personnel who will direct and conduct it, the importance of the project to the water-related economy of the Nation, the need for and expected utilization of the results, the region and the State concerned, its relation to other known research projects previously conducted or currently being pursued, the procedures by which the results can be disseminated, and the extent to which it will provide opportunities for the training of water resources scientists and engineers. No grant shall be made except for projects approved by the Secretary and all grants shall be made upon the basis of the merit of the project, the need for the knowledge it is expected to produce when completed, and the opportunities it provides for the training of water resources scientists and engineers.

(Pub. L. 95-467, title IV, § 404, Oct. 17, 1978, 92 Stat. 1314.)

§ 7876. Payments to institutes; time; amount; vouchers; allowable costs; receiving and accounting officers; annual statement to Secretary; replacement of diminished, lost or misapplied federal funds

(a) Sums appropriated pursuant to this chapter may be paid at such times and in such amounts during each fiscal year as determined by the Secretary and upon vouchers approved by him. Except as may be otherwise specified by this chapter, funds received pursuant to such payment may be used for any allowable costs within the meaning of the Federal procurement regulations that establish principles for determining costs applicable to research and development under grants and contracts with educational institutions.

(b) Each State institute operating pursuant to subchapter I of this chapter shall have an officer appointed by its governing authority who shall receive and account for all funds paid to the institute under the provisions of this chapter and who shall provide to the Secretary an annual statement of the amounts received under any of the provisions of this chapter during the preceding fiscal year, and of its disbursement. If any of the moneys received by the authorized receiving officer of any State institute under the provisions of this chapter shall, by any action or contingency, be found by the Secretary to have been improperly diminished, lost, or misapplied, it shall be replaced and until so replaced no subsequent disbursement of Federal funds shall be made to any institute of such State.

(Pub. L. 95-467, title IV, § 405, Oct. 17, 1978, 92 Stat. 1315.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7880 of this title.

§ 7877. Cooperation with Federal agencies, State and local governments, and private institutions and individuals

(a) Consultation with Environmental Protection Agency; utilization of center for cataloging scientific research

The Secretary shall cooperate fully with, and shall obtain the continuing advice and cooperation of, all agencies of the Federal Government concerned with water problems, State and local governments, and private institutions and individuals, to assure that the programs conducted under this chapter will supplement and not duplicate other water research and technology programs, will stimulate research and development in neglected areas, and will provide a comprehensive, nationwide program of water resources research and development. In order to further these purposes, as well as to assure research undertaken by the Secretary on wastewater treatment and treatment of water for potable use is most responsive to needs in implementing the Federal Water Pollution Control Act, as amended (Public Law 92-500) [33 U.S.C. 1251 et seq.], and the Safe Drinking Water Act, as amended (Public Law 93-523) [42 U.S.C. 300f et seq.], the Secretary will consult with the Administrator of the Environmental Protection Agency in developing and implementing programs in these areas. The Secretary will encourage utilization of the center referred to in section 7853 of this title, for cataloging current research projects in order to assure that programs conducted under this chapter will supplement and not duplicate other research and technology programs and will encourage other Federal agencies to do likewise.

(b) Interagency coordination

The President shall, by such means as he deems appropriate, clarify agency responsibilities for Federal water resources research and development and provide for interagency coordination of such research, including the research authorized by this chapter. Such coordination shall include (1) continuing review of the adequacy of the Government-wide program in water resources research and development and identification of technical needs in various water resources research categories, (2) identification and elimination of duplication and overlaps between two or more programs, (3) recommendations with respect to allocation of technical effort among the Federal agencies, (4) review of technical manpower needs and findings concerning the technical manpower base of the program, (5) recommendations concerning management policies to improve the quality of the Government-wide research effort, and (6) actions to facilitate interagency communication at management levels.

(c) Omitted

(Pub. L. 95-467, title IV, § 406, Oct. 17, 1978, 92 Stat. 1315.)

REFERENCES IN TEXT

The Federal Water Pollution Control Act, referred to in subsec. (a), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Safe Drinking Water Act, referred to in subsec. (a), is Pub. L. 93-523, Dec. 16, 1974, 88 Stat. 1660, as amended, which is classified principally to subchapter XII (§ 300f et seq.) of chapter 6A of this title. For complete classification of this Act to the Code, see Short Title of 1974 Amendments note set out under section 201 of this title and Tables.

CODIFICATION

Subsec. (c) of this section, which provided that the Secretary report within one year of Oct. 17, 1978, to the chairman of the Committee on Science and Technology of the House of Representatives concerning actions taken by the Secretary and the President to implement this section, was omitted from the Code as executed.

§ 7878. Property conveyance; water and byproducts disposal

(a) Property acquired by the Secretary under this chapter for use in furtherance of the purposes of this chapter may be conveyed to a cooperating institute, educational institution, or nonprofit organization in accordance with the Federal Property and Administrative Services Act of 1949, as amended [40 U.S.C. 471 et seq.].

(b) The Secretary may dispose of water and byproducts resulting from his operations under this chapter. All moneys received from dispositions under this chapter shall be paid into the Treasury as miscellaneous receipts except where such operations may be undertaken as a part of a Federal reclamation project in which case the financial provisions of the reclamation laws (32 Stat. 388 and Acts amendatory thereof and supplementary thereto) shall govern.

(Pub. L. 95-467, title IV, § 407, Oct. 17, 1978, 92 Stat. 1316.)

REFERENCES IN TEXT

The Federal Property and Administrative Services Act of 1949, referred to in subsec. (a), is act June 30, 1949, ch. 288, 63 Stat. 377, as amended. Provisions of that Act relating to management and disposal of government property are classified to chapter 10 (§ 471 et seq.) of Title 40, Public Buildings, Property, and Works. For complete classification of this Act to the Code, see Short Title note set out under section 471 of Title 40 and Tables.

The reclamation laws (32 Stat. 388 and Acts amendatory thereof and supplementary thereto), referred to in subsec. (b), include the act of June 17, 1902, ch. 1093, 32 Stat. 388, popularly known as the Reclamation Act, and Acts amendatory thereof and supplementary thereto, classified generally to chapter 12 (§ 371 et seq.) of Title 43, Public Lands. For complete classification of act June 17, 1902 to the Code, see Short Title note set out under section 371 of Title 43 and Tables.

§ 7879. Patent policy

With respect to patent policy and to the definition of title to, and licensing of inventions made or conceived in the course of, or under any contract or grant pursuant to this chapter, and notwithstanding any other provision of law, the Secretary shall be governed by the provisions of sections 5908 and 5909 of this title: *Provided, however,* That subsection (*l*) and (n) of section 5908 of this title shall not apply to this chapter: *Provided further, however,* That, subject to the patent policy of this section, all research or development contracted for, sponsored, cosponsored, or authorized under authority of this chapter, shall be provided in such manner that all information, data, and know-how, regardless of their nature or mediums, resulting from such research and development will (with such exceptions and limitations, if any, as the Secretary may find to be necessary in the interest of national defense) be usefully available for practice by the general public consonant with the purpose of this chapter.

(Pub. L. 95-467, title IV, § 408, Oct. 17, 1978, 92 Stat. 1316.)

§ 7880. Report of institutes to Secretary; report of Secretary to Congress and President

The institutes shall submit a summary report to the Secretary on or before January 31 of each year which highlights research and development work accomplished during the preceding fiscal year, the status of projects underway, and recommended future projects. This report is in addition to such other reports as may be required by sections 7811(b) and 7876(b) of this title. The Secretary shall submit a summary report to the President and the Congress on or before April 1 of each year which summarizes program activities of the preceding fiscal year and projects for the future.

(Pub. L. 95-467, title IV, § 409, Oct. 17, 1978, 92 Stat. 1316.)

§ 7881. Authority of Federal agencies concerning water resources; effect on existing law respecting ownership and control of water

(a) Nothing elsewhere in this chapter is intended to repeal, supersede, or diminish existing authorities or responsibilities of any agency of the Federal Government concerning water resources.

(b) Nothing in this chapter shall be construed to alter existing law with respect to the ownership and control of water.

(Pub. L. 95-467, title IV, § 410(b), (c), Oct. 17, 1978, 92 Stat. 1316, 1317.)

CODIFICATION

Subsecs. (a) and (b) were in the original subsecs. (b) and (c) of section 410 of Pub. L. 95-467 which were redesignated as (a) and (b) for purposes of codification.

§ 7882. Transmittal of rules, regulations, etc., to Speaker of the House and President of Senate; effective date

Any rules, regulations, guidelines, interpretations, orders, or requirements of general applicability prescribed by the Secretary of the Interior in connection with, or affecting, the administration of any program authorized by this chapter or by section 7836 of this title, shall be transmitted to the Speaker of the House of Representatives and the President of the Senate and shall not become effective for thirty days after the date of such transmittal. The thirty day period shall be deemed to run without interruption except during periods when either House is in adjournment sine die, in adjournment subject to the call of the Chair, or in adjournment to a day certain for a period of more than four consecutive days.

(Pub. L. 95-467, title IV, § 411, Oct. 17, 1978, 92 Stat. 1317.)

§ 7883. Limit on authority to enter contracts or cooperative agreements and to make payments

Notwithstanding any other provision of this chapter, authority to enter into contracts or cooperative agreements and to make payments under this chapter shall be effective only to the extent or in such amounts as are provided in advance in appropriation Acts.

(Pub. L. 95-467, title IV, § 412, Oct. 17, 1978, 92 Stat. 1317.)

CHAPTER 88—URANIUM MILL TAILINGS RADIATION CONTROL [NEW]

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7942. Designation by Secretary as processing sites for subchapter I purposes.
(a) New Mexico cooperative agreement respecting certain residual radioactive materials; submission to Congressional committees.
(b) Effective date.
(c) Subchapter I provisions applicable.

§ 7901. Congressional findings and purposes

(a) The Congress finds that uranium mill tailings located at active and inactive mill operations may pose a potential and significant radiation health hazard to the public, and that the protection of the public health, safety, and welfare and the regulation of interstate commerce require that every reasonable effort be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings.

(b) The purposes of this chapter are to provide—

(1) in cooperation with the interested States, Indian tribes, and the persons who own or control inactive mill tailings sites, a program of assessment and remedial action at such sites, including, where appropriate, the reprocessing of tailings to extract residual uranium and other mineral values where practicable, in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public, and

(2) a program to regulate mill tailings during uranium or thorium ore processing at active mill operations and after termination of such operations in order to stabilize and control such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public.

(Pub. L. 95-604, § 2, Nov. 8, 1978, 92 Stat. 3021.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 95-604, Nov. 8, 1978, 92 Stat. 3021, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLE

Section 1 of Pub. L. 95-604 provided that: "This Act [which enacted this chapter and sections 2022, 2113, and 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title] may be cited as the 'Uranium Mill Tailings Radiation Control Act of 1978'."

Cross References

Regulation of uranium mill tailings at active mill operations, see sections 2113 and 2114 of this title.

SUBCHAPTER I—REMEDIAL ACTION PROGRAM

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 2022, 7942 of this title.

§ 7911. Definitions

For purposes of this subchapter—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "Commission" means the Nuclear Regulatory Commission.

(3) The term "Administrator" means the Administrator of the Environmental Protection Agency.

(4) The term "Indian tribe" means any tribe, band, clan, group, pueblo, or community of Indians recognized as eligible for services provided by the Secretary of the Interior to Indians.

(5) The term "person" means any individual, association, partnership, corporation, firm, joint venture, trust, government entity, and any other entity, except that such term does not include any Indian or Indian tribe.

(6) The term "processing site" means—

(A) any site, including the mill, containing residual radioactive materials at which all or substantially all of the uranium was produced for sale to any Federal agency prior to January 1, 1971 under a contract with any Federal agency, except in the case of a site at or near Slick Rock, Colorado, unless—

(i) such site was owned or controlled as of January 1, 1978, or is thereafter owned or controlled, by any Federal agency, or

(ii) a license (issued by the Commission or its predecessor agency under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or by a State as permitted under section 274 of such Act [42 U.S.C. 2021]) for the production at such site of any uranium or thorium product derived from ores is in effect on January 1, 1978, or is issued or renewed after such date; and

(B) any other real property or improvement thereon which—

(i) is in the vicinity of such site, and

(ii) is determined by the Secretary, in consultation with the Commission, to be contaminated with residual radioactive materials derived from such site.

Any ownership or control of an area by a Federal agency which is acquired pursuant to a cooperative agreement under this subchapter shall not be treated as ownership or control by such agency for purposes of subparagraph (A)(i). A license for the production of any uranium product from residual radioactive materials shall not be treated as a license for production from ores within the meaning of subparagraph (A)(ii) if such production is in accordance with section 7918(b) of this title.

(7) The term "residual radioactive material" means—

(A) waste (which the Secretary determines to be radioactive) in the form of tailings resulting from the processing of ores for the extraction of uranium and other valuable constituents of the ores; and

(B) other waste (which the Secretary determines to be radioactive) at a processing site which relate to such processing, including any residual stock of unprocessed ores or low-grade materials.

(8) The term "tailings" means the remaining portion of a metal-bearing ore after some or all of such metal, such as uranium, has been extracted.

(9) The term "Federal agency" includes any executive agency as defined in section 105 of title 5.

(10) The term "United States" means the 48 contiguous States and Alaska, Hawaii, Puerto Rico, the District of Columbia, and the territories and possessions of the United States.

(Pub. L. 95-604, title I, § 101, Nov. 8, 1978, 92 Stat. 3022.)

References in Text

The Atomic Energy Act of 1954, referred to in par. (6)(A)(ii), is act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, as amended, which is classified principally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

Section Referred to in Other Sections

This section is referred to in sections 2022, 7912, 7913, 7914, 7942 of this title.

§ 7912. Processing site designations

(a) Specific and other site locations; remedial action; consultations; boundaries; Grand Junction, Colorado site restriction

(1) As soon as practicable, but no later than one year after November 8, 1978, the Secretary shall designate processing sites at or near the following locations:

Salt Lake City, Utah
Green River, Utah
Mexican Hat, Utah
Durango, Colorado
Grand Junction, Colorado
Rifle, Colorado (two sites)
Gunnison, Colorado
Naturita, Colorado
Maybell, Colorado
Slick Rock, Colorado (two sites)
Shiprock, New Mexico
Ambrosia Lake, New Mexico
Riverton, Wyoming
Converse County, Wyoming
Lakeview, Oregon
Falls City, Texas
Tuba City, Arizona
Monument Valley, Arizona
Lowman, Idaho
Cannonsburg, Pennsylvania

Subject to the provisions of this subchapter, the Secretary shall complete remedial action at the above listed sites before his authority terminates under this subchapter. The Secretary shall within one year of November 8, 1978, also designate all other processing sites within the United States which he determines requires remedial action to carry out the purposes of this subchapter. In making such designation, the Secretary shall consult with the Administrator, the Commission, and the affected States, and in the case of Indian lands, the appropriate Indian tribe and the Secretary of the Interior.

(2) As part of his designation under this subsection, the Secretary, in consultation with the Commission, shall determine the boundaries of each such site.

(3) No site or structure with respect to which remedial action is authorized under Public Law 92-314 in Grand Junction, Colorado, may be designated by the Secretary as a processing site under this section.

(b) Health hazard assessment; priorities for remedial action

Within one year from November 8, 1978, the Secretary shall assess the potential health hazard to the public from the residual radioactive materials at designated processing sites. Based upon such assessment, the Secretary shall, within such one year period, establish priorities for carrying out remedial action at each such site. In establishing such priorities, the Secretary shall rely primarily on the advice of the Administrator.

(c) Notification

Within thirty days after making designations of processing sites and establishing the priorities for such sites under this section, the Secretary shall notify the Governor of each affected State, and, where appropriate, the Indian tribes and the Secretary of the Interior.

(d) Finality of determinations

The designations made, and priorities established, by the Secretary under this section shall be final and not be subject to judicial review.

(e) Certain real property or improved areas

(1) The designation of processing sites within one year after November 8, 1978, under this section shall include, to the maximum extent practicable, the areas referred to in section 7911(6)(B) of this title.

(2) Notwithstanding the one year limitation contained in this section, the Secretary may, after such one year period, include any area described in section 7911(6)(B) of this title as part of a processing site designated under this section if he determines such inclusion to be appropriate to carry out the purposes of this subchapter.

(Pub. L. 95-604, title I, § 102, Nov. 8, 1978, 92 Stat. 3023.)

REFERENCES IN TEXT

Remedial action authorized under Pub. L. 92-314, referred to in subsec. (a)(3), means the remedial action authorized by title II of Pub. L. 92-314, June 16, 1972, 86 Stat. 222, which was not classified to the Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7913, 7915 of this title.

§ 7913. State cooperative agreements

(a) Authority of Secretary; prompt commencement of preparations

After notifying a State of the designation referred to in section 7912 of this title, the Secretary subject to section 7923 of this title, is authorized to enter into cooperative agreements with such State to perform remedial actions at each designated processing site in such State (other than a site located on Indian lands referred to in section 7915 of this title). The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 7912 of this title. The Secretary shall commence preparations for cooperative agreements with respect to each designated processing site as promptly as practicable following the designation of each site.

(b) Terms and conditions; limitation of Federal assistance

Each cooperative agreement under this section shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this chapter, including, but not limited to, a limitation on the use of Federal assistance to those costs which are directly required to complete the remedial action selected pursuant to section 7918 of this title.

(c) Written consent of record interest holder; waiver

(1) Except where the State is required to acquire the processing site as provided in subsection (a) of section 7914 of this title, each cooperative agreement with a State under this section shall provide that the State shall obtain, in a form prescribed by the Secretary, written consent from any person holding any record interest in the designated processing site for the Secretary or any person designated by him to perform remedial action at such site.

(2) Such written consent shall include a waiver by each such person on behalf of himself, his heirs, successors, and assigns—

(A) releasing the United States of any liability or claim thereof by such person, his heirs, successors, and assigns concerning such remedial action, and

(B) holding the United States harmless against any claim by such person on behalf of himself, his heirs, successors, or assigns arising out of the performance of any such remedial action.

(d) Inspection entries; termination of right of entry

Each cooperative agreement under this section shall require the State to assure that the Secretary, the Commission, and the Administrator and their authorized representatives have a permanent right of entry at any time to inspect the processing site and the site provided pursuant to section 7914(b)(1) of this title in furtherance of the provisions of this subchapter and to carry out such agreement and enforce this chapter and any rules prescribed under this chapter. Such right of entry under this section or section 7916 of this title into an area described in section 7911(6)(B) of this title shall terminate on completion of the remedial action, as determined by the Secretary.

(e) Effective date

Each agreement under this section shall take effect only upon the concurrence of the Commission with the terms and conditions thereof.

(f) Reimbursement

The Secretary may, in any cooperative agreement entered into under this section or section 7915 of this title, provide for reimbursement of the actual costs, as determined by the Secretary, of any remedial action performed with respect to so much of a designated processing site as is described in section 7911(6)(B) of this title. Such reimbursement shall be made only to a property owner of record at the time such remedial action was undertaken and only with respect to costs incurred by such property owner. No such reimbursement may be made unless—

(1) such remedial action was completed prior to November 8, 1978, and unless the application for such reimbursement was filed by such owner within one year after an agreement under this section or section 7915 of this title is approved by the Secretary and the Commission, and

(2) the Secretary is satisfied that such action adequately achieves the purposes of this chapter with respect to the site concerned and is consistent with the standards established by the Administrator pursuant to section 2022(a) of this title.

(Pub. L. 95-604, title I, § 103, Nov. 8, 1978, 92 Stat. 3024.)

Section Referred to in Other Sections

This section is referred to in sections 7914, 7917 of this title.

§ 7914. Acquisition and disposition of lands and materials

(a) State acquisition; windfall profits prevention

Each cooperative agreement under section 7913 of this title shall require the State, where determined appropriate by the Secretary with the concurrence of the Commission, to acquire any designated processing site, including where appropriate any interest therein. In determining whether to require the State to acquire a designated processing site or interest therein, consideration shall be given to the prevention of windfall profits.

(b) Disposition and stabilization site for residual radioactive materials; Federal site available

(1) If the Secretary with the concurrence of the Commission determines that removal of residual radioactive material from a processing site is appropriate, the cooperative agreement shall provide that the State shall acquire land (including, where appropriate, any interest therein) to be used as a site for the permanent disposition and stabilization of such residual radioactive materials in a safe and environmentally sound manner.

(2) Acquisition by the State shall not be required under this subsection if a site located on land controlled by the Secretary or made available by the Secretary of the Interior pursuant to section 7916(2) of this title is designated by the Secretary, with the concurrence of the Commission, for such disposition and stabilization.

(c) Boundary limitations

No State shall be required under subsection (a) or (b) of this section to acquire any real property or improvement outside the boundaries of—

(1) that portion of the processing site which is described in section 7911(6)(A) of this title, and

(2) the site used for disposition of the residual radioactive materials.

(d) Purchasers of sites; notification; rules and regulations

In the case of each processing site designated under this subchapter other than a site designated on Indian land, the State shall take such action as may be necessary, and pursuant to regulations of the Secretary under this subsection, to assure that any person who purchases such a processing site after the removal of radioactive materials from such site shall be notified in an appropriate manner prior to such purchase, of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place, and the condition of such site after such action. If the State is the owner of such site, the State shall so notify any prospective purchaser before entering into a contract, option, or other arrangement to sell or otherwise dispose of such site. The Secretary shall issue appropriate rules and regulations to require notice in the local land records of the residual radioactive materials which were located at any processing site and notice of the nature and extent of residual radioactive materials removed from the site, including notice of the date when such action took place.

(e) State disposition; terms and conditions; fair market value; offer of sale to prior owner

(1) The terms and conditions of any cooperative agreement with a State under section 7913 of this title shall provide that in the case of any lands or interests therein acquired by the State pursuant to subsection (a) of this section, the State, with the concurrence of the Secretary and the Commission, may—

(A) sell such lands and interests,

(B) permanently retain such land and interests in lands (or donate such lands and interests therein to another governmental entity within such State) for permanent use by such State or entity solely for park, recreational, or other public purposes, or

(C) transfer such lands and interests to the United States as provided in subsection (f) of this section.

No lands may be sold under subparagraph (A) without the consent of the Secretary and the Commission. No site may be sold under subparagraph (A) or retained under subparagraph (B) if such site is used for the disposition of residual radioactive materials.

(2) Before offering for sale any lands and interests therein which comprise a processing site, the State shall offer to sell such lands and interests at their fair market value to the person from whom the State acquired them.

(f) Transfer of title to Secretary; payment from funds for administrative and legal costs; custody of property; compliance with health and environmental standards for uranium mill tailings; transfer of title restriction

(1) Each agreement under section 7913 of this title shall provide that title to—

(A) the residual radioactive materials subject to the agreement, and

(B) any lands and interests therein which have been acquired by the State, under subsection (a) or (b) of this section, for the disposition of such materials,

shall be transferred by the State to the Secretary when the Secretary (with the concurrence of the Commission) determines that remedial action is completed in accordance with the requirements imposed pursuant to this subchapter. No payment shall be made in connection with the transfer of such property from funds appropriated for purposes of this chapter other than payments for any administrative and legal costs incurred in carrying out such transfer.

(2) Custody of any property transferred to the United States under this subsection shall be assumed by the Secretary or such Federal agency as the President may designate. Notwithstanding any other provision of law, upon completion of the remedial action program authorized by this subchapter, such property and minerals shall be maintained pursuant to a license issued by the Commission in such manner as will protect the public health, safety, and the environment. The Commission may, pursuant to such license or by rule or order, require the Secretary or other Federal agency having custody of such property and minerals to undertake such monitoring, maintenance, and emergency measures necessary to protect public health and safety and other actions as the Commission deems necessary to comply with the standards of section 2022(a) of this title. The Secretary or such other Federal agency is authorized to carry out maintenance, monitoring and emergency measures under this subsection, but shall take no other action pursuant to such license, rule or order with respect to such property and minerals unless expressly authorized by Congress after November 8, 1978. The United States shall not transfer title to property or interest therein acquired under this subsection to any person or State, except as provided in subsection (h) of this section.

(g) Reimbursement; fair market value; deposits in the Treasury

Each agreement under section 7913 of this title which permits any sale described in subsection (e)(1)(A) of this section shall provide for the prompt reimbursement to the Secretary from the proceeds of such sale. Such reimbursement shall be in an amount equal to the lesser of—

(1) that portion of the fair market value of the lands or interests therein which bears the same ratio to such fair market value as the Federal share of the costs of acquisition by the State to such lands or interest therein bears to the total cost of such acquisition, or

(2) the total amount paid by the Secretary with respect to such acquisition.

The fair market value of such lands or interest shall be determined by the Secretary as of the date of the sale by the State. Any amounts received by the Secretary under this subchapter shall be deposited in the Treasury of the United States as miscellaneous receipts.

(h) Subsurface mineral rights; sale, lease, or other disposition; restoration costs for disturbance of residual radioactive materials

No provision of any agreement under section 7913 of this title shall prohibit the Secretary of the Interior, with the concurrence of the Secretary of Energy and the Commission, from disposing of any subsurface mineral rights by sale or lease (in accordance with laws of the United States applicable to the sale, lease, or other disposal of such rights) which are associated with land on which residual radioactive materials are disposed and which are transferred to the United States as required under this section if the Secretary of the Interior takes such action as the Commission deems necessary pursuant to a license issued by the Commission to assure that the residual radioactive materials will not be disturbed by reason of any activity carried on following such disposition. If any such materials are disturbed by any such activity, the Secretary of the Interior shall insure, prior to the disposition of the minerals, that such materials will be restored to a safe and environmentally sound condition as determined by the Commission, and that the costs of such restoration will be borne by the person acquiring such rights from the Secretary of the Interior or from his successor or assign.

(Pub. L. 95-604, title I, § 104, Nov. 8, 1978, 92 Stat. 3025.)

Section Referred to in Other Sections

This section is referred to in sections 2022, 2113, 7913, 7915 of this title.

§ 7915. Indian tribe cooperative agreements

(a) Authority of Secretary; priorities for remedial action; use of Indian personnel; terms and conditions

After notifying the Indian tribe of the designation pursuant to section 7912 of this title, the Secretary, in consultation with the Secretary of the Interior, is authorized to enter into a cooperative agreement, subject to section 7923 of this title, with any Indian tribe to perform remedial action at a designated processing site located on land of such Indian tribe. The Secretary shall, to the greatest extent practicable, enter into such agreements and carry out such remedial actions in accordance with the priorities established by him under section 7912 of this title. In performing any remedial action under this section and in carrying out any continued monitoring or maintenance respecting residual radioactive materials associated with any site subject to a cooperative agreement under this section, the Secretary shall make full use of any qualified members of Indian tribes resident in the vicinity of any such site. Each such agreement shall contain such terms and conditions as the Secretary deems appropriate and consistent with the purposes of this chapter. Such terms and conditions shall require the following:

(1) The Indian tribe and any person holding any interest in such land shall execute a waiver (A) releasing the United States of any liability or claim thereof by such tribe or person concerning such remedial action and (B) holding the United States harmless against any claim arising out of the performance of any such remedial action.

(2) The remedial action shall be selected and performed in accordance with section 7918 of this title by the Secretary or such person as he may designate.

(3) The Secretary, the Commission, and the Administrator and their authorized representatives shall have a permanent right of entry at any time to inspect such processing site in furtherance of the provisions of this subchapter, to carry out such agreement, and to enforce any rules prescribed under this chapter.

Each agreement under this section shall take effect only upon concurrence of the Commission with the terms and conditions thereof.

(b) Disposition and stabilization sites for residual radioactive materials; transfer to Secretary of Interior

When the Secretary with the concurrence of the Commission determines removal of residual radioactive materials from a processing site on lands described in subsection (a) of this section to be appropriate, he shall provide, consistent with other applicable provisions of law, a site or sites for the permanent disposition and stabilization in a safe and environmentally sound manner of such residual radioactive materials. Such materials shall be transferred to the Secretary (without payment therefor by the Secretary) and permanently retained and maintained by the Secretary under the conditions established in a license issued by the Commission, subject to section 7914(f)(2) and (h) of this title.

(Pub. L. 95-604, title I, § 105, Nov. 8, 1978, 92 Stat. 3028.)

Section Referred to in Other Sections

This section is referred to in section 7913 of this title.

§ 7916. Acquisition of land by Secretary; consultations with Governor; consent of Governor; transfer from Federal agency to Secretary

Where necessary or appropriate in order to consolidate in a safe and environmentally sound manner the location of residual radioactive materials which are removed from processing sites under cooperative agreements under this subchapter, or where otherwise necessary for the permanent disposition and stabilization of such materials in such manner—

(1) the Secretary may acquire land and interests in land for such purposes by purchase, donation, or under any other authority of law or

(2) the Secretary of the Interior may make available public lands administered by him for such purposes in accordance with other applicable provisions of law.

Prior to acquisition of land under paragraph (1) or (2) of this subsection.[1] In any State, the Secretary shall consult with the Governor of such State. No lands may be acquired under such paragraph (1) or (2) in any State in which there is no (1) processing site designated under this subchapter or (2) active uranium mill operation, unless the Secretary has obtained the consent of the Governor of such State. No lands controlled by any Federal agency may be transferred to the Secretary to carry out the purposes of this chapter without the concurrence of the chief administrative officer of such agency.

(Pub. L. 95-604, title I, § 106, Nov. 8, 1978, 92 Stat. 3029.)

Section Referred to in Other Sections

This section is referred to in sections 7913, 7914 of this title.

§ 7917. Financial assistance

(a) Federal and non-Federal funds; administrative costs

In the case of any designated processing site for which an agreement is executed with any State for remedial action at such site, the Secretary shall pay 90 per centum of the actual cost of such remedial action, including the actual costs of acquiring such site (and any interest therein) or any disposition site (and any interest therein) pursuant to section 7913 of this title, and the State shall pay the remainder of such costs from non-Federal funds. The Secretary shall not pay the administrative costs incurred by any State to develop, prepare, and carry out any cooperative agreement executed with such State under this subchapter, except the proportionate share of the administrative costs associated with the acquisition of lands and interests therein acquired by the State pursuant to this subchapter.

(b) Indian land processing sites

In the case of any designated processing site located on Indian lands, the Secretary shall pay the entire cost of such remedial action.

(Pub. L. 95-604, title I, § 107, Nov. 8, 1978, 92 Stat. 3029.)

§ 7918. Remedial action and mineral recovery activities

(a) General standards for remedial action; Federal performance and State participation; use of technology; promulgation of standards

(1) The Secretary or such person as he may designate shall select and perform remedial actions at designated processing sites and disposal sites in accordance with the general standards prescribed by the Administrator pursuant to section 2022(a) of this title. The State shall participate fully in the selection and performance of a remedial action for which it pays part of the cost. Such remedial action shall be selected and performed with the concurrence of the

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[1] So in original. Probably should be "section".

Commission and in consultation, as appropriate, with the Indian tribe and the Secretary of the Interior.

(2) The Secretary shall use technology in performing such remedial action as will insure compliance with the general standards promulgated by the Administrator under section 2022(a) of this title and will assure the safe and environmentally sound stabilization of residual radioactive materials, consistent with existing law. No such remedial action may be undertaken under this section before the promulgation by the Administrator of such standards.

(b) Mineral concentration evaluation; terms and conditions for mineral recovery; payment of Federal and State share of net profits; recovery costs; licenses

Prior to undertaking any remedial action at a designated site pursuant to this subchapter, the Secretary shall request expressions of interest from private parties regarding the remilling of the residual radioactive materials and the site and, upon receipt of any expression of interest, the Secretary shall evaluate among other things the mineral concentration of the residual radioactive materials at each designated processing site to determine whether, as a part of any remedial action program, recovery of such minerals is practicable. The Secretary, with the concurrence of the Commission, may permit the recovery of such minerals, under such terms and conditions as he may prescribe to carry out the purposes of this subchapter. No such recovery shall be permitted unless such recovery is consistent with remedial action. Any person permitted by the Secretary to recover such mineral shall pay to the Secretary a share of the net profits derived from such recovery, as determined by the Secretary. Such share shall not exceed the total amount paid by the Secretary for carrying out remedial action at such designated site. After payment of such share to the United States under this subsection, such person shall pay to the State in which the residual radioactive materials are located a share of the net profits derived from such recovery, as determined by the Secretary. The person recovering such minerals shall bear all costs of such recovery. Any person carrying out mineral recovery activities under this paragraph shall be required to obtain any necessary license under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or under State law as permitted under section 274 of such Act [42 U.S.C. 2021].

(Pub. L. 95-604, title I, § 108, Nov. 8, 1978, 92 Stat. 3029.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b), is act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, as amended, which is classified principally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7911, 7913, 7915 of this title.

§ 7919. Rules

The Secretary may prescribe such rules consistent with the purposes of this chapter as he deems appropriate pursuant to title V of the Department of Energy Organization Act [42 U.S.C. 7191 et seq.].

(Pub. L. 95-604, title I, § 109, Nov. 8, 1978, 92 Stat. 3030.)

REFERENCES IN TEXT

The Department of Energy Organization Act, referred to in text, is Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 565, as amended. Title V of the Department of Energy Organization Act is classified generally to subchapter V (§ 7191 et seq.) of chapter 84 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

§ 7920. Enforcement

(a) Civil penalty; appellate review; action to recover civil penalty; sovereign immunity; equitable remedies

(1) Any person who violates any provision of this subchapter or any cooperative agreement entered into pursuant to this subchapter or any rule prescribed under this chapter concerning any designated processing site, dispostion site, or remedial action shall be subject to an assessment by the Secretary of a civil penalty of not more than $1,000 per day per violation. Such assessment shall be made by order after notice and an opportunity for a public hearing, pursuant to section 554 of title 5.

(2) Any person against whom a penalty is assessed under this section may, within sixty calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order, the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review. Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this section.

(4) No civil penalty may be assessed against the United States or any State or political subdivision of a State or any official or employee of the foregoing.

(5) Nothing in this section shall prevent the Secretary from enforcing any provision of this subchapter or any cooperative agreement or any such rule by injunction or other equitable remedy.

(b) Atomic energy licensing requirements

Subsection (a) of this section shall not apply to any licensing requirement under the Atomic

Energy Act of 1954 [42 U.S.C. 2011 et seq.]. Such licensing requirements shall be enforced by the Commission as provided in such Act.

(Pub. L. 95-604, title I, § 110, Nov. 8, 1978, 92 Stat. 3030.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b), is act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, as amended, which is classified principally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

§ 7921. Public participation; public hearings

In carrying out the provisions of this subchapter, including the designation of processing sites, establishing priorities for such sites, the selection of remedial actions, and the execution of cooperative agreements, the Secretary, the Administrator, and the Commission shall encourage public participation and, where appropriate, the Secretary shall hold public hearings relative to such matters in the States where processing sites and disposal sites are located.

(Pub. L. 95-604, title I, § 111, Nov. 8, 1978, 92 Stat. 3031.)

§ 7922. Termination of authority of Secretary; extension of authority; annual Department of Energy authorizations; appropriations available for expenditure

(a) The authority of the Secretary to perform remedial action under this subchapter shall terminate on the date seven years after the date of promulgation by the Administrator of general standards applicable to such remedial action unless such termination date is specifically extended by an Act of Congress enacted after November 8, 1978.

(b) The amounts authorized to be appropriated to carry out the purposes of this subchapter by the Secretary, the Administrator, the Commission, and the Secretary of the Interior shall not exceed such amounts as are established in annual authorization Acts for fiscal year 1979 and each fiscal year thereafter applicable to the Department of Energy. Any sums appropriated for the purposes of this subchapter shall be available until expended.

(Pub. L. 95-604, title I, § 112, Nov. 8, 1978, 92 Stat. 3031.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7942 of this title.

§ 7923. Limitation of contractual authority

The authority under this subchapter to enter into contracts or other obligations requiring the United States to make outlays may be exercised only to the extent provided in advance in annual authorization and appropriation Acts.

(Pub. L. 95-604, title I, § 113, Nov. 8, 1978, 92 Stat. 3031.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7913, 7915 of this title.

§ 7924. Reports to Congress

(a) Information; consultations; separate official views; partial report concerning uranium mill tailings provisions

Beginning on January 1, 1980, and each year thereafter until January 1, 1986, the Secretary shall submit a report to the Congress with respect to the status of the actions required to be taken by the Secretary, the Commission, the Secretary of the Interior, the Administrator, and the States and Indian tribes under this chapter and any amendments to other laws made by this Act. Each report shall—

(1) include data on the actual and estimated costs of the program authorized by this subchapter;

(2) describe the extent of participation by the States and Indian tribes in this program;

(3) evaluate the effectiveness of remedial actions, and describe any problems associated with the performance of such actions; and

(4) contain such other information as may be appropriate.

Such report shall be prepared in consultation with the Commission, the Secretary of the Interior, and the Administrator and shall contain their separate views, comments, and recommendations, if any. The Commission shall submit to the Secretary and Congress such portion of the report under this subsection as relates to the authorities of the Commission under title II of this Act.

(b) Identification of sites; Federal agency jurisdiction; contents; duplication prohibition; use and cooperation respecting other Federal agency information

Not later than July 1, 1979, the Secretary shall provide a report to the Congress which identifies all sites located on public or acquired lands of the United States containing residual radioactive materials and other raidoactive[1] waste (other than waste resulting from the production of electric energy) and specifies which Federal agency has jurisdiction over such sites. The report shall include the identity of property and other structures in the vicinity of such site that are contaminated or may be contaminated by such materials and the actions planned or taken to remove such materials. The report shall describe in what manner such sites are adequately stabilized and otherwise controlled to prevent radon diffusion from such sites into the environment and other environmental harm. If any site is not so stablized or controlled, the report shall describe the remedial actions planned for such site and the time frame for performing such actions. In preparing the reports under this section, the Secretary shall avoid duplication of previous or ongoing studies and shall utilize all information available from other departments and agencies of the United States respecting the subject matter of such report. Such agencies shall cooperate with the Secretary in the preparation of such report and furnish such information as available to them and necessary for such report.

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[1] So in original. Probably should be "radioactive".

(c) Uranium mine wastes hazards elimination program

Not later than January 1, 1980, the Administrator, in consultation with the Commission, shall provide a report to the Congress which identifies the location and potential health, safety, and environmental hazards of uranium mine wastes together with recommendations, if any, for a program to eliminate these hazards.

(d) Reports to Congressional committees

Copies of the reports required by this section to be submitted to the Congress shall be separately submitted to the Committees on Interior and Insular Affairs and on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(e) Documentation of information; public availability; trade secrets and other disclosure exempt information

The Commission, in cooperation with the Secretary, shall ensure that any relevant information, other than trade secrets and other proprietary information otherwise exempted from mandatory disclosure under any other provision of law, obtained from the conduct of each of the remedial actions authorized by this subchapter and the subsequent perpetual care of those residual radioactive materials is documented systematically, and made publicly available conveniently for use.

(Pub. L. 95-604, title I, § 114, Nov. 8, 1978, 92 Stat. 3032.)

REFERENCES IN TEXT

This Act, referred to in subsec. (a), is Pub. L. 95-604, Nov. 8, 1978, 92 Stat. 3021, known as the Uranium Mill Tailings Radiation Control Act of 1978. For complete classification of this Act to the Code, see Short Title note set out under section 7901 of this title and Tables.

Title II of this Act, referred to in subsec. (a), is title II (§§ 201 to 209) of Pub. L. 95-604, Nov. 8, 1978, 92 Stat. 3033, which enacted sections 2022, 2113, and 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title.

§ 7925. Active operations; liability for remedial action

(a) No amount may be expended under this subchapter with respect to any site licensed by the Commission under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] or by a State as permitted under section 274 of such Act [42 U.S.C. 2021] at which production of any uranium product from ores (other than from residual radioactive materials) takes place.

(b) In the case of each processing site designated under this subchapter, the Attorney General shall conduct a study to determine the identity and legal responsibility which any person (other than the United States, a State, or Indian tribe) who owned or operated or controlled (as determined by the Attorney General) such site before November 8, 1978, may have under any law or rule of law for reclamation or other remedial action with respect to such site. The Attorney General shall publish the results of such study, and provide copies thereof to the Congress, as promptly as practicable following November 8, 1978. The Attorney General, based on such study, shall, to the extent he deems it appropriate and in the public interest, take such action under any provision of law in effect when uranium was produced at such site to require payment by such person of all or any part of the costs incurred by the United States for such remedial action for which he determines such person is liable.

(Pub. L. 95-604, title I, § 115, Nov. 8, 1978, 92 Stat. 3033.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (a), is act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, as amended, which is classified principally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7942 of this title.

SUBCHAPTER II—STUDY AND DESIGNATION OF TWO MILL TAILING SITES IN NEW MEXICO

§ 7941. Study of authority for regulation and control of residual radioactive materials at New Mexico sites for protection of public health, safety, and the environment; report to Congress and Secretary; basis for determination of inadequacy of authority; interim regulation pending completion of study

The Commission, in consultation with the Attorney General and the Attorney General of the State of New Mexico, shall conduct a study to determine the extent and adequacy of the authority of the Commission and the State of New Mexico to require, under the Atomic Energy Act of 1954 (as amended by title II of this Act) [42 U.S.C. 2011 et seq.] or under State authority as permitted under section 274 of such Act [42 U.S.C. 2021] or under other provision of law, the owners of the following active uranium mill sites to undertake appropriate action to regulate and control all residual radioactive materials at such sites to protect public health, safety, and the environment: the former Homestake-New Mexico Partners site near Milan, New Mexico, and the Anaconda carbonate process tailings site near Bluewater, New Mexico. Such study shall be completed and a report thereof submitted to the Congress and to the Secretary within one year after November 8, 1978, together with such recommendations as may be appropriate. If the Commission determines that such authority is not adequate to regulate and control such materials at such sites in the manner provided in the first sentence of this section, the Commission shall include in the report a statement of the basis for such determination. Nothing in this chapter shall be construed to prevent or delay action by a State as permitted under section 274 of the Atomic Energy Act of 1954 [42 U.S.C. 2021] or under any other provision of law or by the Commission to regulate such residual radioactive materials at such sites prior to completion of such study.

(Pub. L. 95-604, title III, § 301, Nov. 8, 1978, 92 Stat. 3042.)

References in Text

The Atomic Energy Act of 1954, referred to in text, is act Aug. 30, 1954, ch. 1073, § 1, 68 Stat. 921, as amended, which is classified principally to chapter 23 (§ 2011 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of this title and Tables.

Title II of this Act, referred to in text, is title II (§§ 201 to 209) of Pub. L. 95-604, Nov. 8, 1978, 92 Stat. 3033, which enacted sections 2022, 2113, 2114 of this title, amended sections 2014, 2021, 2111, and 2201 of this title, and enacted provisions set out as notes under sections 2014, 2021, and 2113 of this title.

Section Referred to in Other Sections

This section is referred to in section 7942 of this title.

§ 7942. Designation by Secretary as processing sites for subchapter I purposes

(a) New Mexico cooperative agreement respecting certain residual radioactive materials; submission to Congressional committees

Within ninety days from the date of his receipt of the report and recommendations submitted by the Commission under section 7941 of this title, notwithstanding the limitations contained in section 7911(6)(A) and in section 7925(a) of this title, if the Commission determines, based on such study, that such sites cannot be regulated and controlled by the State or the Commission in the manner described in section 7941 of this title, the Secretary may designate either or both of the sites referred to in section 7941 of this title as a processing site for purposes of subchapter I of this chapter. Following such designation, the Secretary may enter into cooperative agreements with New Mexico to perform remedial action pursuant to such subchapter I concerning only the residual radioactive materials at such site resulting from uranium produced for sale to a Federal agency prior to January 1, 1971, under contract with such agency. Any such designation shall be submitted by the Secretary, together with his estimate of the cost of carrying out such remedial action at the designated site, to the Committee on Interior and Insular Affairs and the Committee on Interstate and Foreign Commerce of the House of Representatives and to the Committee on Energy and Natural Resources of the Senate.

(b) Effective date

(1)[1] No designation under subsection (a) of this section shall take effect before the expiration of one hundred and twenty calendar days (not including any day in which either House of Congress is not in session because of an adjournment of more than three calendar days to a day certain or an adjournment sine die) after receipt by such Committees of such designation.

(c) Subchapter I provisions applicable

Except as otherwise specifically provided in subsection (a) of this section, any remedial action under subchapter I of this chapter with respect to any sites designated under this subchapter shall be subject to the provisions of subchapter I of this chapter (including the authorization of appropriations referred to in section 7922(b) of this title).

(Pub. L. 95-604, title III, § 302, Nov. 8, 1978, 92 Stat. 3042.)

CHAPTER 89—CONGREGATE HOUSING SERVICES [NEW]

Sec.
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Chapter Referred to in Other Sections

This chapter is referred to in section 1437e of this title.

§ 8001. Congressional findings

The Congress finds that—

(1) congregate housing, coordinated with the delivery of supportive services, offers an innovative, proven, and cost-effective means

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[1] So in original. No par. (2) has been enacted.

of enabling temporarily disabled or handicapped individuals to maintain their dignity and independence and to avoid costly and unnecessary institutionalization;

(2) a large and growing number of elderly and handicapped residents of public housing projects and of nonprofit projects for the elderly and handicapped face premature and unnecessary institutionalization because of the absence of or deficiencies in the availability, adequacy, coordination, or delivery of the supportive services required for the successful development of adequate numbers of congregate housing projects; and

(3) supplemental supportive services, available on a secure and continuing basis, are essential to a successful congregate housing program.

(Pub. L. 95-557, title IV, § 402, Oct. 31, 1978, 92 Stat. 2104.)

Short Title

Section 401 of Pub. L. 95-557 provided that: "This title [enacting this chapter and amending section 1437e of this title] may be cited as the 'Congregate Housing Services Act of 1978'."

§ 8002. Definitions

For the purpose of this chapter—

(1) the term "congregate housing" means (A) low-rent housing which, as of January 1, 1979, was built or under construction, with which there is connected a central dining facility where wholesome and economical meals can be served to such occupants; or (B) low-rent housing constructed after, but not under construction prior to, January 1, 1979, connected with which there is a central dining facility to provide wholesome and economical meals for such occupants;

(2) the term "congregate services programs" means programs to be undertaken by a public housing agency or a nonprofit corporation to provide assistance, including personal assistance and nutritional meals, to eligible project residents who, with such assistance, can remain independent and avoid unnecessary institutionalization;

(3) the term "elderly" means sixty-two years of age or over;

(4) the term "eligible project resident" means elderly handicapped individuals, nonelderly handicapped individuals, or temporarily disabled individuals, who are residents of congregate housing projects administered by a public housing agency or by a nonprofit corporation;

(5) the term "handicapped" means having an impairment which (A) is expected to be of long-continued and indefinite duration, and (B) substantially impedes an individual's ability to live independently unless the individual receives supportive congregate services; such impairment may include a functional disability or frailty which is a normal consequence of the human aging process;

(6) the term "personal assistance" means service provided under this chapter which may include, but is not limited to, aid given to eligible project residents in grooming, dressing, and other activities which maintain personal appearance and hygiene;

(7) the term "professional assessment committee" means a group of at least three persons appointed by a local public housing agency or a nonprofit corporation and shall include qualified medical professionals and other persons professionally competent to appraise the functional abilities of elderly or permanently disabled adult persons, or both, in relation to the performance of the normal tasks of daily living;

(8) the term "temporarily disabled" means an impairment which (A) is expected to be of no more than six months' duration, and (B) substantially impedes an individual's ability to live independently unless the individual receives supportive congregate services; and

(9) the term "nonprofit corporation" means any corporation responsible for a housing project assisted under section 1701q of title 12.

(Pub. L. 95-557, title IV, § 403, Oct. 31, 1978, 92 Stat. 2105.)

Section Referred to in Other Sections

This section is referred to in section 8005 of this title.

§ 8003. Contracts to provide congregate services programs

The Secretary of Housing and Urban Development (hereinafter referred to as the "Secretary") is authorized to enter into contracts with local public housing agencies under the United States Housing Act of 1937 [42 U.S.C. 1437 et seq.] (hereinafter referred to as "public housing agencies") and with nonprofit corporations, utilizing sums appropriated under this chapter, to provide congregate services programs for eligible project residents in order to promote and encourage maximum independence within a home environment for such residents capable of self-care with appropriate supportive congregate services. Each contract between the Secretary and a public housing agency or nonprofit corporation shall be for a term of not less than three years or more than five years and shall be renewable at the expiration of such term. Each public housing agency or nonprofit corporation entering into such a contract shall be reserved a sum equal to its total approved contract amount from the moneys authorized and appropriated for the fiscal year in which the notification date of funding approval falls.

(Pub. L. 95-557, title IV, § 404, Oct. 31, 1978, 92 Stat. 2106.)

References in Text

The United States Housing Act of 1937, referred to in text, is act Sept. 1, 1937, ch. 896, as revised generally by Pub. L. 93-383, title II, § 201(a), Aug. 22, 1974, 88 Stat. 653, which is classified generally to chapter 8 (§ 1437 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 1437 of this title and Tables.

§ 8004. Congregate services program

(a) Essential services for maintaining independent living

Congregate services programs assisted under this chapter must include full meal service adequate to meet nutritional needs, and may also include housekeeping aid, personal assistance, and other services essential for maintaining independent living.

(b) Duplication of services

No services funded under this chapter may duplicate services which are already affordable, accessible, and sufficiently available on a long-term basis to eligible project residents under programs administered by or receiving appropriations through any department, agency, or instrumentality of the Federal Government or any other public or private department, agency, or organization.

(c) Consultation with Area Agency on Aging or other appropriate State agency

A public housing agency or nonprofit corporation applying for assistance shall consult with the Area Agency on Aging (or, where no Area Agency on Aging exists, with the appropriate State agency under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.]) in determining the means of providing services under this chapter and in identifying alternative available sources of funding for such services.

(d) Submission of proposed application to Area Agency on Aging or other appropriate State agency

Prior to the submission of a final application for either new or renewed funding under this chapter, a public housing agency and a nonprofit corporation shall present a copy of a proposed application to the Area Agency on Aging (or, where no Area Agency on Aging exists to the appropriate State agency under the Older Americans Act of 1965 [42 U.S.C. 3001 et seq.]) for review and comment. Such agency and nonprofit corporation shall consider such review and comment in the development of any final application for either new or renewed funding under this chapter.

(e) Nonelderly handicapped individuals as eligible project residents

(1) When nonelderly handicapped individuals are included among the eligible project residents, the public housing agency and nonprofit corporation shall consult with the appropriate local agency, if any, designated by applicable State law as having responsibility for the development, provision, or identification of social services to permanently disabled adults, for the purpose of determining the means of providing services under this chapter and of identifying alternative available sources of funding for such services.

(2) Such public housing agency and nonprofit corporation shall also, prior to the submission of a final application for either new or renewed funding under this chapter, present a copy of the proposed application to such appropriate local agency for review and comment. The public housing agency and nonprofit corporation shall consider such review and comment in the development of any final application for either new or renewed funding under this chapter.

(f) Manner of providing congregate services

Any nonprofit corporation or public housing agency receiving assistance under this chapter may provide congregate services directly to eligible project residents or may, by contract or lease, provide such services through other appropriate agencies or providers.

(g) Amount of annual contributions of receiving agency

Nonprofit corporations and public housing agencies receiving assistance for congregate services programs under this chapter shall be required to maintain the same dollar amount of annual contribution which they were making, if any, in support of the provision of services eligible for assistance under this chapter before the date of the submission of the application for such assistance unless the Secretary determines that the waiver of this requirement is necessary for the maintenance of adequate levels of services to eligible project residents. If any contract or lease entered into by a public housing agency or nonprofit corporation pursuant to subsection (f) of this section provides for adjustments in payments for services to reflect changes in the cost of living, then the amount of annual contribution required to be maintained by such public agency or nonprofit corporation under the preceding sentence shall be readjusted in the same manner.

(h) Fees for meal and other services

Each nonprofit corporation and public housing agency shall establish fees for meal service and other appropriate services provided to eligible project residents. These fees shall be reasonable, may not exceed the cost of providing the service, and shall be calculated on a sliding scale related to income which permits the provision of services to such residents who cannot afford meal and service fees. When meal services are provided to other project residents, fees shall be reasonable and may not exceed the cost of providing the meal service.

(i) Standards for provision of services

The Secretary shall establish standards for the provision of services under this chapter, and, in developing such service standards, the Secretary shall consult with the Secretary of the Department of Health, Education, and Welfare and with appropriate organizations representing the elderly and handicapped, as determined by the Secretary.

(Pub. L. 95-557, title IV, § 405, Oct. 31, 1978, 92 Stat. 2106.)

REFERENCES IN TEXT

The Older Americans Act of 1965, referred to in subsecs. (c) and (d), is Pub. L. 89-73, July 14, 1965, 79 Stat. 218, as amended, which is classified generally to chapter 35 (§ 3001 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3001 of this title and Tables.

CHANGE OF NAME

The Secretary of Health, Education, and Welfare was redesignated the Secretary of Health and Human Services by section 3508 of Title 20, Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8006 of this title.

§ 8005. Eligibility for services

(a) Professional assessment committee for determination of eligibility

The identification of project residents eligible to participate in a congregate services program assisted under this chapter, and the designation of the services appropriate to their individual functional abilities and needs, shall be made by a professional assessment committee. Such committee shall utilize procedures which insure that the process of determining eligibility of individuals for services under this title shall accord such individuals fair treatment and due process and a right of appeal of such determination of eligibility, and shall also assure the confidentiality of personal and medical records.

(b) Participation of other residents in meal services program

Other residents may participate in a congregate meal service program assisted under this chapter if the local public housing agency or nonprofit corporation determines that the participation of these individuals will not adversely affect the cost-effectiveness or operation of the program.

(c) Notification of change in membership of professional assessment committee

Any public housing agency or nonprofit corporation receiving assistance under this chapter shall notify the Secretary of any change in the membership of the professional assessment committee within thirty days of such change. Such notification shall list the names and professional qualifications of new members of the committee.

(d) Procedure for changes in membership of professional assessment committee

Procedures shall be established to insure that changes in the membership of the professional assessment committee are consistent with the requirements of section 8002(7) of this title.

(Pub. L. 95-557, title IV, § 406, Oct. 31, 1978, 92 Stat. 2107.)

§ 8006. Application procedure for assistance

(a) Matters included in application

An application for assistance under this chapter shall include—

(1) a plan specifying the types and priorities of the basic services the public housing agency or nonprofit corporation proposes to provide during the term of the contract; such plan must be related to the needs and characteristics of the eligible project residents and, to the maximum extent practicable, provide for the changing needs and characteristics of all project residents; such plan shall be determined after consultation with eligible project residents and with the professional assessment committee;

(2) a list of names and professional qualifications of the members of the professional assessment committee;

(3) the fee schedule established pursuant to section 8004(h) of this title;

(4) any comment received in connection with any review of a proposed application pursuant to section 8004(d) or 8004(e)(2) of this title; and

(5) a statement affirming (A) that the nonprofit corporation or public housing agency has followed the consultation procedures required in subsections (c), (d), and (e) of section 8004 of this title, and (B) that such application complies with subsection (b) of such section.

(b) Deadlines for submission of application

The Secretary shall establish appropriate deadlines for each fiscal year for the submission of applications for funding under this chapter and shall notify any public housing agency and nonprofit corporation applying for assistance under this chapter of acceptance or rejection of its application within ninety days of such submission.

(c) Review of performance of services program prior to submission of application for renewed funding

Within twelve months prior to the submission of an application for renewed funding under this chapter, each nonprofit corporation and public housing agency shall review the performance, appropriateness, and fee schedules of their congregate services program with eligible project residents and with the professional assessment committee. The results of such review shall be included in any application for renewal and shall be considered in the development of the application for renewal by the nonprofit corporation or public housing agency and in its evaluation by the Secretary.

(Pub. L. 95-557, title IV, § 407, Oct. 31, 1978, 92 Stat. 2108.)

§ 8007. Evaluation of applications and programs

(a) In evaluating applications for assistance under this chapter, the Secretary shall consider—

(1) the types and priorities of the basic services proposed to be provided, and the relationship of such proposal to the needs and characteristics of the eligible residents of the projects where the services are to be provided;

(2) how quickly services will be established following approval of the application;

(3) the degree to which local social services are adequate for the purpose of assisting eligible project residents to maintain independent living and avoid unnecessary institutionalization;

(4) the professional qualifications of the members of the professional assessment committee; and

(5) the reasonableness of fee schedules established for each congregate service.

(b) In evaluating programs receiving assistance under this chapter, the Secretary shall—

(1) establish procedures for the review and evaluation of the performance of nonprofit corporations and public housing agencies receiving assistance under this chapter, including provisions for the submission of an annual report, by each such nonprofit corporation and public housing agency, which evaluates the impact and effectiveness of its congregate services program; and

(2) publish annually and submit to the Congress, a report on and evaluation of the impact and effectiveness of congregate services programs assisted under this chapter. Such report and evaluation shall be based, in part, on the evaluations required to be submitted pursuant to paragraph (1).

(Pub. L. 95-557, title IV, § 408, Oct. 31, 1978, 92 Stat. 2108.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8008 of this title.

§ 8008. Funding procedures

(a) The Secretary shall establish procedures—

(1) to assure timely payments to nonprofit corporations and public housing agencies for approved assisted congregate services programs with provision made for advance funding sufficient to meet necessary startup costs;

(2) to permit reallocation of funds approved for the establishment of congregate services in existing public housing projects and projects assisted under section 1701q of this title if the services are not established within six months of the notification date of funding approval;

(3) to assure that where such funding has been approved for the establishment of congregate services for public housing projects and projects assisted under section 1701q of this title under construction or approved for construction, these services shall be in place at the start of the project's occupancy by tenants requiring such services for maintaining independent living;

(4) to establish accounting and other standards in order to prevent any fraudulent or inappropriate use of funds under this chapter; and

(5) to assure that no more than 1 per centum of the funds appropriated under this chapter for any fiscal year may be used by public housing agencies and nonprofit corporations for evaluative purposes as required by section 8007(b)(1) of this title.

(b) The Secretary shall establish a reserve fund, not to exceed 10 per centum of the funds appropriated in each fiscal year for the provision of services under this chapter, in order to supplement grants awarded to public housing agencies and nonprofit corporations under this chapter when, in the determination of the Secretary, such supplemental adjustments are required to maintain adequate levels of services to eligible project residents.

(Pub. L. 95-557, title IV, § 409, Oct. 31, 1978, 92 Stat. 2109.)

§ 8009. Miscellaneous provisions

(a) Utilization of elderly and permanently disabled adult persons

Each public housing agency and nonprofit corporation shall, to the maximum extent practicable, utilize elderly and permanently disabled adult persons who are residents of public housing projects or projects assisted under section 1701q of this title, but who are not eligible project residents, to participate in providing the services assisted under this chapter. Such persons shall be paid wages which shall not be lower than whichever is the highest of—

(1) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938 [29 U.S.C. 201 et seq.], if section 6(a)(1) of such Act [29 U.S.C. 206(a)(1)] applied to the resident and if he or she were not exempt under section 13 [29 U.S.C. 213] thereof;

(2) the State or local minimum wage for the most nearly comparable covered employment; or

(3) the prevailing rates of pay for persons employed in similar public occupations by the same employer.

(b) Tax treatment of services received

No service provided to a public housing resident or to a resident of a housing project assisted under section 1701q of this title under this chapter, except for wages paid under subsection (a) of this section, may be treated as income for the purpose of any other program or provision of State or Federal law.

(c) Individuals receiving aid considered residents of own household

Individuals receiving services assisted under this chapter shall be deemed to be residents of their own households, and not to be residents of a public institution, for the purpose of any other program or provision of State or Federal law.

(d) Regulations

The Secretary may issue regulations to carry out the provisions of this chapter.

(Pub. L. 95-557, title IV, § 410, Oct. 31, 1978, 92 Stat. 2109.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (a)(1), is act June 25, 1938, ch. 676, 52 Stat. 1060, as amended, which is classified principally to chapter 8 (§ 201 et seq.) of Title 29, Labor. For complete classification of this Act to the Code, see section 201 of Title 29 and Tables.

§ 8010. Authorization of appropriations

(a) To carry out the provisions of this chapter, there are authorized to be appropriated—

(1) for fiscal year 1979, not to exceed $20,000,000;

(2) for fiscal year 1980, not to exceed $25,000,000;

(3) for fiscal year 1981, not to exceed $35,000,000; and

(4) for fiscal year 1982, not to exceed $40,000,000.

(b) Sums appropriated pursuant to this section shall remain available until expended.

(Pub. L. 95-557, title IV, § 411, Oct. 31, 1978, 92 Stat. 2110.)

CHAPTER 90—NEIGHBORHOOD AND CITY REINVESTMENT, SELF-HELP AND REVITALIZATION [NEW]

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SUBCHAPTER I—NEIGHBORHOOD REINVESTMENT CORPORATION

§ 8101. Congressional findings and declaration of purpose

(a) The Congress finds that—

(1) the neighborhood housing services demonstration of the Urban Reinvestment Task Force has proven its worth as a successful program to revitalize older urban neighborhoods by mobilizing public, private, and community resources at the neighborhood level; and

(2) the demand for neighborhood housing services programs in cities throughout the United States warrants the creation of a public corporation to institutionalize and expand the neighborhood housing services program and other programs of the present Urban Reinvestment Task Force.

(b) The purpose of this subchapter is to establish a public corporation which will continue the joint efforts of the Federal financial supervisory agencies and the Department of Housing and Urban Development to promote reinvestment in older neighborhoods by local financial institutions working cooperatively with community people and local government, and which will continue the nonbureaucratic approach of the Urban Reinvestment Task Force, relying largely on local initiative for the specific design of local programs.

(Pub. L. 95-557, title VI, § 602, Oct. 31, 1978, 92 Stat. 2115.)

SHORT TITLES

Section 601 of title VI of Pub. L. 95-557 provided that: "This title [enacting this subchapter] may be cited as the 'Neighborhood Reinvestment Corporation Act'."

Section 701 of title VII of Pub. L. 95-557 provided that: "This title [enacting subchapter II of this chapter] may be cited as the 'Neighborhood Self-Help Development Act of 1978'."

Section 801 of title VIII of Pub. L. 95-557 provided that: "This title [enacting subchapter III of this chapter] may be cited as the 'Livable Cities Act of 1978'."

§ 8102. National Neighborhood Reinvestment Corporation

(a) Establishment

There is established a National Neighborhood Reinvestment Corporation (hereinafter referred to as the "corporation") which shall be a body corporate and shall possess the powers, and shall be subject to the direction and limitations specified herein.

(b) Implementation and expansion of demonstration activities

The corporation shall implement and expand the demonstration activities carried out by the Urban Reinvestment Task Force.

(c) Principal office

The corporation shall maintain its principal office in the District of Columbia or at such other place the corporation may from time to time prescribe.

(d) Exemption from taxation

The corporation, including its franchise, activities, assets, and income, shall be exempt from all taxation now or hereafter imposed by the United States, by any territory, dependency, or possession thereof, or by any State, county, municipality, or local taxing authority, except that any real property of the corporation shall be subject to State, territorial, county, municipal, or local taxation to the same extent according to its value as other real property is taxed.

(Pub. L. 95-557, title VI, § 603, Oct. 31, 1978, 92 Stat. 2115.)

§ 8103. Board of Directors

(a) Membership

The corporation shall be under the direction of a board of directors made up of the following members:

(1) the Chairman of the Federal Home Loan Bank Board;

(2) the Secretary of Housing and Urban Development;

(3) a member of the Board of Governors of the Federal Reserve System, to be designated by the Chairman of the Board of Governors of the Federal Reserve System;

(4) the Chairman of the Federal Deposit Insurance Corporation;

(5) the Comptroller of the Currency; and

(6) the Administrator of the National Credit Union Administration.

(b) Election of chairman

The Board shall elect from among its members a chairman who shall serve for a term of two years, except that the Chairman of the Federal Home Loan Bank Board shall serve as Chairman of the Board of Directors for the first such two-year term.

(c) Terms of office

Each director of the corporation shall serve ex officio during the period he holds the office to which he is appointed by the President.

(d) Compensation and expenses

The directors of the corporation, as full-time officers of the United States, shall serve without additional compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred in the performance of their duties as directors of the corporation.

(e) Bylaws, policies and administrative provisions

The directors of the corporation shall adopt such bylaws, policies, and administrative provisions as are necessary to the functioning of the corporation and consistent with the provisions of this subchapter.

(f) Quorum

The presence of a majority of the board members shall constitute a quorum.

(g) Application of other laws

The corporation shall be subject to the provisions of section 552 of title 5.

(h) Meetings of board

All meetings of the board of directors will be conducted in accordance with the provisions of section 552b of title 5.

(Pub. L. 95-557, title VI, § 604, Oct. 31, 1978, 92 Stat. 2115.)

§ 8104. Officers and employees

(a) Employment, compensation and benefits

The board shall have power to select, employ, and fix the compensation and benefits of such officers, employees, attorneys, and agents as shall be necessary for the performance of its duties under this subchapter, without regard to the provisions of title 5 governing appointments in the competitive service, classification, and General Schedule pay rates, except that no officer, employee, attorney, or agent of the corporation may be paid compensation at a rate in excess of the highest rate provided for GS-18 of the General Schedule under section 5332 of title 5.

(b) Appointment of executive director

The directors of the corporation shall appoint an executive director who shall serve as chief executive officer of the corporation.

(c) Appointment and removal of employees by executive director

The executive director of the corporation, subject to approval by the board, may appoint and remove such employees of the corporation as he determines necessary to carry out the purposes of the corporation.

(d) Prohibition of political tests and qualifications in selection, etc., of personnel

No political test or political qualification shall be used in selecting, appointing, promoting, or taking any other personnel action with respect to any officer, agent, or employee of the corporation or of any recipient, or in selecting or monitoring any grantee, contractor, or person or entity receiving financial assistance under this subchapter.

(e) Employee status; applicability of administrative and cost standards of Office of Management and Budget

Officers and employees of the corporation shall not be considered officers or employees of the United States, and the corporation shall not be considered a department, agency, or instrumentality of the Federal Government. The corporation shall be subject to administrative and cost standards issued by the Office of Management and Budget similar to standards applicable to non-profit grantees and educational institutions.

(Pub. L. 95-557, title VI, § 605, Oct. 31, 1978, 92 Stat. 2116.)

REFERENCES IN TEXT

The provisions of title 5 governing appointments in the competitive service, referred to in subsec. (a), are classified to section 3301 et seq. of Title 5, Government Organization and Employees.

§ 8105. Powers and duties of corporation

(a) Continuance of work of Urban Reinvestment Task Force regarding neighborhood housing services programs and preservation projects

(1) The corporation shall continue the work of the Urban Reinvestment Task Force in establishing neighborhood housing services programs in neighborhoods throughout the United States, supervising their progress, and providing them with grants and technical assistance. For the purpose of this paragraph, a neighborhood housing services program may involve a partnership of neighborhood residents and representatives of local governmental and financial institutions, organized as a State-chartered non-profit corporation, working to bring about reinvestment in one or more neighborhoods through a program of systematic housing inspections, increased public investment, increased private lending, increased resident investment, and a revolving loan fund to make loans available at flexible rates and terms to homeowners not meeting private lending criteria.

(2) The corporation shall continue the work of the Urban Reinvestment Task Force in identifying, monitoring, evaluating, and providing grants and technical assistance to selected neighborhood preservation projects which show promise as mechanisms for reversing neighborhood decline and improving the quality of neighborhood life.

(3) The corporation shall experimentally replicate neighborhood preservation projects which have demonstrated success, and after creating reliable developmental processes, bring the new programs to neighborhoods throughout the United States which in the judgment of the corporation can benefit therefrom, by providing assistance in organizing programs, providing grants in partial support of program costs, and providing technical assistance to ongoing programs.

(4) The corporation shall continue the work of the Urban Reinvestment Task Force in supporting Neighborhood Housing Services of America, a nonprofit corporation established to provide services to local neighborhood housing services programs, with support which may include technical assistance and grants to expand its national loan purchase pool and may contract with it for services which it can perform more efficiently or effectively than the corporation.

(5) The corporation shall, in making and providing the foregoing grants and technical and other assistance, determine the reporting and management restrictions or requirements with which the recipients of such grants or other assistance must comply. In making such determinations, the corporation shall assure that recipients of grants and other assistance make available to the corporation such information as may be necessary to determine compliance with applicable Federal laws.

(b) General administrative powers

To carry out the foregoing purposes and engage in the foregoing activities, the corporation is authorized—

(1) to adopt, alter, and use a corporate seal;

(2) to have succession until dissolved by Act of Congress;

(3) to make and perform contracts, agreements, and commitments;

(4) to sue and be sued, complain and defend, in any State, Federal, or other court;

(5) to determine its necessary expenditures and the manner in which the same shall be incurred, allowed, and paid, and appoint, employ, and fix and provide for the compensation of consultants, without regard to any other law, except as provided in section 8107(d) of this title;

(6) to settle, adjust, and compromise, and with or without compensation or benefit to the corporation to release or waive in whole or in part, in advance or otherwise, any claim, demand, or right of, by, or against the corporation;

(7) to invest such funds of the corporation in such investments as the board of directors may prescribe;

(8) to acquire, take, hold, and own, and to deal with and dispose of any property; and

(9) to exercise all other powers that are necessary and proper to carry out the purposes of this subchapter.

(c) Contracting powers

(1) The corporation may contract with the Office of Neighborhood Reinvestment of the Federal home loan banks for all staff, services, facilities, and equipment now or in the future furnished by the Office of Neighborhood Reinvestment to the Urban Reinvestment Task Force, including receiving the services of the Director of the Office of Neighborhood Reinvestment as the corporation's executive director.

(2) The corporation shall have the power to award contracts and grants to—

(A) neighborhood housing services corporations and other nonprofit corporations engaged in neighborhood preservation activities; and

(B) local governmental bodies.

(3) The Secretary of Housing and Urban Development, the Federal Home Loan Bank Board and the Federal home loan banks, the Board of Governors of the Federal Reserve System and the Federal Reserve banks, the Federal Deposit Insurance Corporation, and the Comptroller of the Currency, the National Credit Union Administration or any other department, agency,

or other instrumentality of the Federal Government are authorized to provide services and facilities, with or without reimbursement, necessary to achieve the objectives and to carry out the purposes of this subchapter.

(d) Non-profit nature of corporation

(1) The corporation shall have no power to issue any shares of stocks, or to declare or pay any dividends.

(2) No part of the income or assets of the corporation shall inure to the benefit of any director, officer, or employee, except as reasonable compensation for services or reimbursement for expenses.

(3) The corporation may not contribute to or otherwise support any political party or candidate for elective public office.

(Pub. L. 95-557, title VI, § 606, Oct. 31, 1978, 92 Stat. 2117.)

§ 8106. Reports and audits

(a) Annual report to President and Congress

The corporation shall publish an annual report which shall be transmitted by the corporation to the President and the Congress.

(b) Annual audit of accounts

The accounts of the corporation shall be audited annually. Such audits shall be conducted in accordance with generally accepted auditing standards by independent certified public accountants who are certified by a regulatory authority of the jurisdiction in which the audit is undertaken.

(c) Additional audits by General Accounting Office

In addition to the annual audit, the financial transactions of the corporation for any fiscal year during which Federal funds are available to finance any portion of its operations may be audited by the General Accounting Office in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States. The financial transactions of the corporation shall be audited by the General Accounting Office at least once during each three years.

(d) Audit of grantees and contractors of corporation

For any fiscal year during which Federal funds are available to finance any portion of the corporation's grants or contracts, the General Accounting Office, in accordance with such rules and regulations as may be prescribed by the Comptroller General of the United States, may audit the grantees or contractors of the corporation.

(e) Annual financial audit

The corporation shall conduct or require each grantee or contractor to provide for an annual financial audit. The report of each such audit shall be maintained for a period of at least five years at the principal office of the corporation.

(Pub. L. 95-557, title VI, § 607, Oct. 31, 1978, 92 Stat. 2118.)

§ 8107. Appropriations

(a) Authorization

There are authorized to be appropriated to the corporation to carry out this subchapter not to exceed $12,500,000 for fiscal year 1979, and not to exceed $12,000,000 for fiscal year 1980.

(b) Availability of funds until expended

Funds appropriated pursuant to this section shall remain available until expended.

(c) Accounting and reporting of non-Federal funds

Non-Federal funds received by the corporation, and funds received by any recipient from a source other than the corporation, shall be accounted for and reported as receipts and disbursements separate and distinct from Federal funds.

(d) Preparation of business-type budget

The corporation shall prepare annually a business-type budget which shall be submitted to the Office of Management and Budget, under such rules and regulations as the President may establish as to the date of submission, the form and content, the classifications of data, and the manner in which such budget program shall be prepared and presented. The budget of the corporation as modified, amended, or revised by the President shall be transmitted to the Congress as a part of the annual budget required by the Budget and Accounting Act, 1921 [31 U.S.C. 1 et seq.]. Amendments to the annual budget program may be submitted from time to time.

(Pub. L. 95-557, title VI, § 608, Oct. 31, 1978, 92 Stat. 2119; Pub. L. 96-153, title III, § 307, Dec. 21, 1979, 93 Stat. 1113.)

REFERENCES IN TEXT

The Budget and Accounting Act, 1921, referred to in subsec. (d), is act June 10, 1921, ch. 18, 42 Stat. 20, as amended, which is classified principally to chapter 1 (§ 1 et seq.) of Title 31, Money and Finance. For complete classification of this Act to the Code, see section 1 of Title 31 and Tables.

AMENDMENTS

1979—Subsec. (a). Pub. L. 96-153, authorized appropriation of $12,000,000 for fiscal year 1980.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8105 of this title.

SUBCHAPTER II—NEIGHBORHOOD SELF-HELP DEVELOPMENT

§ 8121. Congressional findings and statement of purposes

(a) The Congress finds and declares that—

(1) existing urban neighborhoods are a national resource to be conserved and revitalized wherever possible, and that public policy should promote governmental and private programs and activities that further that objective;

(2) to be effective, neighborhood conservation and revitalization efforts must involve the fullest possible support and participation of those most directly affected at the neighborhood levels; and

(3) an effective way to obtain such support and participation at the neighborhood level is through neighborhood organizations accountable to residents of a particular neighborhood

with a demonstrable capacity for developing, assessing, and carrying out projects for neighborhood conservation and revitalization.

(b) Therefore, the purposes of this subchapter are (1) to provide grants and other forms of assistance to qualified neighborhood organizations to undertake specific housing, economic or community development, and other appropriate neighborhood conservation and revitalization projects in low- and moderate-income neighborhoods, which are in need of preservation and revitalization, and (2) in the process of providing such assistance, to increase the capacity of neighborhood organizations to utilize and coordinate resources available from the public and private sectors and from the residents and neighborhoods themselves, in conserving and revitalizing such neighborhoods.

(Pub. L. 95-557, title VII, § 702, Oct. 31, 1978, 92 Stat. 2119.)

SHORT TITLE

For short title of this subchapter as the Neighborhood Self-Help Development Act of 1978, see Short Title note set out under section 8101 of this title.

§ 8122. Definitions

As used in this subchapter—

(1) the term "neighborhood organization" means a voluntary, nonprofit organization which (A) is broadly representative of the neighborhood in which the project will be located (and may include representatives of local business, financial and other governmental and nongovernmental entities), (B) is accountable to neighborhood residents with respect to the project being proposed, (C) has an objective the preservation and revitalization of such neighborhood, and (D) is found by the Secretary to have a proven record or demonstrable capacity for developing resources for, and effectively implementing neighborhood conservation and revitalization programs and projects;

(2) the term "neighborhood conservation and revitalization projects" includes, but is not limited to, (A) locally initiated programs for housing rehabilitation or the creative reuse or improvement of existing housing; (B) conservation and revitalization of neighborhood retail business areas and the recycling of vacant or underutilized industrial sites, public facilities, and privately-owned businesses for the purpose of expanding employment opportunities and neighborhood economic development; and (C) energy conservation and weatherization projects; and

(3) the term "Secretary" means the Secretary of Housing and Urban Development.

(Pub. L. 95-557, title VII, § 703, Oct. 31, 1978, 92 Stat. 2120.)

§ 8123. Grants and other forms of assistance

(a) Authorization; purposes

The Secretary is authorized to make grants and to provide other forms of assistance to neighborhood organizations for effectively preparing and implementing specific housing, economic and community development, and other appropriate neighborhood conservation and revitalization projects within a particular neighborhood, and to assist such organizations in implementing such projects in partnership with local government and other public and private entities.

(b) Preconditions

Grants and other forms of assistance may be made available under this section only if—

(1) the assistance will be used for a specific project which is related to and supportive of a conservation or revitalization strategy for the neighborhood in which the project will be located;

(2) the project will, to the extent feasible, include a self-help component which involves a contribution of time or resources by neighborhood residents;

(3) the project will directly benefit the residents of a low- or moderate-income neighborhood;

(4) the project will, to the extent feasible, involve leveraging of resources available from the private sector;

(5) the project will, to the extent feasible, involve the coordination of resources available from the local, State, or Federal Government;

(6) the applicant demonstrates that the residents of the neighborhood where the project will be located, and particularly residents who will be directly affected by the project, have been actively involved in and supportive of the selection of the project, and will continue to be involved in project development, implementation, and evaluation through an effective and continuing participation mechanism; and

(7) the applicant provides evidence that identified funding sources support the project and can make funds available contingent on the progress of the project.

(c) Uses of available assistance

Grants and other forms of assistance made available under this section shall be used primarily for preparing and the implementation of specific neighborhood housing, economic, and community development projects. No grant or other assistance or portion thereof shall be made available under this section for (1) planning functions which are not directly combined with project implementation, (2) a public works project such as street repair which is not associated with the specific project being funded under this section, (3) operation of a social service program which is not associated with the specific project being funded under this section, (4) an economic development project which will not primarily benefit the residents of the neighborhood in which it will be located, (5) operating costs of a community group which are not associated with the specific project being funded under this section, or (6) other purposes which the Secretary may determine are not consistent with the purposes of this subchapter.

(d) Certified application requirements; waiver of certification for assistance to demonstration of innovative means of neighborhood conservation and revitalization

Grants and other forms of assistance may be made available under this subchapter only if the application contains a certification by the unit of general local government within which the neighborhood to be assisted is located that such assistance is consistent with, and supportive of the specific objectives of that unit of government including housing and community development, economic development, and neighborhood conservation or revitalization activities being carried out by such unit, except that the Secretary may make such grants and other forms of assistance available without such certification if such assistance is made available for the demonstration of innovative means of assisting in neighborhood conservation and revitalization, but not more than 10 per centum of assistance made available under this subchapter in any fiscal year shall be made available without such certification.

(e) Consultation and coordination requirements

The Secretary shall consult with the heads of other Federal departments and agencies having responsibilities related to the purposes of this subchapter, including the Community Services Administration, with respect to (1) general standards, policies, and procedures to be followed in the administration of this subchapter, and (2) particular assistance actions or approvals which the Secretary believes to be of special interest or concern to one or more of such departments and agencies. The Secretary shall ensure the close coordination of activities assisted under this subchapter with other related Federal, State, and local assistance programs, including the programs of the Community Services Administration, and, with respect to particular assistance actions or approvals, ensure a maximum commitment by the neighborhood organization of its own financial and other resources toward the assisted project.

(Pub. L. 95-557, title VII, § 704, Oct. 31, 1978, 92 Stat. 2120; Pub. L. 96-153, title I, § 107(b), Dec. 21, 1979, 93 Stat. 1104.)

AMENDMENTS

1979—Subsec. (d). Pub. L. 96-153 added conditions under which the Secretary can make grants and other forms of assistance without certification.

§ 8124. Authorization of appropriations

There are authorized to be appropriated for the purpose of carrying out this subchapter not to exceed $13,500,000 for each of the fiscal years 1979 and 1980. Any amount appropriated pursuant to this section shall remain available until expended.

(Pub. L. 95-557, title VII, § 705, Oct. 31, 1978, 92 Stat. 2121; Pub. L. 96-153, title I, § 107(a), Dec. 21, 1979, 93 Stat. 1104.)

AMENDMENTS

1979—Pub. L. 96-153 substituted "$13,500,000" for "$15,000,000".

SUBCHAPTER III—LIVABLE CITIES

§ 8141. Congressional findings

The Congress finds and declares—

(1) that artistic, cultural, and historic resources, including urban design, constitute an integral part of a suitable living environment for the residents of the Nation's urban areas, and should be available to all residents of such areas, regardless of income;

(2) that the development or preservation of such resources is a significant and necessary factor in restoring and maintaining the vitality of the urban environment, and can serve as a catalyst for improving decaying or deteriorated urban communities and expanding economic opportunities, and for creating a sense of community identity, spirit, and pride; and

(3) that the encouragement and support of local initiatives to develop or preserve such resources, particularly in connection with federally assisted housing or community development activities or in communities with a high proportion of low-income residents, is an appropriate function of the Federal Government.

(Pub. L. 95-557, title VIII, § 802, Oct. 31, 1978, 92 Stat. 2122.)

SHORT TITLE

For short title of this subchapter as the Livable Cities Act of 1978, see Short Title note set out under section 8101 of this title.

§ 8142. Statement of purpose

The primary purpose of this subchapter is to assist the efforts of States, local governments, neighborhood and other organizations to provide a more suitable living environment, expand cultural opportunities, and to the extent practicable, stimulate economic opportunities, primarily for the low and moderate income residents of communities and neighborhoods in need of conservation and revitalization, through the utilization, design or development of artistic, cultural, or historic resources.

(Pub. L. 95-557, title VIII, § 803, Oct. 31, 1978, 92 Stat. 2122.)

§ 8143. Definitions

For the purpose of this subchapter—

(1) the terms "art" and "arts" include, but are not limited to, architecture (including preservation, restoration, or adaptive use of existing structures), landscape architecture, urban design, interior design, graphic arts, fine arts (including painting and sculpture), performing arts (including music, drama, and dance), literature, crafts, photography, communications media and film, as well as other similar activities which reflect the cultural heritage of the Nation's communities and their citizens;

(2) the term "nonprofit organization" means an organization in which no part of its net earnings inures to the benefit of any private stockholder or stockholders, individual or individuals and, if a private entity, which is

not disqualified for tax exemption under section 501(c)(3) of title 26 by reason of attempting to influence legislation and does not participate in or intervene in (including the publishing or distribution of statements) any political campaign on behalf of any candidate for public office; such organizations may include States and units of local government (including public agencies or special authorities thereof), regional organizations of local governments and nonprofit societies, neighborhood groups, institutions, organizations, associations or museums;

(3) the term "project" means a program or activity intended to carry out the purposes of this subchapter, including programs for neighborhood and community-based arts programs, urban design, user needs design, and the encouragement of the preservation of historic or other structures which have neighborhood or community significance;

(4) the term "Secretary" means the Secretary of Housing and Urban Development;

(5) the term "Chairman" means the Chairman of the National Endowment for the Arts;

(6) the term "Department" means the Department of Housing and Urban Development; and

(7) the term "Endowment" means the National Endowment for the Arts.

(Pub. L. 95-557, title VIII, § 804, Oct. 31, 1978, 92 Stat. 2122.)

§ 8144. Grants to or contracts with organizations

(a) Authorization; purposes

The Secretary is authorized to make grants to, or enter into contracts with, nonprofit organizations for the purpose of enabling such organizations to undertake or support in cities, urban communities, or neighborhoods, projects which the Secretary, in consultation with the Chairman, determines will carry out the purposes of this subchapter and which—

(1) have substantial artistic, cultural, historical, or design merit,

(2) represent community or neighborhood initiatives which have a significant potential for conserving or revitalizing communities or neighborhoods, and for enhancing community or neighborhood identity and pride, and

(3) meet the criteria established jointly by the Secretary and the Chairman pursuant to this section.

(b) Establishment of criteria and procedures for evaluation and selection of projects; scope of criteria

The Secretary and the Chairman shall establish jointly criteria and procedures for evaluating and selecting projects to be assisted under this subchapter. Such criteria shall address, but need not be limited to—

(1) artistic, cultural, historical, or design quality;

(2) the degree of broadly based, active involvement of neighborhood residents, community groups, local officials, and persons with expertise in the arts with the proposed project;

(3) the degree of or the potential for utilization or stimulation of assistance or cooperation from other Federal, State, and local public and private sources, including arts organizations;

(4) the feasibility of project implementation, including the capability of the sponsor organization;

(5) the potential contribution to neighborhood revitalization and the creation of a sense of community identity and pride;

(6) the potential for stimulating neighborhood economic and community development, particularly for the benefit of persons of low and moderate income; and

(7) the potential of utilization of the project by neighborhood residents, particularly residents of low and moderate income, senior citizens, and handicapped persons.

(c) Application requirements

No assistance shall be made under this subchapter except upon application therefor submitted to the Secretary in accordance with regulations and procedures established jointly by the Secretary and the Chairman.

(d) Consultation requirements

Prior to the approval of any application for assistance under this subchapter, the Secretary shall consult with the Chairman and, in accordance with regulations and procedures established jointly by the Secretary and the Chairman, seek the recommendations of State and local officials and private citizens who have broad knowledge of, or experience or expertise in, community and economic development and revitalization, and of such officials and citizens who have broad knowledge of, or expertise in, the arts.

(e) Regulations respecting matching requirements; waiver, etc.

The Secretary, in cooperation with the Chairman, shall prescribe regulations which require that specific portions of the cost of any projects assisted under this subchapter shall be provided from sources other than funds made available under this subchapter. Such matching requirements may vary depending on the type of applicant, and the Secretary may reduce or waive such requirements solely in order to take account of the financial capacity of the applicant.

(f) Certification of application

Grants and other assistance may be made available under this subchapter only if the application contains a certification by the unit of general local government in which the project will be located that the project is consistent with and supportive of the objectives of that government for the area in which the project is located.

(g) Available funds not to supplant other public or private funds

Funds made available under this subchapter shall not be used to supplant other public or private funds.

(h) Availability of funds for administrative expenses

No more than 10 per centum of the funds appropriated for any fiscal year under section 8146 of this title shall be available for administrative expenses.

(Pub. L. 95-557, title VIII, § 805, Oct. 31, 1978, 92 Stat. 2123.)

§ 8145. Coordination and development of program with other Federal and nonfederal programs

The Secretary shall coordinate the administration of the provisions of this subchapter in cooperation with other Federal agencies and assure that projects assisted under this subchapter are coordinated with efforts undertaken by State and local public and private entities, including arts organizations.

(Pub. L. 95-557, title VIII, § 806, Oct. 31, 1978, 92 Stat. 2124.)

§ 8146. Authorization of appropriations

There are authorized to be appropriated for carrying out the purposes of this subchapter not to exceed $5,000,000 for fiscal year 1979, and not to exceed $5,000,000 for fiscal year 1980. Any amounts appropriated under this section shall remain available until expended.

(Pub. L. 95-557, title VIII, § 807, Oct. 31, 1978, 92 Stat. 2124; Pub. L. 96-153, title I, § 108, Dec. 21, 1979, 93 Stat. 1105.)

AMENDMENTS

1979—Pub. L. 96-153 reduced the authorization of appropriation for fiscal year 1980 from "$10,000,000" to "$5,000,000".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8144 of this title.

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SUBCHAPTER I—GENERAL PROVISIONS

§ 8201. Findings and statement of purposes

(a) Findings

The Congress finds that—

(1) the United States faces an energy shortage arising from increasing demand for energy, particularly for oil and natural gas, and insufficient domestic supplies of oil and natural gas to satisfy that demand;

(2) unless effective measures are promptly taken by the Federal Government and other users of energy to reduce the rate of growth of demand for energy, the United States will become increasingly dependent on the world oil market, increasingly vulnerable to interruptions of foreign oil supplies, and unable to provide the energy to meet future needs; and

(3) all sectors of our Nation's economy must begin immediately to significantly reduce the demand for nonrenewable energy resources such as oil and natural gas by implementing and maintaining effective conservation measures for the efficient use of these and other energy sources.

(b) Statement of purposes

The purposes of this chapter are to provide for the regulation of interstate commerce, to reduce the growth in demand for energy in the United States, and to conserve nonrenewable energy resources produced in this Nation and elsewhere, without inhibiting beneficial economic growth.

(Pub. L. 95-619, title I, § 102, Nov. 9, 1978, 92 Stat. 3208.)

REFERENCES IN TEXT

This chapter, referred to in subsec. (b), was in the original "this Act", meaning Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3206, known as the National Energy Conservation Policy Act. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

SHORT TITLES

Section 101 of Pub. L. 95-619 provided that: "This Act [which enacted this chapter, sections 1490i, 6215, 6311 to 6317, 6344a, 6371, 6371a to 6371j, 6372, 6372a to 6372i, 6373, 6873, and 7141 of this title, and sections 1723f to 1723h of Title 12, Banks and Banking, amended sections 300k-2, 300n-1, 1437c, 1471, 1474, 1483, 6202, 6211, 6233 to 6241, 6243 to 6245, 6272 to 6274, 6291 to 6299, 6303 to 6309, 6321 to 6327, 6341 to 6346, 6361, 6381, 6383, 6392, 6836, 6862, 6863, 6865, and 6872 of this title, sections 1451, 1703, 1709, 1713, 1715z-6, 1717, and 1735f-4 of Title 12, and sections 2006 and 2008 of Title 15, Commerce and Trade, repealed section 6397 of this title, and enacted provisions set out as notes under sections 6321, 6344a, 6345, 6371, 6372, and 8201 of this title, section 2006 of Title 15, and section 217 of Title 23, Highways] may be cited as the 'National Energy Conservation Policy Act'."

Section 561 of Pub. L. 95-619 provided that: "This part [which enacted sections 8271 to 8278 of this title] may be cited as the 'Federal Photovoltaic Utilization Act'."

SUBCHAPTER II—RESIDENTIAL ENERGY CONSERVATION

PART A—UTILITY PROGRAM

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in title 15 section 3204; title 16 section 2625.

§ 8211. Definitions

As used in this subchapter—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "load management technique" means any technique to reduce the maximum kilowatt demand on an electric utility, including ripple or radio control mechanisms, or other types of interruptible electric service, energy storage devices, and load limiting devices.

(3) The term "natural gas" means natural gas as defined in the Natural Gas Act [15 U.S.C. 717 et seq.]

(4) The term "public utility" means any person, State agency, or Federal agency which is engaged in the business of selling natural gas or electric energy, or both, to residential customers for use in a residential building.

(5) The term "regulated utility" means a public utility with respect to whose rates a State regulatory authority has rate-making authority.

(6) The term "nonregulated utility" means a public utility which is not a regulated utility.

(7) The term "rate" means any price, rate, charge, or classification made, demanded, observed, or received with respect to sales of electric energy or natural gas, any rule, regulation, or practice respecting any such rate, charge, or classification, and any contract pertaining to the sale of electric energy or natural gas.

(8) The term "ratemaking authority" means authority to fix, modify, approve, or disapprove rates.

(9) The term "residential building" means any building used for residential occupancy which—

(A) is not a new building to which final standards under sections 6833(a) and 6834 of this title apply,

(B) contains at least one, but no more than four, dwelling units, and

(C) has a system for heating or cooling, or both.

(10) The term "residential customer" means any person to whom—

(A) a public utility sells natural gas or electric energy, or

(B) a home heating supplier supplies or sells home heating fuel (including No. 2 heating oil, kerosene, butane, and propane),

for consumption by such customer in a residential building.

(11) The term "residential energy conservation measure" means—

(A) caulking and weatherstripping of doors and windows;

(B) furnace efficiency modifications including—

(i) replacement burners, furnaces or boilers or any combination thereof which, as determined by the Secretary, substantially increases the energy efficiency of the heating system,

(ii) devices for modifying flue openings which will increase the energy efficiency of the heating system, and

(iii) electrical or mechanical furnace ignition systems which replace standing gas pilot lights;

(C) clock thermostats;

(D) ceiling, attic, wall, and floor insulation;

(E) water heater insulation;

(F) storm windows and doors, multiglazed windows and doors, heat-absorbing or heat-reflective glazed window and door materials;

(G) devices associated with load management techniques;

(H) devices to utilize solar energy or windpower for any residential energy conservation purpose, including heating of water, space heating or cooling; and

(I) such other measures as the Secretary by rule identifies for purposes of this part.

No measure referred to in subparagraphs (B) through (I) shall be treated as a residential energy conservation measure for purposes of this part unless such measure is warranted by the manufacturer to meet a specified level of performance over a period of not less than three years.

(12) The term "residential energy conservation plan" means a plan approved by the Secretary pursuant to section 8213 of this title.

(13) The term "State" means a State, the District of Columbia, and Puerto Rico.

(14) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electric energy or natural gas by any public utility (other than by such State agency); except that in the case of a public utility with respect to which the Tennessee Valley Authority has rate-making authority, such term means the Tennessee Valley Authority.

(15) The term "State agency" means a State, a political subdivision thereof, or any agency or instrumentality of either.

(16) The term "suggested measures" means, with respect to a particular residential building, the residential energy conservation measures which the Secretary, in the rules prescribed pursuant to section 8213 of this title, determines to be appropriate for the location and the category of residential buildings which includes such building. In determining which of the residential energy conservation measures shall be suggested measures for a location and category of residential building, the Secretary shall consider the cost of the inspection offered under section 8216(b)(1)(A) of this title and its effect on the willingness of residential customers to participate in the utility program.

(17) The term "utility program" means a program meeting the requirements of section 8216 of this title.

(18) The term "Governor" means the Governor or chief executive officer of a State or his designee.

(19) The term "home heating supplier program" means a program meeting the requirements of section 8218 of this title.

(20) The term "home heating supplier" means a person who sells or supplies home heating fuel (including No. 2 heating oil, kerosene, butane, and propane) to a residential customer for consumption in a residential building.

(Pub. L. 95-619, title II, § 210, Nov. 9, 1978, 92 Stat. 3209.)

References in Text

This subchapter, referred to in provision preceding par. (1), was in the original "this title", meaning title II (§§ 210 to 255) of Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3209, which enacted this subchapter and sections 1490i and 6873 of this title and sections 1723f to 1723h of Title 12, Banks and Banking, and amended sections 1437c, 1471, 1474, 1483, 6836, 6862, 6863, 6865, and 6872 of this title and sections 1451, 1703, 1709, 1713, 1715z-6, 1717, and 1735f-4 of Title 12. For complete classification of this Title to the Code, see Short Title note set out under section 8201 of this title and Tables.

The Natural Gas Act, referred to in par. (3), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

Section Referred to in Other Sections

This section is referred to in sections 8214, 8217, 8221 of this title.

§ 8212. Coverage

(a) In general

This part shall apply in any calendar year to a public utility only if during the second preceding calendar year either—

(1) sales of natural gas by such public utility for purposes other than resale exceeded 10 billion cubic feet, or

(2) sales of electric energy by such public utility for purposes other than resale exceeded 750 million kilowatt-hours.

(b) List of covered utilities

Before the beginning of each calendar year, the Secretary shall publish a list identifying each public utility to which this part applies during such calendar year. Promptly after publication of such list, each State regulatory authority shall notify the Secretary of each public utility on the list for which such State regulatory authority has ratemaking authority.

(Pub. L. 95-619, title II, § 211, Nov. 9, 1978, 92 Stat. 3211.)

§ 8213. Rules of Secretary for submission and approval of plans

(a) Promulgation of rules by Secretary

The Secretary shall, not later than 45 days after November 9, 1978, publish an advanced notice of proposed rulemaking with respect to rules on the content and implementation of residential energy conservation plans which meet the requirements of sections 8214 and 8215 of this title. Not later than 60 days after the date of publication of the advanced notice of proposed rulemaking, and after consultation with the Secretary of Housing and Urban Development, the Secretary of Commerce (acting through the National Bureau of Standards), the Federal Trade Commission, the Consumer Product Safety Commission, and the heads of such other agencies as he deems appropriate, the Secretary shall publish a proposed rule on content and implementation of such plans. After publication of such proposed rule, the Secretary shall afford interested persons (including Federal and State agencies) an opportunity to present oral and written comments on matters relating to such proposed rule. A rule prescribing the content and implementation of residential energy conservation plans shall be published not earlier than 45 days after publication of the proposed rule.

(b) Content of Secretary's rules

The rules promulgated under subsection (a) of this section—

(1) shall identify the suggested measures for residential buildings, by climatic region and by categories determined by the Secretary on the basis of type of construction and any other factors which the Secretary may deem appropriate;

(2) shall include—

(A) standards which the Secretary determines necessary for general safety and effectiveness of any residential energy conservation measure;

(B) standards which the Secretary determines necessary for installation of any residential energy conservation measure;

(C) standards for the procedures concerning fair and reasonable prices and rates of interest required under section 8214(a)(4) of this title;

(D) standards, developed in consultation with the Federal Trade Commission, concerning unfair, deceptive, or anticompetitive acts or practices, for the measures required under section 8214(b) of this title;

(E) standards which (i) require the lists referred to in section 8214(a)(2) of this title (concerning lists of suppliers and contractors) and 8214(a)(3) of this title (concerning lists of lending institutions) to be prepared in a fair, open, and nondiscriminatory manner and (ii) provide for the removal, in appropriate cases, of suppliers, contractors, or lending institutions from such lists; and

(F) standards which assure that any person who alleges any injury resulting from a violation of the requirements of the standards under subparagraph (E) shall be entitled to redress under procedures established by the Governor (or the Secretary in any case in which section 8220 of this title, relating to Federal standby authority applies); and

(3) may include such other requirements as the Secretary may determine to be necessary to carry out this part.

(c) Procedure for submission and approval of State residential energy conservation plans

(1)(A) Not later than 180 days after promulgation of rules under subsection (a) of this section, the Governor of each State or any State agency specifically authorized to do so under State law, may submit to the Secretary a proposed residential energy conservation plan which meets the requirements of the rules promulgated under subsection (a) of this section. Within such 180-day period, each nonregulated utility shall submit a proposed plan, which meets the requirements of the rules promulgated under subsection (a) of this section, to the Secretary unless a plan submitted under the preceding sentence for the State in which the nonregulated utility provides utility service applies to nonregulated utilities as provided in paragraph (2). The Secretary may, upon request of the Governor or State agency or nonregulated utility, extend, for good cause shown, the time period for submission of a plan.

(B) Each such plan shall be reviewed and approved or disapproved by the Secretary not later than 90 days after submission. If the Secretary disapproves a plan, the Governor or State agency or nonregulated utility may submit a new or amended plan not later than 60 days after the date of such disapproval, or such longer period as the Secretary may, for good cause, allow. The Secretary shall review and approve or disapprove any such new or amended plan not later than 90 days after submission.

(C) After approval of a plan, a Governor or State agency or nonregulated utility may submit an amended plan and such plan shall be approved or disapproved in the same manner as the original plan.

(2) Any plan submitted by a Governor or State agency under paragraph (1) may, in the discretion of the Governor, if he notifies the Secretary within 30 days after promulgation of rules under subsection (a) of this section, apply to nonregulated utilities providing utility service in the State in the same manner as to regu-

lated utilities. In any such case references elsewhere in this part to regulated utilities (including references to utilities with respect to which a State regulatory authority exercises ratemaking authority) shall, with respect to such State, be treated as references also to nonregulated utilities and references elsewhere in this part to nonregulated utilities shall not apply. For purposes of this paragraph, the term "nonregulated utility" shall not include any public utility which is a Federal agency.

(3) A plan applicable to home heating suppliers may be submitted by the Governor in his discretion.

(4) In the case of the Tennessee Valley Authority or any public utility with respect to which the Tennessee Valley Authority has ratemaking authority, the authority otherwise vested in the Governor or State agency under this section shall be vested in the Tennessee Valley Authority.

(Pub. L. 95-619, title II, § 212, Nov. 9, 1978, 92 Stat. 3211.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8211, 8214, 8215, 8216, 8218, 8219, 8220 of this title.

§ 8214. Requirements for State residential energy conservation plans for regulated utilities

(a) General requirements

No proposed residential energy conservation plan submitted for regulated utilities shall be approved by the Secretary unless such plan—

(1) requires each regulated utility to implement a utility program which meets the requirements of section 8216 of this title (except such requirements of section 8216 of this title as do not apply by reason of section 8217(f) of this title) and contains adequate State enforcement procedures in connection with such implementation;

(2) provides a procedure for permitting any supplier or contractor—

(A) who sells or installs residential energy conservation measures in the area served by such utility, and

(B) who meets such minimum requirements as may be contained in rules promulgated by the Secretary under section 8213(b)(2)(E) of this title

to be included on a list made public by such utility as provided under section 8216(a)(3) of this title;

(3) provides a procedure for permitting any bank, savings and loan association, credit union, or other public or private lending institution which—

(A) offers loans for the purchase and installation of residential energy conservation measures in the areas served by such utility and

(B) which meets such minimum requirements as may be promulgated by the Secretary under section 8213(b)(2)(E) of this title

to be included on a list made public by such utility as provided under section 8216(a)(3) of this title;

(4) provides adequate procedures to assure that each regulated utility will charge fair and reasonable prices and rates of interest to its residential customers under such utility program in connection with the purchase and installation of residential energy conservation measures;

(5) provides procedures for resolving complaints against persons who sell or install residential energy conservation measures under such program;

(6) provides procedures for insuring the effective coordination exists among various local, State, and Federal energy conservation programs within and affecting such State, including any energy extension service program administered by the Secretary of Energy;

(7) is adopted after notice and public hearings; and

(8) meets such other requirements as may be contained in the rules promulgated under section 8213 of this title.

(b) Requirements concerning unfair, deceptive, or anticompetitive acts or practices

(1) No proposed residential energy conservation plan submitted for regulated utilities shall be approved by the Secretary unless such plan contains adequate measures for preventing unfair, deceptive, or anticompetitive acts or practices affecting commerce which relate to the implementation of utility programs within such State.

(2) The measures under paragraph (1) shall include—

(A) provisions to assure that, in carrying out procedures under section 8216(b)(1) of this title (or the corresponding procedures in section 8218 of this title) the regulated utility will not unfairly discriminate among—

(i) residential customers,

(ii) suppliers and contractors of such measures, or

(iii) lending institutions in the utility's service area which offer loans for the purchase and installation of residential energy conservation measures, and

will not unfairly discriminate among measures which are purchased from, or installed by, any person under such program, and

(B) provisions to assure that in the case of a furnace which uses as its primary source of energy any fuel or source of energy other than the fuel or source of energy sold by a utility, such utility will not inspect such furnace, or make, install, or inspect any furnace efficiency modification referred to in section 8211(11)(B) of this title, unless the residential customer requests (in writing) such inspection, installation, or modification.

(c) Redress

No residential energy conservation plan submitted for regulated utilities shall be approved by the Secretary unless such plan contains provisions to assure that any person who alleges any injury resulting from a violation of any plan provision shall be entitled to redress under such procedures as may be established by the Governor or State agency.

(Pub. L. 95-619, title II, § 213, Nov. 9, 1978, 92 Stat. 3213.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8213, 8215, 8216, 8218, 8220 of this title.

§ 8215. Plan requirements for nonregulated utilities and home heating suppliers

(a) Requirements for plans for nonregulated utilities

No residential energy conservation plan proposed by a nonregulated utility shall be approved by the Secretary unless such plan meets the same requirements as provided under section 8214 of this title for regulated utilities and in addition contains procedures pursuant to which such utility will submit a written report to the Secretary not later than one year after approval of such plan, and biennially thereafter, regarding the implementation of a utility program under section 8216 of this title and containing such information as may be required by the Secretary in the rules promulgated under section 8213 of this title. In applying the requirements of section 8214 of this title in the case of a plan for nonregulated utilities under this section, any reference to a regulated utility shall be treated as a reference to a nonregulated utility.

(b) Requirements for plans for home heating suppliers

No residential energy conservation plan proposed for home heating suppliers shall be approved by the Secretary unless such plan meets the same requirements as provided under section 8214(a) of this title (other than paragraphs (1) and (8) thereof) and section 8214(b) and (c) of this title and in addition—

(1) meets the requirements of section 8218 of this title and contains adequate enforcement procedures with respect to such requirements;

(2) meets such requirements applicable to home heating suppliers as may be contained in the rules promulgated under section 8213 of this title; and

(3) takes into account the resources of small home heating suppliers.

In applying the requirements of section 8214 of this title in the case of a plan for home heating suppliers under this section, any reference to a regulated utility shall be treated as a reference to the home heating supplier and any reference to a utility program shall be treated as a reference to a home heating supplier program.

(Pub. L. 95-619, title II, § 214, Nov. 9, 1978, 92 Stat. 3214.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8213, 8220 of this title.

§ 8216. Utility programs

(a) Information requirements

Each utility program shall include procedures designed to inform, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 8213 of this title, if later, and each two years thereafter before January 1, 1985, each of its residential customers who owns or occupies a residential building, of—

(1) the suggested measures for the category of buildings which includes such residential building;

(2) the savings in energy costs that are likely to result from installation of the suggested measures in typical residential buildings in such category;

(3) the availability of the arrangements described in subsection (b) of this section and the lists referred to in section 8214(a)(2) and (3) of this title; and

(4) suggestions of energy conservation techniques, including suggestions developed by the Secretary, such as adjustments in energy use patterns and modifications of household activities which can be employed by the residential customer to save energy and which do not require the installation of energy conservation measures (including the savings in energy costs that are likely to result from the adoption of such suggestions).

(b) Project manager requirements

Each utility program shall include—

(1) procedures whereby the public utility, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 8213 of this title, if later, will, for each residential customer who owns or occupies a residential building, offer to—

(A) inspect the residential building (either directly or through one or more inspectors under contract) to determine and inform the residential customer of the estimated cost of purchasing and installing the suggested measures and the savings in energy costs that are likely to result from the installation of such measures (a report of which inspection shall be kept on file for not less than 5 years which shall be available to any subsequent owner without charge), except that a utility shall be required to make only one inspection of a residence unless a new owner requests a subsequent inspection;

(B) arrange to have the suggested measures installed (except for furnace efficiency modifications with respect to which the inspection prohibition of section 8214(b)(2)(B) of this title applies, unless the customer requests in writing arrangements for such modifications in writing); and

(C) arrange for a lender to make a loan to such residential customer to finance the purchase and installation costs of suggested measures; and

(2) procedures whereby the public utility provides to each of its residential customers the lists as described in section 8214(a)(2) and (3) of this title.

(c) Requirements concerning accounting and payment of costs

(1) Each utility program shall include—

(A) procedures to assure that all amounts expended or received by the utility which are attributable to the utility program (including any penalties paid by such utility under section 8220(d) of this title) are accounted for on the books and records of the utility separately from amounts attributable to all other activities of the utility;

(B) procedures to assure that all amounts expended by a utility for providing information under subsection (a) of this section are to be treated for such purposes as a current expense of providing utility service and charged to all ratepayers of such utility in the same manner as current operating expenses of providing such utility service;

(C) procedures to permit general administrative costs of carrying out a utility program and the amounts expended by a public utility to carry out subsection (b) of this section to be, in the discretion of the State regulatory authority (or in the case of a nonregulated utility, in the discretion of such nonregulated utility)—

(i) treated as a current expense of providing utility service and charged to all ratepayers of such utility in the same manner as current operating expenses of providing such utility service, or

(ii) charged to the residential customer for whom the activity is performed; and

(D) procedures to assure that the costs of labor and materials incurred by a utility for the purchase or installation of any residential energy conservation measure shall be charged to the residential customer for whom such activity is performed.

(2)(A) The costs of carrying out any activity as a part of a utility program under this section (other than an activity described in subparagraph (B), (C), or (D) of paragraph (1)) shall be charged to the residential customer for whom such activity is performed, unless (and to the extent that) the State regulatory authority or nonregulated utility (as the case may be) finds, after public notice and an opportunity for a public hearing, that treatment of such costs in the manner described in clause (i) of paragraph (1)(C) is likely to result (by reason of reduction in demand for energy) in lower rates to the ratepayers of such utility than would occur if the utility did not treat such costs in the manner described in such clause. Any such costs with respect to which such finding is made shall be treated in the manner described in clause (i) of paragraph (1)(C).

(B) Any portion of the costs of carrying out any activity as a part of a utility program under this section which are charged to the residential customer for whom such activity is performed and included on a billing for utility service submitted by the utility to such residential customer shall be stated separately on such billing from the cost of providing utility service.

(C) For purposes of this subsection, the term "ratepayer" means any person, State agency, or Federal agency who purchases electric energy or natural gas from a utility.

(d) Requirements respecting new customers

In the case of any person who becomes a residential customer of a utility carrying out a utility program under this section after January 1, 1980 (or the date six months after approval of the applicable plan, if later), and before January 1, 1985, not later than 60 days after such person becomes a residential customer of such utility, such utility shall inform such person of the items listed in subsection (a) of this section, the offer required under subsection (b)(1)(A) of this section, and shall offer such person the opportunity to enter into arrangements referred to in subparagraphs (B) and (C) of subsection (b)(1) of this section.

(e) Termination of service

No utility implementing any program under this section may terminate utility service to any customer by reason of any default of such customer with respect to payments due for energy conservation measures installed pursuant to such program.

(f) Loans

(1) In the case of any loan made by a public utility (as may be permitted under subsection (c), (d)(1), (d)(2), or (e) of section 8217 of this title) to a residential customer under a utility program under this part, the public utility carrying out such program shall permit the residential customer to repay the principal and interest of such loan as a part of his periodic bill (over a period of not less than 3 years unless he elects a shorter payment period). In the case of a loan made by any other person, the public utility shall permit repayment of the loan as part of the periodic bill if such other person agrees to repayment in such manner.

(2) In the case of any loan referred to in paragraph (1)—

(A) a lump-sum payment of outstanding principal and interest may be required by the lender upon default (as determined under otherwise applicable law) in payment by the residential customer, and

(B) no penalty shall be imposed by the lender for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(g) Exempt activities

For purposes of this section, the term "utility program" includes activities which are subject to this section by reason of section 8217(f) of this title.

(Pub. L. 95–619, title II, § 215, Nov. 9, 1978, 92 Stat. 3215.)

Section Referred to in Other Sections

This section is referred to in sections 8211, 8214, 8215, 8217, 8219, 8220 of this title.

§ 8217. Supply, installation, and financing by public utilities

(a) Prohibition on supply, installation, or financing

Except as provided in this section, no public utility may—

(1) supply or install a residential energy conservation measure, or

(2) make a loan to any residential customer for the purchase or installation of any residential energy conservation measure.

(b) Exemption from prohibition on installation

The prohibition contained in subsection (a)(1) of this section shall not apply to the energy conservation measures referred to in section 8211(11)(B) or 8211(11)(C) of this title, or devices associated with load management techniques for the type of energy sold by the utility.

(c) Exemption from prohibition on financing

The prohibition contained in subsection (a)(2) of this section shall not apply to any loan to a residential customer which does not exceed the greater of—

(1) $300, or

(2) the cost of purchase, and installation in such customer's residence, of items referred to in subsection (b) of this section.

(d) General exemptions

The prohibitions contained in subsection (a) of this section shall not apply to—

(1) the supply, installation, or financing of those specific residential energy conservation measures which the Secretary determines were being installed or financed by a public utility on November 9, 1978;

(2) supply, installation, or financing activities which the Secretary determines were broadly advertised or for which substantial preparations were completed on or before November 9, 1978; or

(3) supply, installation, or financing activities by a public utility with respect to energy conservation measures where a law or regulation in effect on or before November 9, 1978 either requires, or explictly permits, the public utility to carry out such activities.

(e) Waiver

The Secretary may, upon petition of a public utility, supported in the case of a regulated utility by a Governor, waive in whole or in part the prohibitions contained in subsection (a) of this section with respect to the utility if such utility demonstrates to the satisfaction of the Secretary that, in carrying out prohibited activities under subsection (a) of this section, fair and reasonable prices and rates of interest would be charged and the Secretary finds, after consultation with the Federal Trade Commission, that such activities would not be inconsistent with the prevention of unfair methods of competition and the prevention of unfair or deceptive acts or practices.

(f) Applicability of section 8216 of this title

Any public utility carrying out activities permitted under subsection (b) or (c) or subsection (d)(2) or (e) of this section shall be subject to all the requirements of section 8216 of this title with respect to such activities. A public utility which is carrying out activities permitted pursuant to subsection (d)(1) of this section shall, within such reasonable period as may be prescribed by the Secretary, be subject to all such requirements of section 8216 of this title with respect to such activities. A public utility carrying out activities permitted pursuant to the exemption contained in subsection (d)(3) of this section shall not be subject to the requirements of section 8216 of this title with respect to such activities.

(g) Prohibition on supply, installation or financing by utilities

After November 9, 1978, no public utility may make any loan, to finance the purchase or installation of, or supply or install, any residential energy conservation measure if the Secretary has determined, after notice and opportunity for public hearing, and after consultation with the Federal Trade Commission, that—

(1) such loans are being made, or supply or installations carried out by such utility at unreasonable rates or on unreasonable terms and conditions, or

(2) such loans made, or supply or installations carried out by such utility, have a substantial adverse effect upon competition.

(h) Enforcement

For purposes of section 8220(d) of this title, any violation of a prohibition contained in this section shall be treated as a violation of a plan promulgated under section 8220(a) of this title.

(Pub. L. 95-619, title II, § 216, Nov. 9, 1978, 92 Stat. 3217.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8214, 8216, 8219, 8220 of this title.

§ 8218. Home heating supplier programs

(a) Requirements

Each home heating supplier program shall include—

(1) procedures designed to inform, no later than January 1, 1980, or the date six months after the approval of the applicable plan under section 8213 of this title, if later, and each two years thereafter before January 1, 1985, each residential customer of each participating home heating supplier who owns or occupies a residential building of—

(A) the suggested measures for the category of buildings which includes such residential building;

(B) the savings in energy costs that are likely to result from installation of the suggested measures in typical residential buildings in such category; and

(C) the availability of the arrangements described in paragraph (2) of this subsection; and

(2) procedures whereby a participating home heating supplier, no later than January 1, 1980 (or the later date referred to in paragraph (1)) will offer each such residential customer the opportunity to enter into arrangements with the home heating supplier under which such supplier, directly or through one or more inspectors under contract, will—

(A) inspect the residential building to determine and inform the residential customer of the estimated cost of purchasing and installing, and the savings in energy costs that are likely to result from installing, suggested measures;

(B) inform each interested customer of the lists referred to in section 8214(a)(2) and (3) of this title;

(C) install or have suggested measures installed;

(D) make, or arrange for another lender to make, a loan to such residential customer to finance the purchase and installation costs of suggested measures; and

(E) permit the residential customer to repay the principal of and interest on any loan made pursuant to subparagraph (D) (over a period of not less than three years unless the customer elects a shorter payment period) as a part of his periodic bill except:

(i) failure to make any payment of such principal or interest shall not be grounds for the termination of fuel deliveries to the residential customer; and

(ii) a lump-sum payment of outstanding principal and interest may be required upon default (as determined under otherwise applicable law) in payment by the residential customer.

No penalty shall be imposed by the lender, under procedures described in paragraph (2), for payment of all or any portion of the outstanding loan amount prior to the date such payment would otherwise be due.

(b) Notice; waiver

A home heating supplier who wishes to participate in the program established pursuant to this section may so notify the Governor. The Governor may waive, for any home heating supplier, any requirement of this section, upon demonstration to his satisfaction that the resources of such supplier do not enable him to comply with such requirement.

(Pub. L. 95-619, title II, § 217, Nov. 9, 1978, 92 Stat. 3219.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8211, 8214, 8215 of this title.

§ 8219. Temporary programs

(a) Exemption from certain requirements

A Governor of any State, on behalf of one or more utilities, or any public utility (supported by the Governor in the case of a regulated utility) may, no later than 180 days after the promulgation of rules pursuant to section 8213 of this title, apply for a temporary exemption for one or more utilities from one or more of the requirements of section 8216 of this title and the prohibitions contained in section 8217(a) of this title. Such temporary exemption may be granted, as determined by the Secretary, for a period not to exceed 3 years after the date of approval of such exemption.

(b) Time limit

An application for an exemption under subsection (a) of this section shall be approved or disapproved by the Secretary within 90 days of receipt of such application or such longer period as the Secretary may require in the case of any particular application.

(c) Information

An application for an exemption under subsection (a) of this section to establish a temporary program shall contain such information and meet such requirements as the Secretary shall prescribe by rule.

(d) Requirements

In order for an application for an exemption under subsection (a) of this section to be granted, the Governor or the public utility shall demonstrate to the satisfaction of the Secretary that the temporary program will:

(1) contain adequate procedures to assure that each public utility, in connection with such program, will charge fair and reasonable prices and rates of interest to its residential customers in connection with the purchase and installation of residential energy conservation measures;

(2) contain adequate procedures for preventing unfair, deceptive, or anticompetitive acts or practices affecting commerce which relate to the implementation of such program; and

(3) be likely to result in the installation of suggested measures in at least as many residential buildings as would have been installed had such utility submitted a program which met the requirements of section 8216 of this title and did not violate the prohibitions contained in section 8217(a) of this title.

(e) Federal standby authority

The Secretary shall not exercise the Federal standby authority, pursuant to section 8220(a) or (b) of this title with respect to any public utility which is covered by a temporary exemption approved by the Secretary pursuant to this section. Upon termination of such temporary exemption, the Secretary shall exercise such authority unless, within such period as he deems reasonable after such termination, the State (or nonregulated utility as the case may be) has a plan applicable to such utility approved under section 8213 of this title and such plan is being adequately implemented (as determined by the Secretary).

(Pub. L. 95-619, title II, § 218, Nov. 9, 1978, 92 Stat. 3220.)

§ 8220. Federal standby authority

(a) Standby authority for State regulated utilities

If a State does not have a plan approved under section 8213(c) of this title within 270 days after promulgation of rules under section 8213(a) of this title, or within such additional period as the Secretary may allow pursuant to section 8213(c)(1) of this title, or if the Secretary determines, after notice and opportunity for a public hearing that an approved plan is not being adequately implemented in such State, the Secretary shall—

(1) promulgate a plan which meets the requirements of section 8214 of this title, and

(2) under such plan, by order, require each regulated utility in the State to offer, no later than 90 days following the date of issuance of such order, to its residential customers a utility program prescribed in such order which meets the requirements specified in section 8216 of this title (except with respect to a utility for which such requirements are inapplicable by reason of section 8217(f) of this title).

For purposes of applying section 8214(c) of this title in the case of a plan promulgated by the Secretary under this section, the references to the Governor or State agency shall be treated as references to the Secretary.

(b) Nonregulated utilities

If a nonregulated utility which is not covered by an approved State plan under section 8213 of this title does not have a plan approved under section 8213(c) of this title within 270 days after promulgation of rules under section 8213(a) of this title or within such additional period as the Secretary may allow pursuant to section 8213(c)(1) of this title, or if the Secretary determines that such nonregulated utility has not adequately implemented an approved plan, the Secretary shall, by order, require such nonregulated utility to—

(1) promulgate a plan which meets the requirements of section 8215 of this title and which applies to the residential buildings which would have been covered had such a plan been so approved or implemented, and

(2) under such plan, by order, require the nonregulated utility to offer, not later than 90 days following the date of issuance of such order, to its residential customers a utility program prescribed in such order which meets the requirements specified in section 8216 of this title (except in the case of a nonregulated utility for which such requirements are inapplicable by reason of section 8217(f) of this title).

(c) Failure to comply with orders

If the Secretary determines that any public utility to which an order has been issued pursuant to subsection (a) or (b) of this section has failed to comply with such order, he may file a petition in the appropriate United States district court to enjoin such utility from violating such order.

(d) Civil penalty

(1) Any public utility which violates any requirement of a plan promulgated under subsection (a) or (b) of this section or which fails to comply with an order under subsection (a) or (b) of this section within 90 days from the issuance of such order shall be subject to a civil penalty of not more than $25,000 for each violation. Each day that such violation continues shall be considered a separate violation.

(2)(A) Notwithstanding section 7172(d) of this title, a civil penalty under this subsection shall be assessed by an order of the Secretary.

(B) Before issuing an order assessing a civil penalty against any person under this section, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after receipt of such notice to have the procedures of paragraph (4) (in lieu of those of paragraph (3)) apply with respect to such assessment.

(3)(A) Unless an election in writing is made within 30 calendar days after receipt of notice under paragraph (2) to have paragraph (4) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom such penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(4)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall assess such penalty, by order, not later than 60 calendar days after the date of receipt of notice under paragraph (2) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(5) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (3), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (4), the Secretary shall recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final order or judgment imposing the civil penalty shall not be subject to review.

(6)(A) Notwithstanding the provisions of title 28 or of section 7192 of this title, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which this subsection applies (including any related collection action) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 7192(c) of this title, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(Pub. L. 95-619, title II, § 219, Nov. 9, 1978, 92 Stat. 3220.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8213, 8216, 8217, 8219 of this title.

§ 8221. Relationship to other laws

(a) State and local law in general

Nothing in this part shall supersede any law or regulation of any State or political subdivision thereof, except to the extent that the Secretary, upon petition of a public utility and for good cause, determines that such law or regulation prohibits a public utility from taking any action required to be taken under this part or that such law or regulation requires or permits any public utility to take any action prohibited under this part.

(b) Laws relating to unfair competition and deceptive acts

Nothing in this part shall be construed as restricting the authority of any agency or instrumentality of the United States or of any State under any provision of law to prevent unfair methods of competition and unfair or deceptive acts or practices.

(c) Truth in lending

Nothing contained in section 1603(4) of title 15 or the regulations issued pursuant thereto shall be deemed to exempt sales or credit extensions by public utilities under this part.

(d) Manufacturer's warranties

With respect to the last sentence of section 8211(11) of this title respecting warranties offered by a manufacturer, all Federal and State laws otherwise applicable to such warranties offered by a manufacturer shall apply, except to the extent inconsistent with such last sentence.

(Pub. L. 95-619, title II, § 220, Nov. 9, 1978, 92 Stat. 3222.)

§ 8222. Rules

The Secretary is authorized to promulgate such rules as he determines may be necessary to carry out this part.

(Pub. L. 95-619, title II, § 221, Nov. 9, 1978, 92 Stat. 3223.)

§ 8223. Product standards

The Secretary shall consult with the Secretary of Commerce, acting through the National Bureau of Standards, with regard to any product or material standard which is relied on in implementing this part as a basis for judging the efficacy, energy efficiency, safety, or other attributes of energy conservation materials, products, or devices, and with the Federal Trade Commission for the purpose of insuring that such standards do not operate to deceive consumers or unreasonably restrict consumer or producer options, and that such standards (when applicable) are suitable as a basis for making truthful and reliable disclosures to consumers regarding performance and safety attributes of energy conservation products, materials, and devices.

(Pub. L. 95-619, title II, § 222, Nov. 9, 1978, 92 Stat. 3223.)

§ 8224. Authorization of appropriations

There are hereby authorized to be appropriated $5,000,000 to the Secretary for each of the first three fiscal years 1979, 1980, and 1981, to carry out his responsibilities under this part.

(Pub. L. 95-619, title II, § 223, Nov. 9, 1978, 92 Stat. 3223.)

§ 8225. Omitted

CODIFICATION

Section, Pub. L. 95-619, title II, § 224, Nov. 9, 1978, 92 Stat. 3223, which provided that the Secretary, within six months after Nov. 9, 1978, prepare a report on the potential for energy conservation in apartment buildings, was omitted from the Code as executed.

§ 8226. Federal Trade Commission study and report

(a) Study

(1) Before January 1, 1982, the Federal Trade Commission shall complete a study and submit a report to Congress and the President on the activities of public utilities and home heating suppliers under this part.

(2) The study shall include a review of the making, or arranging, of loans and the installation, or arranging for installation, of any residential energy conservation measure by public utilities and home heating suppliers.

(3) Such study may contain legislative recommendations respecting lending and installation activities for any residential energy conservation measure by public utilities and home heating suppliers and may contain recommendations concerning whether public utilities or home heating suppliers should be permitted by State or Federal law to continue to carry out such activities.

(b) Considerations required

In conducting the study under this part, the Commission shall consider the effect of public utility and home heating supplier activities under this part on—

(1) competition among utilities, home heating suppliers, contractors, and lenders in a utility's service area;

(2) the availability of supplies of each residential energy conservation measure and the price of purchasing and installing each such measure;

(3) the increase in the number of residential buildings in which are installed, or likely to be installed any such measure; and

(4) any other factors the Commission deems appropriate.

(Pub. L. 95-619, title II, § 225, Nov. 9, 1978, 92 Stat. 3224.)

PART B—MISCELLANEOUS

§ 8231. Grants for energy conserving improvements; establishment of standards; authorization of appropriations

(1) The Secretary of Housing and Urban Development is authorized to make grants to finance energy conserving improvements (as defined in subparagraph (2) of the last paragraph of section 1703(a) of title 12 to projects which are financed with loans under section 1701q of

title 12, or which are subject to mortgages insured under section 1715*l*(d)(3) or section 1715z-1 of title 12. The Secretary shall make assistance available under this section on a priority basis to those projects which are in financial difficulty as a result of high energy costs. In carrying out the program authorized by this section, the Secretary shall issue regulations requiring that any grant made under this section shall be made only on the condition that the recipient of such grant shall take steps (prescribed by the Secretary) to assure that the benefits derived from such grants in terms of lower energy costs shall accure[1] to tenants in the form of lower rentals or to the Federal Government in the form of a lower operating subsidy if such a subsidy is being paid to such recipient.

(2) The Secretary shall establish minimum standards for energy conserving improvements to multifamily dwelling units to be assisted under this section.

(3) There are authorized to be appropriated to carry out the provisions of this section not to exceed $25,000,000.

(Pub. L. 95-619, title II, § 251(b), Nov. 9, 1978, 92 Stat. 3235.)

§ 8232. Omitted

Codification

Section, Pub. L. 95-619, title II, § 253, Nov. 9, 1978, 92 Stat. 3236, which provided that the Secretary of Housing and Urban Development, in coordination with the Secretary of Agriculture, the Secretary of Treasury, the Administrator of Veterans' Affairs, the Secretary of Energy, and such other representatives of Federal, State, and local governments as the Secretary shall designate, conduct a study for the purpose of determining the need for, the feasibility of, and the problems of requiring, by mandatory Federal action, that all residential dwelling units meet applicable energy efficient standards, and that the Secretary report, no later than one year after Nov. 9, 1978, to both Houses of the Congress with respect to such study, was omitted from the Code as executed.

§ 8233. Weatherization study

The President shall conduct a study which shall monitor the weatherization activities authorized by this Act and amendments made thereby and those weatherization activities undertaken, independently of this Act and such amendments. The President shall report to the Congress within one year from November 9, 1978, and annually thereafter, concerning—

(1) the extent of progress being made through weatherization activities toward the achievement of national energy conservation goals;

(2) adequacy and costs of materials necessary for weatherization activities; and

(3) the need for and desirability of modifying weatherization activities authorized by this Act, and amendments made thereby and of extending such activities to a broader range of income groups than are being assisted under this Act and such amendments.

(Pub. L. 95-619, title II, § 254, Nov. 9, 1978, 92 Stat. 3237.)

References in Text

This Act, referred to in provision preceding par. (1) and in par. (3), is Pub. L. 95-619, Nov. 9, 1978, 92 Stat. 3206, known as the National Energy Conservation Policy Act. For complete classification of this Act to the Code, see Short Title note set out under section 8201 of this title and Tables.

SUBCHAPTER III—FEDERAL ENERGY INITIATIVE

Part A—Demonstration of Solar Heating and Cooling in Federal Buildings

§ 8241. Definitions

As used in the part—

(1) The term "Federal agency" means—

(A) an Executive agency as defined in section 105 of title 5; and

(B) each entity specified in paragraphs (B) through (H) of subsection (1) of section 5721 of title 5.

(2) The term "Federal building" means any building or other structure owned in whole or part by the United States or any Federal agency, including any such structure occupied by a Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation.

(3) The term "solar heating" means, with respect to any Federal building, the use of solar energy to meet all or part of the heating needs of such building (including hot water), or all or part of the needs of such building for hot water.

(4) The term "solar heating and cooling" means the use of solar energy to provide all or part of the heating needs of a Federal building (including hot water) and all or part of the cooling needs of such building, or all or part of the needs of such building for hot water.

(5) The term "solar energy equipment" means equipment for solar heating or solar heating and cooling.

(6) The term "Secretary" means the Secretary of Energy.

(Pub. L. 95-619, title V, § 521, Nov. 9, 1978, 92 Stat. 3275.)

§ 8242. Federal solar program

The Secretary, in consultation with the Administrator of the General Services Administration, shall develop and carry out a program to demonstrate the application to buildings of solar heating and solar heating and cooling technology in Federal buildings.

(Pub. L. 95-619, title V, § 522, Nov. 9, 1978, 92 Stat. 3276.)

Section Referred to in Other Sections

This section is referred to in section 8243 of this title.

§ 8243. Duties of Secretary

(a) Duties

In exercising the authority provided by section 8242 of this title, the Secretary, in consultation with the Administrator of the General Services Administration, shall—

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[1] So in original. Probably should be "accrue".

(1) promulgate, by rule—

(A) requirements under which Federal agencies shall submit proposals for the installation of solar energy equipment in Federal buildings which are under their control and which are selected in accordance with procedures set forth in such rule, and

(B) criteria by which proposals under subparagraph (A) will be evaluated, which criteria shall provide for the inclusion in each proposal of a complete analysis of the present value, as determined by the Secretary, of the costs and benefits of the proposal to the Federal agency, and for the demonstration, to the maximum extent practicable, of innovative and diverse applications to a variety of types of Federal buildings of solar heating and solar heating and cooling technology, and for location of demonstration projects in areas where a private sector market for solar energy equipment is likely to develop;

(2) evaluate in writing each such proposal pursuant to the criteria promulgated pursuant to paragraph (1)(B), and make such evaluation available to the agency and, upon request, to any person;

(3) provide technical and financial assistance by interagency agreement for implementing a proposal evaluated under paragraph (2) and approved by the Secretary; except that such assistance shall be limited to the design, acquisition, construction, and installation of solar energy equipment;

(4) provide, by rule, that Federal agencies report to the Secretary periodically such information as they acquire respecting maintenance and operation of solar energy equipment for which assistance is provided under paragraph (3);

(5) require that a life cycle cost analysis in accordance with part B be done for any Federal building for which a proposal is submitted under this section and the results of such analysis be included in such proposal; and

(6) if solar energy equipment for which assistance is to be provided under paragraph (3) is not the minimum life-cycle cost alternative, require the Federal agency involved to submit a report to the Secretary stating the amount by which the life-cycle cost of such equipment exceeds the minimum life-cycle cost.

(b) Contents of proposals

Proposals under paragraph (1)(A) of subsection (a) of this section shall include a list of the specific Federal buildings proposed to be provided with solar energy equipment, the funds necessary for the acquisition and installation of such equipment, the proposed implementation schedule, maintenance costs, the estimated savings in fossil fuels and electricity, the estimated payback time, and such other information as may be required by the Secretary.

(c) Initial submission of proposals

Under the requirements established under subsection (a)(1)(A) of this section, initial proposals for the installation of solar energy equipment in Federal buildings selected under subsection (a)(1)(A) of this section shall be submitted not later than 180 days after the date of promulgation of the rule under subsection (a)(1) of this section.

(Pub. L. 95-619, title V, § 523, Nov. 9, 1978, 92 Stat. 3276.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8244 of this title.

§ 8244. Authorization of appropriations

There are authorized to be appropriated to the Secretary through fiscal year ending September 30, 1980, to carry out the purposes of this part not to exceed $100,000,000. Funds so appropriated may be transferred by the Secretary to any Federal agency to the extent necessary to carry out the purposes of section 8243(a)(3) of this title.

(Pub. L. 95-619, title V, § 524, Nov. 9, 1978, 92 Stat. 3277.)

PART B—ENERGY CONSERVATION AND SOLAR ENERGY IN FEDERAL BUILDINGS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in section 8243 of this title.

§ 8251. Findings

The Congress finds that—

(1) there is an urgent need to promote the design, construction, and operation of buildings to conserve and make more efficient use of fuels and energy;

(2) a shift from dependence on nonrenewable to renewable energy sources would have a beneficial effect on the Nation's overall energy supply;

(3) programs for energy conservation in buildings, along with the use of renewable energy sources, would stimulate industries and create new job opportunities for supply and servicing new or improved energy-conserving and energy-supplying systems and equipment;

(4) in the construction or renovation of buildings, the cost of energy consumed over the life of such buildings must be considered as well as the initial cost of such construction or renovation; and

(5) the Federal Government, the largest energy consumer in the United States, should be in the forefront in implementing energy conservation measures and in promoting the use of solar heating and cooling and other renewable energy sources.

(Pub. L. 95-619, title V, § 541, Nov. 9, 1978, 92 Stat. 3277.)

§ 8252. Policy

It is the policy of the United States that the Federal Government has the opportunity and responsibility, with the participation of industry, to further develop, demonstrate, and promote the use of energy conservation, solar heating and cooling, and other renewable energy sources in Federal buildings.

(Pub. L. 95-619, title V, § 542, Nov. 9, 1978, 92 Stat. 3277.)

§ 8253. Purpose

It is the purpose of this part to promote—

(1) the use of commonly accepted methods to establish and compare the life cycle costs of operating Federal buildings, and the life cycle fuel and energy requirements of such buildings, with and without special features for energy conservation, and

(2) the use of solar heating and cooling and other renewable energy sources in Federal buildings.

(Pub. L. 95-619, title V, § 543, Nov. 9, 1978, 92 Stat. 3277.)

§ 8254. Definitions

For purposes of this part—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "life cycle cost" means the total costs of owning, operating, and maintaining a building over its useful life, including its fuel and energy costs, determined on the basis of a systematic evaluation and comparison of alternative building systems; except that in the case of leased buildings, the life cycle cost shall be calculated over the effective remaining term of the lease.

(3) The term "preliminary energy audit" means a determination of the energy consumption characteristics of an existing Federal building, including the size, type, rate of energy consumption and major energy using systems of such building and the climate characterizing the region where such building is located.

(4) The term "energy survey" means a procedure to be used in determining energy conservation and cost savings likely to result from appropriate energy conserving maintenance and operating procedures and modifications, including the purchase and installation of particular energy-related fixtures to a Federal building.

(5) The term "Federal building" means any building, structure, or facility which is constructed, renovated or leased or purchased in whole or in part for use by the United States, and which includes a heating system, a cooling system, or both.

(6) The term "construction" means construction and substantial reconstruction or renovation, as determined under rules prescribed by the Secretary.

(7) The term "energy performance target" means a rate of energy consumption which is the minimum practically achievable, taking into account life-cycle cost, by adjusting maintenance and operating procedures, or by modifying a Federal building's equipment or structure, or both.

(Pub. L. 95-619, title V, § 544, Nov. 9, 1978, 92 Stat. 3277.)

§ 8255. Establishment and use of life cycle cost methods

(a) Establishment of life cycle cost methods

The Secretary, in consultation with the Director of the Office of Management and Budget, the Director of the National Bureau of Standards, and the Administrator of the General Services Administration, shall—

(1) establish practical and effective methods for estimating and comparing life cycle costs for Federal buildings; and

(2) develop and prescribe the procedures to be followed in applying and implementing the methods so established and in conducting preliminary energy audits required by section 8257 of this title.

(b) Use of life cycle costs

All new Federal buildings shall be life cycle cost effective as determined in accordance with the methods established under subsection (a) of this section. In the design of new Federal buildings, cost evaluation shall be made on the basis of life cycle cost rather than initial cost.

(c) Use in non-Federal structures

The Secretary shall make available to the public information on the use of life cycle cost methods in the construction of buildings, structures, and facilities in all segments of the economy.

(Pub. L. 95-619, title V, § 545, Nov. 9, 1978, 92 Stat. 3278.)

§ 8256. Energy performance targets for Federal buildings

The Secretary, in consultation with the Administrator of the General Services Administration, the Director of the National Bureau of Standards, and the Director of the Office of Management and Budget, shall establish and publish energy performance targets for Federal buildings, and shall take such actions as may be necessary or appropriate to promote to the maximum extent practicable achievement of such targets by Federal buildings. The performance targets established under the preceding sentence shall be compatible with energy conservation performance standards adopted or developed by the Secretary of Housing and Urban Development for buildings.

(Pub. L. 95-619, title V, § 546, Nov. 9, 1978, 92 Stat. 3278.)

§ 8257. Energy audits and retrofitting of existing Federal buildings

(a) Audits of buildings with 30,000 or more square feet

As soon as possible after November 9, 1978, each Federal agency shall conduct, to the maximum extent feasible, a preliminary energy audit, of all Federal buildings under its jurisdiction, occupancy, or control which contain 30,000 or more square feet of floor space, and shall furnish the results of such audit to the Secretary. The Secretary shall submit to the Congress a full report on all preliminary energy audits conducted under this subsection no later than August 15, 1979.

(b) Audits of Federal buildings with 1,000 or more but less than 30,000 square feet

As soon as possible after the completion of the preliminary energy audits required under subsection (a) of this section (and concurrently with such audits to the maximum extent feasible in the case of any agency), each Federal agency shall conduct a preliminary energy audit of all Federal buildings under its jurisdiction, occupancy, or control which contain 1,000 or more but less than 30,000 square feet of floor space, and shall furnish the results of such audit to the Secretary. The Secretary shall submit to the Congress a full report on all preliminary energy audits conducted under this subsection no later than August 15, 1980.

(c) Retrofit of Federal buildings

(1) Each Federal agency shall, in accordance with this subsection, select from each preliminary energy audit conducted by such agency under subsections (a) and (b) of this section appropriate Federal buildings under its jurisdiction, occupancy, or control for retrofit measures to improve their energy efficiency in general and to minimize their life cycle cost. Such measures shall include, without being limited to, energy conservation measures, measures involving solar technology and other renewable energy resources, and any maintenance and operating procedures and particular energy-related modifications determined appropriate by an energy survey. In selecting the measures to be applied, Federal agencies shall give priority to changes in maintenance and operating procedures over measures requiring substantial structural modification or the installation of equipment.

(2) At least 1 percent of the total gross square floor footage contained in all Federal buildings which are under the jurisdiction, occupancy, or control of Federal agencies, and which are included in a preliminary energy audit conducted by such agencies under subsection (a) and (b) of this section shall be retrofitted by such agencies under paragraph (1) pursuant to actions taken or arrangements made by such agencies during the first full fiscal year beginning after November 9, 1978; and an additional percentage of such total gross square footage equal to at least 1 percentage point higher than the percentage applicable under this paragraph in the preceding year shall be so retrofitted pursuant to actions taken or arrangements made during the second and third such fiscal years, with a view to achieving full compliance with paragraph (3) by the time specified therein.

(3) On or before January 1, 1990, all Federal buildings which are under the jurisdiction, occupancy, or control of any Federal agency shall be the subject of such retrofit measures under paragraph (1) as will assure their minimum life cycle costs.

(Pub. L. 95-619, title V, § 547, Nov. 9, 1978, 92 Stat. 3279.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8255 of this title.

§ 8258. Leased Federal buildings

In leasing buildings for its own use or that of another Federal agency, each Federal agency shall give appropriate preference to buildings which use solar heating and cooling equipment or other renewable energy sources or which otherwise minimize life cycle costs.

(Pub. L. 95-619, title V, § 548, Nov. 9, 1978, 92 Stat. 3279.)

§ 8259. Budget treatment of energy conserving improvements by Federal agencies

Each Federal agency, in the preparation and submission of its requests to the Congress for appropriations, and authorizations for appropriations, for any fiscal year beginning after November 9, 1978, shall specifically set forth and identify in a separate line item or items—

(1) the funds requested for retrofit measures to be undertaken under this part; and

(2) the portion of any other funds requested which represent to the maximum extent practicable the initial costs of construction or renovation attributable to capital equipment for energy conservation or the utilization of solar energy and other renewable energy sources.

(Pub. L. 95-619, title V, § 549, Nov. 9, 1978, 92 Stat. 3280.)

§ 8260. Reports

Each Federal agency shall periodically furnish the Secretary with full and complete information on its activities under this part, and the Secretary shall annually submit to the Congress a comprehensive report on all activities under this part and on the progress made toward achievement of the objectives of this part.

(Pub. L. 95-619, title V, § 550, Nov. 9, 1978, 92 Stat. 3280.)

§ 8261. Authorization of appropriations

There are authorized to be appropriated to the Secretary not to exceed $2,000,000 for the fiscal year ending September 30, 1979, to enable him to perform the analytical and administrative functions vested in him under this part.

(Pub. L. 95-619, title V, § 551, Nov. 9, 1978, 92 Stat. 3280.)

PART C—FEDERAL PHOTOVOLTAIC UTILIZATION

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 5593, 5594 of this title.

§ 8271. Definitions

For purposes of this part—

(1) The term "Federal facility" means any building, structure, or fixture or part thereof which is owned by the United States or any Federal agency or which is held by the United States or any Federal agency under a lease-acquisition agreement under which the United States or a Federal agency will receive fee simple title under the terms of such agreement without further negotiation.

(2) The term "Secretary" means the Secretary of Energy.

(Pub. L. 95-619, title V, § 562, Nov. 9, 1978, 92 Stat. 3280.)

SHORT TITLE

For citation of this part as the "Federal Photovoltaic Utilization Act", see section 561 of Pub. L. 95-619, set out as a Short Title note under section 8201 of this title.

§ 8272. Photovoltaic energy program

There is hereby established a photovoltaic energy commercialization program for the accelerated procurement and installation of photovoltaic solar electric systems for electric production in Federal facilities.

(Pub. L. 95-619, title V, § 563, Nov. 9, 1978, 92 Stat. 3280.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8273, 8274, 8275 of this title.

§ 8273. Purpose of program

The purpose of the program established by section 8272 of this title is to—

(1) accelerate the growth of a commercially viable and competitive industry to make photovoltaic solar electric systems available to the general public as an option in order to reduce national consumption of fossil fuel;

(2) reduce fossil fuel costs to the Federal Government;

(3) stimulate the general use within the Federal Government of methods for the minimization of life cycle costs; and

(4) develop performance data on the program established by section 8272 of this title.

(Pub. L. 95-619, title V, § 564, Nov. 9, 1978, 92 Stat. 3280.)

§ 8274. Acquisition of systems

The program established by section 8272 of this title shall provide for the acquisition of photovoltaic solar electric systems and associated storage capability by the Secretary for their use by Federal agencies. The acquisition of photovoltaic solar electric systems shall be at an annual level substantial enough to allow use of low-cost production techniques by suppliers of such systems. The Secretary is authorized to make such acquisitions through the use of multiyear contracts. Authority under this part to enter into acquisition contracts shall be only to the extent as may be provided in advance in appropriation Acts.

(Pub. L. 95-619, title V, § 565, Nov. 9, 1978, 92 Stat. 3281.)

§ 8275. Administration

The Secretary shall administer the program established under section 8272 of this title and shall—

(1) consult with the Secretary of Defense to insure that the installation and purchase of photovoltaic solar electric systems pursuant to this part shall not interfere with defense-related activities;

(2) prescribe such rules and regulations as may be appropriate to monitor and assess the performance and operation of photovoltaic electric systems installed pursuant to this part; and

(3) report annually to the Congress on the status of the program.

(Pub. L. 95-619, title V, § 566, Nov. 9, 1978, 92 Stat. 3281.)

§ 8276. System evaluation and purchase program

(a) Program

The Secretary shall establish, within 60 days after November 9, 1978, a photovoltaic systems evaluation and purchase program to provide such systems as are required by the Federal agencies to carry out this part. In acquiring photovoltaic solar electric systems under this part, the Secretary shall insure that such systems reflect to the maximum extent practicable the most advanced and reliable technologies and shall schedule purchases in a manner which will stimulate the early development of a permanent low-cost private photovoltaic production capability in the United States, and to stimulate the private sector market for photovoltaic power systems. The Secretary shall, subject to the availability of appropriated funds, procure not more than 30 megawatts of photovoltaic solar electric systems during fiscal years ending September 30, 1979, September 30, 1980, and September 30, 1981.

(b) Other procurement

Nothing in this part shall preclude any Federal agency from directly procuring a photovoltaic solar electric system (in lieu of obtaining one under the program under subsection (a) of this section), except that any such Federal agency shall consult with the Secretary before procuring such a system.

(Pub. L. 95-619, title V, § 567, Nov. 9, 1978, 92 Stat. 3281.)

§ 8277. Advisory committee

(a) Establishment

There is hereby established an advisory committee to assist the Secretary in the establishment and conduct of the programs established under this part.

(b) Membership

Such committee shall be composed of the Secretary of Defense, the Secretary of Housing and Urban Development, the Administrator of the National Aeronautics and Space Administration, the Administrator of the General Services Administration, the Secretary of Transportation, the Administrator of the Small Business Administration, the chairman of the Federal Trade Commission, the Postmaster General, and such other persons as the Secretary deems necessary. The Secretary shall appoint such other nongovernmental persons to the extent necessary to assure that the membership of the committee will be fairly balanced in terms of the point of view represented and the functions to be performed by the committee.

(c) Termination

The advisory committee shall terminate October 1, 1981.

(Pub. L. 95-619, title V, § 568, Nov. 9, 1978, 92 Stat. 3281.)

§ 8278. Authorization of appropriations

For the purposes of this part, there is authorized to be appropriated to the Secretary not to exceed $98,000,000 for the period beginning October 1, 1978, and ending September 30, 1981.

(Pub. L. 95-619, title V, § 569, Nov. 9, 1978, 92 Stat. 3282.)

CHAPTER 92—POWERPLANT AND INDUSTRIAL FUEL USE [NEW]

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SUBCHAPTER I—GENERAL PROVISIONS

§ 8301. Findings; statement of purposes

(a) Findings

The Congress finds that—

(1) the protection of public health and welfare, the preservation of national security, and the regulation of interstate commerce require the establishment of a program for the expended[1] use, consistent with applicable environmental requirements, of coal and other alternate fuels as primary energy sources for existing and new electric powerplants and major fuel-burning installations; and

(2) the purposes of this chapter are furthered in cases in which coal or other alternate fuels are used by electric powerplants and major fuel-burning installations, consistent with applicable environmental requirements, as primary energy sources in lieu of natural gas or petroleum.

(b) Statement of purposes

The purpose[1] of this chapter, which shall be carried out in a manner consistent with applicable environmental requirements, are—

(1) to reduce the importation of petroleum and increase the Nation's capability to use indigenous energy resources of the United States to the extent such reduction and use further the goal of national energy self-sufficiency and otherwise are in the best interests of the United States;

(2) to conserve natural gas and petroleum for uses, other than electric utility or other industrial or commercial generation of steam or electricity, for which there are no feasible alternative fuels or raw material substitutes;

(3) to encourage and foster the greater use of coal and other alternate fuels, in lieu of natural gas and petroleum, as a primary energy source;

(4) to the extent permitted by this chapter, to encourage the use of synthetic gas derived from coal or other alternate fuels;

(5) to encourage the rehabilitation and upgrading of railroad service and equipment necessary to transport coal to regions or States which can use coal in greater quantities;

(6) to prohibit or, as appropriate, minimize the use of natural gas and petroleum as a primary energy source and to conserve such gas and petroleum for the benefit of present and future generations;

(7) to encourage the modernization or replacement of existing and new electric powerplants and major fuel-burning installations which utilize natural gas or petroleum as a primary energy source and which cannot utilize coal or other alternate fuels where to do so furthers the conservation of natural gas and petroleum;

(8) to require that existing and new electric powerplants and major fuel-burning installations which utilize natural gas, petroleum, or coal or other alternate fuels pursuant to this chapter comply with applicable environmental requirements;

(9) to insure that all Federal agencies utilize their authorities fully in furtherance of the purposes of this chapter by carrying out programs designed to prohibit or discourage the use of natural gas and petroleum as a primary energy source and by taking such actions as lie within their authorities to maximize the efficient use of energy and conserve natural gas and petroleum in programs funded or carried out by such agencies;

(10) to insure that adequate supplies of natural gas are available for essential agricultur-

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[1] So in original. Probably should be "expanded".

[1] So in original. Probably should be "purposes".

al uses (including crop drying, seed drying, irrigation, fertilizer production, and production of essential fertilizer ingredients for such uses);

(11) to reduce the vulnerability of the United States to energy supply interruptions; and

(12) to regulate interstate commerce.

(Pub. L. 95-620, title I, § 102, Nov. 9, 1978, 92 Stat. 3291.)

REFERENCES IN TEXT

This chapter, referred to in text, in the original read "this Act", meaning Pub. L. 95-620, Nov. 9, 1978, 92 Stat. 3289, known as the Powerplant and Industrial Fuel Use Act of 1978, which enacted this chapter, amended sections 6211 and 7193 of this title, section 796 of Title 15, Commerce and Trade, section 1202 of Title 19, Customs Duties, sections 821, 822, and 825 of Title 45, Railroads, and section 26b of Title 49, Transportation, and enacted provisions set out as notes under this section and section 822 of Title 45. For complete classification of this Act to the Code, see Short Title note set out below and Tables.

EFFECTIVE DATE

Section 901 of Pub. L. 95-620 provided that: "Unless otherwise provided in this Act [see Short Title note set out below] the provisions of this Act shall take effect 180 days after the date of the enactment of this Act [Nov. 9, 1978], except that the Secretary may issue rules pursuant to such provisions at any time after such date of enactment, which rules may take effect no earlier than 180 days after such date of enactment."

SHORT TITLE

Section 101(a) of Pub. L. 95-620 provided that: "This Act [enacting this chapter, amending sections 6211 and 7193 of this title, section 796 of Title 15, Commerce and Trade, section 1202 of Title 19, Customs Duties, sections 821, 822 and 825 of Title 45, Railroads, and section 26b of Title 49, Transportation, and enacting provisions set out as notes under this section and section 822 of Title 45] may be cited as the 'Powerplant and Industrial Fuel Use Act of 1978'."

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AND TEMPORARY EXEMPTION ISSUED UNDER SECTION 8321(d) AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

Section 902 of Pub. L. 95-620 provided that:

"(a) EXEMPTIONS IN THE CASE OF CERTAIN POWERPLANTS.—In the case of—

"(1) any electric powerplant which, as of April 20, 1977, has received a final decision from the appropriate State agency authorizing the construction of such powerplant, and

"(2) any electric powerplant (A) consisting of one or more combined cycle units owned or operated by an electric utility which serves at least 2,000,000 customers and (B) for which an application has been filed for at least one year before the date of the enactment of this Act [Nov. 9, 1978] with the appropriate State agency for authorization to construct such powerplant,

the Secretary may receive, consider, and grant (or deny) any petition for an exemption under title II or III [subchapters II and III of this chapter] notwithstanding section 901 [section 901 of Pub. L. 95-620, set out as a note above] or the fact that all rules related to such petition have not been prescribed at the time.

"(b) EXEMPTIONS UNDER SECTION 211(d).—The Secretary may receive, consider, and grant (or deny) any petition for any exemption under section 211(d) [section 8321(d) of this title] notwithstanding section 901 [section 901 of Pub. L. 95-620, set out as a note above], or the fact that all rules related to such petition have not been prescribed at the time."

CROSS REFERENCES

Industrial energy conservation, see section 6341 et seq. of this title.

§ 8302. Definitions

(a) Generally

Unless otherwise expressly provided, for the purposes of this chapter—

(1) The term "Secretary" means the Secretary of Energy.

(2) The term "person" means any (A) individual, corporation, company, partnership, association, firm, institution, society, trust, joint venture, or joint stock company, (B) any State, the District of Columbia, Puerto Rico, and any territory or possession of the United States, or (C) any agency or instrumentality (including any municipality) thereof.

(3)(A) Except as provided in subparagraph (B), the term "natural gas" means any fuel consisting in whole or in part of—

(i) natural gas;

(ii) liquid petroleum gas;

(iii) synthetic gas derived from petroleum or natural gas liquids; or

(iv) any mixture of natural gas and synthetic gas.

(B) The term "natural gas" does not include—

(i) natural gas which is commercially unmarketable (either by reason of quality or quantity), as determined under rules prescribed by the Secretary;

(ii) natural gas produced by the user from a well the maximum efficient production rate of which is less than 250 million Btu's per day;

(iii) natural gas to the extent the exclusion of such gas is provided for in subsection (b) of this section; or

(iv) synthetic gas, derived from coal or other alternate fuel, the heat content of which is less than 600 Btu's per cubic foot at 14.73 pounds per square inch (absolute) and 60 degrees Fahrenheit.

(4) The term "petroleum" means crude oil and products derived from crude oil, other than—

(A) synthetic gas derived from crude oil;

(B) liquid petroleum gas;

(C) liquid, solid, or gaseous waste byproducts of refinery operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; or

(D) petroleum coke or waste gases from industrial operations.

(5) The term "coal" means anthracite and bituminous coal, lignite, and any fuel derivative thereof.

(6) The term "alternate fuel" means electricity or any fuel, other than natural gas or petroleum, and includes—

(A) petroleum coke, shale oil, uranium, biomass, and municipal, industrial, or agricultural wastes, wood, and renewable and geothermal energy sources;

(B) liquid, solid, or gaseous waste byproducts of refinery or industrial operations which are commercially unmarketable, either by reason of quality or quantity, as determined under rules prescribed by the Secretary; and

(C) waste gases from industrial operations.

(7)(A) The terms "electric powerplant" and "powerplant" mean any stationary electric generating unit, consisting of a boiler, a gas turbine, or a combined cycle unit, which produces electric power for purposes of sale or exchange and—

(i) has the design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more electric generating units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) For purposes of subparagraph (A), the term "electric generating unit" does not include—

(i) any electric generating unit subject to the licensing jurisdiction of the Nuclear Regulatory Commission; and

(ii) any cogeneration facility, less than half of the annual electric power generation of which is sold or exchanged for resale, as determined by the Secretary.

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule, to be appropriate.

(8) The term "new electric powerplant" means—

(A) any electric powerplant for which construction or acquisition began on a date on or after November 9, 1978; and

(B) any electric powerplant for which construction or acquisition began on a date after April 20, 1977, and before November 9, 1978, unless the Secretary finds the construction or acquisition of such powerplant could not be canceled, rescheduled, or modified to comply with the applicable requirements of this chapter without—

(i) adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority), or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(9)(A) The term "existing electric powerplant" means any electric powerplant other than a new electric powerplant.

(B) Any powerplant treated under this chapter as an existing electric powerplant shall not be treated thereafter as a new electric powerplant merely by reason of a transfer of ownership.

(10)(A) The terms "major fuel-burning installation" and "installation" means a stationary unit consisting of a boiler, gas turbine unit, combined cycle unit, or internal combustion engine which—

(i) has a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 100 million Btu's per hour or greater; or

(ii) is in a combination of two or more such units which are located at the same site and which in the aggregate have a design capability of consuming any fuel (or mixture thereof) at a fuel heat input rate of 250 million Btu's per hour or greater.

(B) The terms "major fuel-burning installation" and "installation" do not include—

(i) any electric powerplant; or

(ii) any pump or compressor used solely in connection with the production, gathering, transmission, storage, or distribution of gases or liquids, but only if there is certification to the Secretary of such use (in accordance with rules prescribed by the Secretary).

(C) For purposes of clause (ii) of subparagraph (A), there shall be excluded any unit which has a design capability to consume any fuel (including any mixture thereof) that does not equal or exceed 100 million Btu's per hour and the exclusion of which for purposes of such clause is determined by the Secretary, by rule to be appropriate.

(11) The term "new major fuel-burning installation" means—

(A) any major fuel-burning installation on which construction or acquisition began on a date on or after November 9, 1978; and

(B) any major fuel-burning installation on which construction or acquisition began on a date after April 20, 1977, and before November 9, 1978, unless the Secretary finds the construction or acquisition of such installation could not be canceled, rescheduled, or modified to comply with applicable requirements of this chapter without—

(i) incurring significant operational detriment of the unit (as determined by the Secretary); or

(ii) imposing substantial financial penalty (as determined under rules prescribed by the Secretary).

(12)(A) The term "existing major fuel-burning installation" means any installation which is not a new major fuel-burning installation.

(B) Such term does not include a major fuel-burning installation for the extraction of mineral resources located—

(i) on or above the Continental Shelf of the United States, or

(ii) on wetlands areas adjacent to the Continental Shelf of the United States,

where coal storage is not practicable or would produce adverse effects on environmental quality.

(C) Any installation treated as an existing major fuel-burning installation shall not be treated thereafter as a new major fuel-burning installation merely by reason of a transfer of ownership.

(13) The term "construction or acquisition began" means, when used with reference to a certain date, that—

(A) construction in accordance with final drawings or equivalent design documents (as defined by the Secretary, by rule) began on or after that date; or

(B)(i) construction or acquisition had been contracted for on or after that date, or (ii) if the construction or acquisition had been contracted for before such date, such construction or acquisition could be canceled, rescheduled, or modified to comply with the applicable requirements of this chapter—

(I) without imposing substantial financial penalty, as determined under rules prescribed by the Secretary;

(II) in the case of a powerplant, without adversely affecting electric system reliability (as determined by the Secretary after consultation with the Federal Energy Regulatory Commission and the appropriate State authority); or

(III) in the case of a major fuel-burning installation, without incurring significant operational detriment of the unit (as determined by the Secretary).

(14) The term "construction" means substantial onsite construction or reconstruction, as defined by rule by the Secretary.

(15) The term "primary energy source" means the fuel or fuels used by any existing or new electric powerplant or major fuel-burning installation, except it does not include, as determined under rules prescribed by the Secretary—

(A) the minimum amounts of fuel required for unit ignition, startup, testing, flame stabilization, and control uses, and

(B) the minimum amounts of fuel required to alleviate or prevent (i) unanticipated equipment outages and (ii) emergencies directly affecting the public health, safety, or welfare which would result from electric power outages.

(16) The term "site limitation" means, when used with respect to any powerplant or installation, any specific physical limitation associated with a particular site which relates to the use of coal or other alternate fuels as a primary energy source for such powerplant or installation, such as—

(A) inaccessibility to coal or other alternate fuels;

(B) lack of transportation facilities for coal or other alternate fuels;

(C) lack of adequate land or facilities for the handling, use, and storage of coal or other alternate fuels;

(D) lack of adequate land or facilities for the control or disposal of wastes from such powerplant or installation, including lack of pollution control equipment or devices necessary to assure compliance with applicable environmental requirements; and

(E) lack of an adequate and reliable supply of water, including water for use in compliance with applicable environmental requirements.

(17) The term "applicable environmental requirements" includes—

(A) any standard, limitation, or other requirement established by or pursuant to Federal or State law (including any final order of any Federal or State court) applicable to emissions of environmental pollutants (including air and water pollutants) or disposal of solid waste residues resulting from the use of coal or other alternate fuels or natural gas or petroleum as a primary energy source or from the operation of pollution control equipment in connection with such use, taking into account any variance of law granted or issued in accordance with Federal law or in accordance with State law to the extent consistent with Federal law; and

(B) any other standard, limitation, or other requirement established by, or pursuant to, the Clean Air Act [42 U.S.C. 7401 et seq.], the Federal Water Pollution Control Act [33 U.S.C. 1251 et seq.], the Solid Waste Disposal Act [42 U.S.C. 6901 et seq.], or the National Environmental Policy Act of 1969 [42 U.S.C. 4321 et seq.].

(18)(A) The term "peakload powerplant" means a powerplant the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 1,500 hours.

(B) The term "intermediate load powerplant" means a powerplant (other than a peakload powerplant), the electrical generation of which in kilowatt hours does not exceed, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(C) The term "base load powerplant" means a powerplant the electrical generation of which in kilowatt hours exceeds, for any 12-calendar-month period, such powerplant's design capacity multiplied by 3,500 hours.

(D) Not later than 90 days after November 9, 1978, the Federal Energy Regulatory Commission shall prescribe rules under which a powerplant's design capacity may be determined for purposes of this paragraph.

(19) the term "cogeneration facility" means an electric powerplant or a major fuel-burning installation which produces—

(A) electric power; and

(B) any other form of useful energy (such as steam, gas, or heat) which is, or will be, used for industrial, commercial, or space heating purposes.

(20) The term "cost", unless the context indicates otherwise, means total costs (both operating and capital) incurred over the estimated remaining useful life of an electric powerplant or major fuel-burning installation, discounted to present value, as determined by the Secretary (in the case of powerplants, in consultation with the State regulatory authorities). In the case of an electric

powerplant, such costs shall take into account any change required in the use of existing electric powerplants in the relevant dispatching system and other economic factors which are included in planning for the production, transmission, and distribution of electric power within such system.

(21) The term "State regulatory authority" means any State agency which has ratemaking authority with respect to the sale of electricity by any State regulated electric utility.

(22) The term "air pollution control agency" has the same meaning as given such term by section 302(b) of the Clean Air Act [42 U.S.C. 7602(b)].

(23) The term "electric utility" means any person, including any affiliate, or Federal agency which sells electric power.

(24) The term "affiliate", when used in relation to a person, means another person which controls, is controlled by, or is under common control with, such person.

(25) The term "Federal agency" means each authority of the Government of the United States, whether or not it is within or subject to review by another agency, but does not include—

(A) the Congress;

(B) the courts of the United States;

(C) the governments of the territories or possessions of the United States; and

(D) the government of the District of Columbia.

(26) The term "Btu" means British thermal unit.

(27) the term "Mcf" means, when used in relation to natural gas, 1,000 cubic feet of natural gas.

(28) The term "mixture", when used in relation to fuels used in a unit, means a mixture of such fuels or a combination of such fuels used simultaneously or alternately in such unit.

(29) The term "fluidized bed combustion" means combustion of fuel in connection with a bed of inert material, such as limestone or dolomite, which is held in a fluid-like state by the means of air or other gases being passed through such materials.

(b) Special rules relating to definitions of natural gas and alternate fuel

(1) Subject to paragraph (2), natural gas which is to be used by a powerplant or major fuel-burning installation shall for purposes of this chapter (other than this subsection), be excluded from the definition of "natural gas" under subsection (a)(3)(B)(iii) of this section and shall be included within the definition of "alternate fuel" under subsection (a)(6) of this section if the person proposing to use such natural gas certifies to the Secretary (together with such supporting documents as the Secretary may require) that—

(A) such person owns, or is entitled to receive, at the point of manufacture, synthetic gas derived from coal or another alternate fuel;

(B) the Btu content of such synthetic gas is equal to, or greater than, the Btu content of the natural gas to be covered by this subsection by reason of such certification, plus the approximate Btu content of any natural gas consumed or lost in transportation;

(C) such person delivers, or arranges for the delivery of, such synthetic gas to a pipeline or pipelines which by transport or displacement are capable of delivering such synthetic gas, mixed with natural gas, to such person; and

(D) all necessary permits, licenses, or approvals from appropriate Federal, State, and local agencies (including Indian tribes) have been obtained for construction and operation of the facilities for the manufacture of the synthetic gas involved, except that for purposes of the prohibition under section 8311(2) of this title against powerplants being constructed without the capability of using coal or another alternate fuel, only permits, licenses, and approvals for the construction of such synthetic gas facilities shall be required under this subparagraph to be certified and documented.

(2) The application of paragraph (1) with respect to the use of natural gas by any powerplant or major fuel-burning installation shall be conditioned on the person using such natural gas submitting to the Secretary a report not later than one year after certification is made under paragraph (1), and annually thereafter, containing the following information:

(A) the source, amount, quality, and point of delivery to the pipeline of the synthetic gas to which paragraph (1) applied during the annual period ending with the calendar month preceding the date of such report; and

(B) the amount, quality, and point of delivery by the pipeline to such person of the natural gas covered by paragraph (1) which is used by the person during such annual period.

(3) In the case of any boiler subject to a prohibition under section 8371 of this title, the preceding provisions of this subsection shall apply with respect to such boiler to the same extent and in the same manner as they apply in the case of major fuel-burning installations.

(4) For purposes of this subsection, the term "pipeline" means any interstate or intrastate pipeline or local distribution company.

(Pub. L. 95-620, title I, § 103, Nov. 9, 1978, 92 Stat. 3292.)

References in Text

The Clean Air Act, referred to in subsec. (a)(17)(B), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Federal Water Pollution Control Act, referred to in subsec. (a)(17)(B), is act June 30, 1948, ch. 758, as amended generally by Pub. L. 92-500, § 2, Oct. 18, 1972, 86 Stat. 816, which is classified generally to chapter 26 (§ 1251 et seq.) of Title 33, Navigation and Navigable Waters. For complete classification of this Act to the Code, see Short Title note set out under section 1251 of Title 33 and Tables.

The Solid Waste Disposal Act, referred to in subsec. (a)(17)(B), is title II of Pub. L. 89-272, Oct. 20, 1965, 79 Stat. 997, as amended generally by Pub. L. 94-580, § 2, Oct. 21, 1976, 90 Stat. 2795, which is classified generally to chapter 82 (§ 6901 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 6901 of this title and Tables.

The National Environmental Policy Act of 1969, referred to in subsec. (a)(17)(B), is Pub. L. 91-190, Jan. 1, 1970, 83 Stat. 852, as amended, which is classified generally to chapter 55 (§ 4321 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 4321 of this title and Tables.

Section Referred to in Other Sections

This section is referred to in section 8374 of this title; title 15 section 717z.

§ 8303. Territorial application

The provisions of this chapter shall apply in all the States, Puerto Rico, and the territories and possessions of the United States, except that—

(1) the provisions of subchapters II and III of this chapter (other than section 8341 of this title) shall only apply to powerplants and installations situated within the contiguous 48 States, Alaska, and the District of Columbia; and

(2) the provisions of section 8341 of this title shall only apply to powerplants situated within the contiguous 48 States and the District of Columbia.

(Pub. L. 95-620, title I, § 104, Nov. 9, 1978, 92 Stat. 3298.)

SUBCHAPTER II—NEW FACILITIES

Subchapter Referred to in Other Sections

This subchapter is referred to in sections 8303, 8391, 8441, 8472 of this title.

Part A—Prohibitions

Part Referred to in Other Sections

This part is referred to in sections 8321, 8322 of this title.

§ 8311. New electric powerplants

Except to such extent as may be authorized under part B—

(1) natural gas or petroleum shall not be used as a primary energy source in any new electric powerplant; and

(2) no new electric powerplant may be constructed without the capability to use coal or any other alternate fuel as a primary energy source.

(Pub. L. 95-620, title II, § 201, Nov. 9, 1978, 92 Stat. 3298.)

Critical Energy Facility Program

For provisions relating to the establishment of a Critical Energy Facility Program relating to nuclear and non-nuclear facilities requiring Federal permits for siting, construction, or operation, see Ex. Ord. No. 12129, Apr. 5, 1979, 44 F.R. 21001, set out as a note under section 2235 of this title.

Section Referred to in Other Sections

This section is referred to in sections 8302, 8321, 8323 of this title.

§ 8312. New major fuel-burning installations

(a) General prohibition

Except to such extent as may be authorized under part B natural gas or petroleum shall not be used as a primary energy source in a new major fuel-burning installation consisting of a boiler.

(b) Authority of secretary to prohibit nonboilers from using natural gas or petroleum

(1) The Secretary may, by rule, prescribe categories (identified in such rules) of new major fuel-burning installations, other than boilers, in which natural gas or petroleum, or both, shall be prohibited from being used as a primary energy source. In identifying categories of new major fuel-burning installations pursuant to this paragraph, the Secretary shall take into account any special circumstances or characteristics of each category of such installations (such as the technical feasibility of burning coal or other alternate fuels and the size or geographic location of such installations). The application of any such final rule in the case of any new major fuel-burning installation subject to such rule shall be stayed pending a resolution (including judicial review) of any petition for an exemption for such installation which is filed with the Secretary not later than 60 days after such final rule is published under section 8412(a) of this title. Any such final rule shall not apply in the case of any installation with respect to which a comparable prohibition was issued by order (or was proposed but was not issued because it was demonstrated that it could qualify for an exemption under part B).

(2)(A) The Secretary may, by order, prohibit the use of natural gas or petroleum, or both, as a primary energy source in any new major fuel-burning installation, other than a boiler, if such installation is not, at the time of the issuance of the proposed order, in a category identified in a final rule issued under paragraph (1).

(B) Subject to subpragraph[1] (C), the Secretary shall not issue a final order under this paragraph with respect to any installation if it is demonstrated that there would have been granted an exemption for such installation if such prohibition had been established by rule pursuant to paragraph (1) rather than by order pursuant to this paragraph, except that if a temporary exemption would have been granted, such a final order may be issued but may not take effect until such time as such temporary exemption would have terminated.

(C) In any case in which an order is not issued by reason of subparagraph (B) or in which the effective date of such order is delayed under subparagraph (B), the Secretary shall take such steps as may be necessary to assure the installation involved complies with the same requirements (including provisions of section 8324(a) of this title) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed.

(3) A prohibition under this subsection shall only apply with respect to an installation for

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[1] So in original. Probably should be "subparagraph".

which construction or acquisition began on or after the date of the publication under section 8411(b) of this title of the proposed rule or order establishing the prohibition. Any installation not subject to such a prohibition because of the preceding sentence shall be considered an existing major fuel-burning installation for purposes of subchapter III of this chapter.

(Pub. L. 95-620, title II, § 202, Nov. 9, 1978, 92 Stat. 3298.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8321 of this title.

PART B—EXEMPTIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 8311, 8312 of this title.

§ 8321. Temporary exemptions

(a) General exemption due to lack of alternate fuel supply, site limitations, or environmental requirements

After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of part A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant or installation at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source;

(2) one or more site limitations exist which would to[1] permit the location or operation of such a powerplant or installation using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 8311 or 8312 of this title could not be satisfied without violating applicable environmental requirements.

(b) Temporary exemption based upon future use of synthetic fuels

After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of part A, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of part A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8324(b) of this title.

(c) Temporary public interest exemption

After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of part A, the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption would be in the public interest and would be consistent with the purposes of this chapter.

(d) Temporary exemption for the use of petroleum by certain installations

After consideration of a petition (and comments thereon) for an exemption from the prohibition of the use of petroleum under section 8312 of this title for an installation with a design capacity of consuming any fuel (or any mixture thereof) at a fuel heat input rate which does not exceed 300 million Btu's per hour, the Secretary may, by order, grant an exemption under this subsection for the use of petroleum if he finds that the petitioner has demonstrated, by the existence of binding contracts or other evidence, including appropriate State construction permits, that he will use coal or another alternate fuel for at least 75 percent of the annual fuel heat input rate upon the expiration of such exemption. For provisions relating to authority to receive, consider and granting (or denying) certain petitons[1] for an exemption under this subsection, see section 902(b).

(e) Duration of temporary exemptions

(1) Except as provided in paragraph (2), exemptions under this section for any powerplant or installation may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) of this section may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) An exemption under subsection (b) of this section may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) If an exemption is granted for any powerplant or installation before the powerplant or installation is placed in service, the period before it is placed in service shall not be taken into account in computing the 5-year and the 10-year limitations of paragraphs (1) and (2).

(Pub. L. 95-620, title II, § 211, Nov. 9, 1978, 92 Stat. 3299.)

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[1] So in original. Probably should be "not".

[1] So in original. Probably should be "petitions".

REFERENCES IN TEXT

Section 902(b), referred to in subsec. (d), is section 902(b) of Pub. L. 95-620, which is set out as a note under section 8301 of this title.

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AND TEMPORARY EXEMPTION ISSUED UNDER SUBSECTION (d) AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplants and the temporary exemption issued under subsec. (d) of this section as prior to 180 days after Nov. 9, 1978, see section 902 of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8322. Permanent exemptions

(a) Permanent exemption due to lack of alternate fuel supply, site limitations, environmental requirements or adequate capital

(1) After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of part A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source (i) will not be available within the first 10 years of the useful life of the powerplant or installation, or (ii) will not be available at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source during the useful life of the powerplant or installation involved;

(B) one or more site limitations exist which would not permit the location or operation of such powerplant or installation using coal or any other alternate fuel as a primary energy source;

(C) the prohibitions of part A could not be satisfied without violating applicable environmental requirements; or

(D) the required use of coal or any other alternate fuel would not allow the petitioner to obtain adequate capital for the financing of such powerplant or installation.

(2) The demonstration required to be made by a petitioner under paragraph (1) shall—

(A) in the case of a new major fuel-burning installation, be made with respect to the site of such installation proposed by the petitioner; and

(B) in the case of a new electric powerplant, be made with respect to the site of such powerplant and reasonable alternative sites.

(3) Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (h) of this section may not be granted an exemption under this subsection.

(b) Permanent exemption due to certain state or local requirements

After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of part A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) with respect to the proposed site of the powerplant or installation, the construction or operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement (other than a building code or a nuisance or zoning law);

(2) in the case of a powerplant, there is no reasonable alternative site for such powerplant which meets the criteria set forth in subsection (a)(1)(A) through (D) of this section; and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this chapter.

(c) Permanent exemption for cogeneration

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) Permanent exemption for certain mixture containing natural gas or petroleum

(1) After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of part A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(A) the powerplant or installation uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(B) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant or installation needed to maintain reliability of operation of such powerplant or installation consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(2) In the case of a new major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent.

(e) Permanent exemption for emergency purposes

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant or installation, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant or installation will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

(f) Permanent exemption for powerplants necessary to maintain reliability of service

After consideration of a petition (and comments thereon) for an exemption for a powerplant from one or more of the prohibitions of part A, the Secretary may, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum if he finds that the petitioner has demonstrated that—

(1) such exemption is necessary to prevent impairment of reliability of service, and

(2) the petitioner, despite diligent good faith efforts, is not able to make the demonstration necessary to obtain an exemption under subsection (a) or (b) of this section in the time required to prevent such impairment of service.

(g) Permanent exemption for peakload powerplants

After consideration of a petition (and comments thereon) for an exemption for a powerplant—

(1) in the case of a proposed use of petroleum, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to petroleum if the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant; and

(2) in the case of a proposed use of natural gas, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas if—

(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded; and

(B) the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant.

(h) Permanent exemption for intermediate load powerplants

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A on the use of petroleum by a powerplant, the Secretary may grant a permanent exemption under this subsection for such use, by order, if he finds that the petitioner has demonstrated that—

(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded;

(B) such powerplant is to be constructed and operated only to replace no more than the equivalent capacity of existing electric powerplants—

(i) which use natural gas or petroleum as a primary source,

(ii) which are owned by the same person who is to operate such powerplant, and

(iii) which, if they used coal as a primary energy source, would cause or contribute to such a concentration in such area;

(C) such powerplant is to be operated solely as an intermediate load powerplant;

(D) the net heat input rate for such powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the useful life of the powerplant;

(E) there is no reasonable alternative site for such powerplant which meets the criteria set forth in subsection (a)(1)(A) through (D) of this section; and

(F) the powerplant is to be constructed with the capability to use a synthetic fuel derived from coal or other alternate fuel.

(2) The Secretary shall, from time to time, review each exemption granted to a powerplant under this subsection, and shall terminate such exemption when he finds that there is available a supply of synthetic fuel derived from coal or other alternate fuel suitable for use as a primary energy source by such powerplant.

(i) Permanent exemptions for installation based upon product or process requirements

After consideration of a petition (and comments thereon) for an exemption for an installation from one or more of the prohibitions of part A, the Secretary shall, by order, grant a permanent exemption under this subsection with respect to natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the use of coal or another alternate fuel is not technically feasible due to the necessity to maintain satisfactory control of product quality; and

(2) substitution of steam is not technically feasible due to process requirements.

(j) Permanent exemption for installation necessary to meet scheduled equipment outages

After consideration of a petition (and comments thereon) for any exemption from one or more of the prohibitions of part A for an installation, the Secretary may, by order, grant a permanent exemption under this subsection if he finds that the petitioner has demonstrated that such exemption is necessary to meet scheduled equipment outages (as defined by the Secretary by rule).

(Pub. L. 95-620, title II, § 212, Nov. 9, 1978, 92 Stat. 3300.)

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplant as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8323, 8471 of this title.

§ 8323. General requirements for exemptions

(a) Use of mixtures or fluidized bed combustion not feasible

Except in the case of an exemption under section 8322(d) or (g) of this title, the Secretary may grant a permanent exemption for a powerplant or installation under this part only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal or another alternate fuel, for which an exemption under section 8322(d) of this title would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or another alternate fuel is economically and technically feasible.

(b) State approval required for powerplant

If the appropriate State regulatory authority has not approved a powerplant for which a petition has been filed, such exemption—

(1) to the extent it applies to the prohibition under section 8311(2) of this title against construction without the capability of using coal or another alternate fuel, shall not take effect until all approvals required by such State regulatory authority which relate to construction have been obtained; and

(2) to the extent it applies to the prohibition under section 8311(1) of this title against the use of natural gas or petroleum as a primary energy source, shall not take effect until all approvals required by such State regulatory authority which relate to construction or operation have been obtained.

(c) No alternative power supply in the case of a powerplant

(1) Except in the case of an exemption under section 8322(c) or (g) of this title, the Secretary may not grant an exemption for a new powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with such Commission before making any finding on such petition under paragraph (1).

(Pub. L. 95-620, title II, § 213, Nov. 9, 1978, 92 Stat. 3304.)

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplant as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8324. Terms and conditions; compliance plans

(a) Terms and conditions generally

Any exemption from any prohibition under this part shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this chapter. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b) of this section) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant or installation covered by such exemption will comply with the applicable prohibitions.

(b) Compliance plans

A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibitions of this chapter will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow or[1] such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

(Pub. L. 95-620, title II, § 214, Nov. 9, 1978, 92 Stat. 3304.)

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplant as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8312, 8321 of this title.

SUBCHAPTER III—EXISTING FACILITIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 8303, 8312, 8391, 8402, 8441, 8472 of this title.

PART A—PROHIBITIONS

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 8351, 8352 of this title.

§ 8341. Existing electric powerplants

(a) General prohibitions

Except to such extent as may be authorized under part B—

(1) natural gas shall not be used as a primary energy source in an existing electric powerplant on or after January 1, 1990;

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[1] So in original. Probably should be "for".

(2) natural gas shall not be used as a primary energy source in an existing electric powerplant before January 1, 1990, unless such powerplant used natural gas as a primary energy source at any time during calendar year 1977; and

(3) natural gas shall not be used as a primary energy source in an existing electric powerplant in any calendar year before 1990 in greater proportions than the average yearly proportion of natural gas which—

(A) such powerplant used as a primary energy source in calendar years 1974 through 1976, or

(B) if such powerplant began operations on or after January 1, 1974, such powerplant used as a primary energy source during the first two calendar years of its operation.

The prohibition of paragraph (1) shall be stayed with respect to any existing powerplant pending a resolution (including judicial review) of any petition for any exemption from such prohibition which is filed for such powerplant at any time after the effective date of this chapter, but at least one year before the date such prohibition first takes effect.

(b) Authority of Secretary to prohibit where coal or alternate fuel capability exists

The Secretary may prohibit, in accordance with section 8343(a) or (b) of this title, the use of petroleum or natural gas, or both, as a primary energy source in any existing electric powerplant, if the Secretary finds that—

(1) such powerplant has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

(2) such powerplant has the technical capability to use coal or another alternate fuel as a primary energy source, or it could have such capability without—

(A) substantial physical modification of the powerplant, or

(B) substantial reduction in the rated capacity of the powerplant; and

(3) it is financially feasible to use coal or another alternate fuel as a primary energy source in such powerplant.

The requirement of paragraph (1) shall not be considered to be satisfied unless the finding under such paragraph is made before the date of the publication of the notice of proposed prohibition under section 8411(b) of this title and is published with such notice.

(c) Authority of Secretary to prohibit excessive use in mixtures

In the case of any existing electric powerplant in which the Secretary finds it is technically and financially feasible to use a mixture of petroleum or natural gas and coal or an alternate fuel as a primary energy source, the Secretary may prohibit, in accordance with section 8343(a) of this title, the use of petroleum or natural gas, or both, in such powerplant in amounts in excess of the minimum amount necessary to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of such mixture.

(Pub. L. 95-620, title III, § 301, Nov. 9, 1978, 92 Stat. 3305.)

References in Text

The effective date of this chapter, referred to in subsec. (a), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as a note under section 8301 of this title.

Section Referred to in Other Sections

This section is referred to in sections 8303, 8343, 8351, 8352 of this title.

§ 8342. Existing major fuel-burning installations

(a) Authority of Secretary to prohibit where coal or alternate fuel capability exists

The Secretary may prohibit, in accordance with section 8343(a) or (b) of this title, the use of petroleum or natural gas, or both, as a primary energy source in any existing major fuel-burning installation, if the Secretary finds that—

(1) such installation has or previously had the technical capability to use coal or another alternate fuel as a primary energy source;

(2) such installation has the technical capability to use coal or another alternate fuel as a primary energy source, or it could have such capability without—

(A) substantial physical modification of the unit, or

(B) substantial reduction in the rated capacity of the unit; and

(3) it is financially feasible to use coal or another alternate fuel as a primary energy source in such installation.

The requirement of paragraph (1) shall not be considered to be satisfied unless the finding under such paragraph is made before the date of the publication of the notice of proposed prohibition under section 8411(b) of this title and is published with such notice.

(b) Authority of Secretary to prohibit excessive use in mixtures

(1) In the case of any existing major fuel-burning installation in which the Secretary finds it is technically and financially feasible to use a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source the Secretary may prohibit, in accordance with section 8343(a) of this title, the use of petroleum or natural gas, or both, in such installation in amounts in excess of the minimum percentage of the total Btu heat input of the primary energy sources needed to maintain reliability of operation of the unit consistent with maintaining reasonable fuel efficiency of such mixture.

(2) The percentage determined by the Secretary under paragraph (1) shall not be less than 25 percent.

(Pub. L. 95-620, title III, § 302, Nov. 9, 1978, 92 Stat. 3306.)

Section Referred to in Other Sections

This section is referred to in sections 8343, 8351 of this title.

§ 8343. Rules relating to case-by-case and category prohibitions

(a) Case-by-case prohibitions

(1) Except to the extent authorized by subsection (b) of this section, the Secretary shall prohibit any powerplant or installation from using natural gas or petroleum under the authority granted him under section 8341(b) or (c) or 8342 of this title only by means of a final order issued by him which shall be limited to the particular powerplant or installation involved.

(2) The Secretary may issue such a final order only with respect to a powerplant or installation which is not, at the time the proposed order is issued, covered by a final rule issued under subsection (b) of this section.

(3)(A) Subject to subparagraph (B), the Secretary shall not issue a final order under this subsection to any powerplant or installation if it is demonstrated that such powerplant or installation would have been granted an exemption if such prohibition had been established by a final rule pursuant to subsection (b) of this section rather than by order pursuant to this subsection, except that if a temporary exemption would have been granted, such a final order may be issued but may not take effect until such time as the temporary exemption would have terminated.

(B) In any case in which an order is not issued by reason of subparagraph (A) or in which the effective date of such order is delayed under subparagraph (A), the Secretary shall take such steps as may be necessary to assure the installation involved complies with the same requirements (including provisions of section 8354(a) of this title) as would have been applicable if an exemption had been granted based upon the grounds for which the order is not issued or the effective date of which is delayed.

(b) Prohibitions applicable to categories of facilities

(1) The Secretary may, by rule, prohibit the use of natural gas or petroleum pursuant to section 8341(b) or 8342(a) of this title—

(A) in the case of any category of existing electric powerplants identified in such rule; and

(B) in the case of any category of existing major fuel-burning installations which have design capabilities of consuming fuel (or any mixture thereof) at a fuel heat input rate of 300 million Btu's per hour or greater which are identified in such rule.

(2) Each powerplant or installation to be covered by any final rule issued under this subsection shall be specifically identified in the proposed rule published under section 8411(b) of this title.

(3) In prescribing any final rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of powerplants or installations (such as the intermittent use, size, age, or geographic location of such powerplants or installations). Any such rules shall not apply in the case of any existing electric powerplant or major fuel-burning installation—

(A) pending a resolution (including judicial review) of any petition for any exemption for such powerplant or installation which may be filed with the Secretary not later than 60 days after such final rule is published under section 8412(a) of this title; or

(B) with respect to which a comparable prohibition was issued by order (or was proposed but was not issued by reason of subsection (a)(3) of this section).

(Pub. L. 95-620, title III, § 303, Nov. 9, 1978, 92 Stat. 3306.)

Section Referred to in Other Sections

This section is referred to in sections 8341, 8342 of this title.

Part B—Exemptions

Part Referred to in Other Sections

This part is referred to in section 8341 of this title.

§ 8351. Temporary exemptions

(a) Temporary exemption due to lack of alternate fuel supply, site limitations, or environmental requirements

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant or installation, the Secretary shall, by order, grant such an exemption for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption, despite diligent good faith efforts—

(1) it is likely that an adequate and reliable supply of coal or other alternate fuel of the quality necessary to conform with design and operational requirements for use as a primary energy source, will not be available to such powerplant or installation at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the costs, as determined by rule by the Secretary, of using imported petroleum as a primary energy source;

(2) one or more site limitations exist which would not permit the operation of such a powerplant or installation using coal or any other alternate fuel as a primary energy source; or

(3) the prohibitions of section 8341 or 8342 of this title could not be satisfied without violating applicable environmental requirements.

(b) Temporary exemption based upon future use of synthetic fuels

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant or installation, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that—

(1) the petitioner will comply with the prohibitions of part A by the end of the proposed exemption by the use of a synthetic fuel derived from coal or another alternate fuel; and

(2) the petitioner is not able to comply with such prohibitions by the use of such synthetic fuel until the end of the proposed exemption.

The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) of this title.

(c) Temporary exemption based upon use of innovative technologies

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant or installation, the Secretary, by order, shall grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant or installation will comply with such prohibitions at the expiration of such exemption by the adoption of a technology for the use of coal or another alternate fuel which at the time of the granting of the exemption is determined by the Secretary to be an innovative technology. The effectiveness of an exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) of this title.

(d) Temporary exemption for units to be retired

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant or installation, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such powerplant or installation is to permanently cease operation at or before the expiration of the exemption period. An exemption under this subsection is conditioned on the petitioner filing and maintaining a compliance plan meeting the requirements of section 8354(b) (other than paragraph (1)(B)) of this title.

(2) Notwithstanding any other provision of this chapter, an exemption under this part may not be granted for any powerplant or installation once an exemption under this subsection has been granted for such powerplant or installation.

(e) Temporary public interest exemption

After consideration of a petition (and comments thereon) for an exemption for a powerplant or installation from one or more of the prohibitions of part A for a powerplant or installation, the Secretary may, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that for the period of the proposed exemption the issuance of such exemption is in the public interest and is consistent with the purposes of this chapter.

(f) Temporary exemption for peakload powerplants

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if the petitioner certifies that such powerplant is to be operated solely as a peakload powerplant.

(g) Temporary exemption for powerplants where necessary to maintain reliability of service

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant an exemption under this subsection for the use of natural gas or petroleum, if he finds that the petitioner has demonstrated that such exemption is necessary to prevent impairment of reliability of service.

(2) Notwithstanding any other provision of this chapter, an exemption under this part (other than a permanent exemption under section 8352(f) of this title for the use of petroleum) may not be granted for any powerplant for which an exemption under this subsection has been granted.

(h) Duration of temporary exemptions

(1) Except as provided in paragraphs (2) and (3), exemptions under this section for any powerplant or installation may not exceed, taking into account any extension or renewal, 5 years.

(2)(A) An exemption under subsection (a)(1) of this section may be granted for a period of more than 5 years, but may not exceed, taking into account any extension or renewal, 10 years.

(B) Subject to paragraph (3), an exemption under subsections (b), (c), and (g) of this section may be extended beyond the 5-year limit under paragraph (1), but such exemption, so extended, may not exceed 10 years.

(3) An exemption under subsections (d), (f), and (g) of this section for the use of natural gas by a powerplant may not extend beyond December 31, 1994.

(4) In computing the 5-year and 10-year limitations of paragraphs (1) and (2) in the case of any exemption under this section, the period before the prohibition on the use of natural gas and petroleum would first apply (if the exemption had not been granted) shall be disregarded.

(Pub. L. 95-620, title III, § 311, Nov. 9, 1978, 92 Stat. 3307.)

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplant as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8352. Permanent exemptions

(a) Permanent exemption due to lack of alternate fuel supply, site limitations, or environmental requirements

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant or installation, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of natural gas or petro-

leum, if he finds that the petitioner has demonstrated that despite diligent good faith efforts—

(A) it is likely that an adequate and reliable supply of coal or other alternate fuels of the quality necessary to conform with design and operational requirements for use as a primary energy source will not be available to such powerplant or installation at a cost (taking into account associated facilities for the transportation and use of such fuel) which, based upon the best practicable estimates, does not substantially exceed the cost, as determined by rule by the Secretary, of using imported petroleum as a primary energy source during the remaining useful life of the powerplant or installation;

(B) one or more site limitations exist which would not permit the operation of such a powerplant or installation using coal or any other alternate fuel as a primary energy source; or

(C) the prohibitions of part A could not be satisfied without violating applicable environmental requirements.

(2) Notwithstanding the preceding provisions of this subsection, a powerplant which has been granted an exemption under subsection (g) of this section may not be granted an exemption under this subsection.

(b) Permanent exemption due to certain state or local requirements

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant or installation, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(1) with respect to the site of the powerplant or installation, the operation of such a facility using coal or any other alternate fuel is infeasible because of a State or local requirement;

(2) if such State or local requirement is under a building code or nuisance or zoning law, no other exemption under this part could be granted for such facility; and

(3) the granting of the exemption would be in the public interest and would be consistent with the purposes of this chapter.

(c) Permanent exemption for cogeneration

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a cogeneration facility, the Secretary may, by order, grant a permanent exemption under this subsection, if he—

(1) finds that the petitioner has demonstrated that economic and other benefits of cogeneration are unobtainable unless petroleum or natural gas, or both, are used in such facility, and

(2) includes in the final order a statement of the basis for such finding.

(d) Permanent exemption for certain fuel mixtures containing natural gas or petroleum

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant or installation, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the powerplant or installation uses, or proposes to use, a mixture of petroleum or natural gas and coal or another alternate fuel as a primary energy source; and

(B) the amount of the petroleum or natural gas used in such mixture will not exceed the minimum percentage of the total Btu heat input of the primary energy sources of such powerplant or installation needed to maintain reliability of operation of the unit consistent with maintaining a reasonable level of fuel efficiency, as determined in accordance with rules prescribed by the Secretary.

(2) In the case of an existing major fuel-burning installation, the percentage determined by the Secretary under subparagraph (B) of paragraph (1) shall not be less than 25 percent.

(3) In the case of an existing electric powerplant, the Secretary may authorize a higher percentage than that referred to in paragraph (1)(B) if he finds that the higher percentage of natural gas allowed would be mixed with synthetic fuels derived from municipal wastes or agricultural wastes and would encourage the use of alternate or new technologies which use renewable sources of energy.

(e) Permanent exemption for emergency purposes

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant or installation, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that such powerplant or installation will be maintained and operated only for emergency purposes (as defined by rule by the Secretary).

(f) Permanent exemption for peakload powerplants

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that—

(1) the powerplant is operated solely as a peakload powerplant;

(2) a denial of such petition is likely to result in an impairment of reliability of service; and

(3)(A) modification of the powerplant to permit compliance with such prohibitions is technically infeasible; or

(B) such modification would result in an unreasonable expense.

(g) Permanent exemption for intermediate load powerplants

(1) After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A on the use of petroleum by a powerplant, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(A) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary that the use by such powerplant of coal or any available alternate fuel as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such area;

(B) such powerplant is to be operated only to place no more than the equivalent capacity of existing electric powerplants—

(i) which use natural gas or petroleum as a primary energy source,

(ii) which are owned by the same person who is to operate such powerplant, and

(iii) which, if they used coal as a primary energy source, would cause or contribute to such a concentration in such region;

(C) such powerplant is and shall continue to be operated solely as an intermediate load powerplant;

(D) the net fuel heat input rate for such powerplant will be maintained at or less than 9,500 Btu's per kilowatt hour throughout the remaining useful life of the powerplant; and

(E) the powerplant has the capability to use synthetic fuels derived from coal or other alternate fuel.

(2) The Secretary shall, from time to time, review each exemption granted to a powerplant under this subsection, and shall terminate such exemption if he finds that there is available a supply of synthetic fuel derived from coal or other alternate fuel suitable for use as a primary energy source by such powerplant.

(h) Permanent exemption for use of natural gas by certain powerplants with capacities of less than 250 million BTU's per hour

(1) Subject to paragraph (2), after consideration of a petition (and comments thereon) for an exemption from any prohibition of part A for the use of natural gas by a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for such use, if he finds that the petitioner has demonstrated that—

(A) such powerplant has a design capability of consuming fuel (or any mixture thereof) at a fuel heat input rate of less than 250 million Btu's per hour;

(B) such powerplant was a baseload powerplant on April 20, 1977; and

(C) such powerplant is not capable of consuming coal without—

(i) substantial physical modification of the unit; or

(ii) substantial reduction in the rated capacity of the unit (as determined by the Secretary).

(2) An exemption under this subsection may only apply to the prohibitions under section 8341 of this title and prohibitions established by final rules or orders issued before January 1, 1990.

(i) Permanent exemption for the use of LNG by certain powerplants

After consideration of a petition (and comments thereon) for an exemption from one or more of the prohibitions of part A for a powerplant, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of liquefied natural gas if the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) has certified to the Secretary that the use of coal by such powerplant as a primary energy source will cause or contribute to a concentration, in an air quality control region or any area within such region, of a pollutant for which any national ambient air quality standard is or would be exceeded for such region or area and the use of coal would not comply with applicable environmental requirements.

(j) Permanent exemption for installations served by certain international pipelines

(1) After consideration of a petition (and comments thereon) for an exemption for an installation from one or more of the prohibitions of part A, the Secretary shall, by order, grant a permanent exemption under this subsection for the use of natural gas, if he finds that the petitioner has demonstrated that—

(A) such installation's primary source of natural gas is under a contract with a pipeline between Canada and the United States which cannot be cancelled by the petitioner without his suffering substantial financial penalty;

(B) such pipeline was supplying to such installation before April 21, 1977, natural gas from Canada under such contract;

(C) such pipeline serves high-priority users within the United States service to whom would be jeopardized if service to such installation is terminated;

(D) the revenues from the transportation and sale of natural gas transported by such pipeline are essential to the economic vitality of the pipeline; and

(E) the exemption is consistent with the purposes of this chapter, and the denial of such exemption would not result in natural gas being made available for any other use within the United States.

(2) For purposes of this subsection, the term "high-priority user" means any residential user of natural gas, or any commercial user whose consumption of natural gas on a peak day is less than 50 Mcf, as determined by the Secretary.

(k) Permanent exemption for installation based upon product or process requirements

After consideration of a petition (and comments thereon) for an exemption for an installation from one or more of the prohibitions of part A, the Secretary shall, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that—

(1) the use of coal or other alternate fuels is not technically feasible due to the necessity to maintain satisfactory control of product quality; and

(2) substitution of steam is not technically feasible due to process requirements.

(l) Permanent exemption for installations necessary to meet scheduled equipment outages

After consideration of a petition (and comments thereon) for any exemption from one or more of the prohibitions of part A for an installation, the Secretary may, by order, grant a permanent exemption under this subsection, if he finds that the petitioner has demonstrated that such exemption is necessary to meet scheduled equipment outages (as defined by the Secretary by rule).

(Pub. L. 95-620, title III, § 312, Nov. 9, 1978, 92 Stat. 3309.)

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplant as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8351, 8353, 8391, 8471, 8473 of this title.

§ 8353. General requirements for exemptions

(a) Use of mixtures or fluidized bed combustion not feasible

Except in the case of an exemption under section 8352(b), (f), (i) or (j) of this title, the Secretary may grant a permanent exemption for a powerplant or installation under this part only—

(1) if the applicant has demonstrated that the use of a mixture of natural gas or petroleum and coal (or other alternate fuels), for which an exemption under section 8352(b) of this title would be available, is not economically or technically feasible; and

(2) if the Secretary has not made a finding that the use of a method of fluidized bed combustion of coal or an alternate fuel is economically and technically feasible.

(b) No alternative power supply in the case of a powerplant

(1) In the case of an exemption under section 8352(b) or (g) of this title, the Secretary may not grant an exemption for an existing powerplant unless he finds that the petitioner has demonstrated that there is no alternative supply of electric power which is available within a reasonable distance at a reasonable cost without impairing short-run or long-run reliability of service and which can be obtained by the petitioner, despite reasonable good faith efforts.

(2) The Secretary shall forward a copy of any such petition to the Federal Energy Regulatory Commission promptly after it is filed with the Secretary and shall consult with the Commission before making any finding on such petition under paragraph (1).

(Pub. L. 95-620, title III, § 313, Nov. 9, 1978, 92 Stat. 3313.)

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplant as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8354. Terms and conditions; compliance plans

(a) Terms and conditions generally

Any exemption from any prohibition under this part shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this chapter. In the case of any temporary exemption, the terms and conditions (which may include a compliance plan meeting the requirements of subsection (b) of this section) shall be designed to insure that upon the expiration of such exemption, the persons and powerplant or installation covered by such exemption will comply with the applicable prohibitions.

(b) Compliance plans

A compliance plan meets the requirements of this subsection if it is approved by the Secretary and—

(1) contains (A) a schedule indicating how compliance with applicable prohibition of this chapter will occur and (B) evidence of binding contracts for fuel, or facilities for the production of fuel, which would allow for such compliance; and

(2) is revised at such times and to such extent as the Secretary may require to reflect changes in circumstances.

(Pub. L. 95-620, title III, § 314, Nov. 9, 1978, 92 Stat. 3314.)

EXEMPTION FOR CERTAIN ELECTRIC POWERPLANTS AS EFFECTIVE PRIOR TO 180 DAYS AFTER NOVEMBER 9, 1978

For effectiveness of exemption for certain electric powerplant as prior to 180 days after Nov. 9, 1978, see section 902(a) of Pub. L. 95-620, set out as a note under section 8301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8343, 8351 of this title.

SUBCHAPTER IV—ADDITIONAL PROHIBITIONS; EMERGENCY AUTHORITIES

§ 8371. Authority to prohibit use of natural gas in certain boilers used for space heating

(a) Existing boilers

The Secretary may prohibit the use of natural gas as a primary energy source in any existing boiler (other than a major fuel-burning installation) if he finds that—

(1) such boiler is used to produce steam for space heating purposes;

(2) such boiler consumes 300 Mcf or more of natural gas per day on a peak day;

(3) such boiler has, or previously had, the technical capability to use petroleum as a primary energy source;

(4) such boiler has the technical capability to use petroleum as a primary energy source or it could have such capability without—

(A) substantial physical modification of the boiler, or

(B) substantial reduction in the rated capacity of the unit;

(5) it is financially feasible for such boiler to use petroleum as a primary energy source; and

(6) such prohibition is consistent with the purposes of this chapter.

The requirement of paragraph (3) shall not be considered to be satisfied unless the finding under such paragraph is made before the date of the publication of the notice of proposed prohibition under section 8411(b) of this title.

(b) New boilers

The Secretary may prohibit the use of natural gas as a primary energy source in any new boiler (other than a major fuel-burning installation) if he determines that—

(1) such boiler will be used to produce steam for space heating purposes;

(2) such boiler will, by design, be capable of consuming 300 Mcf or more of natural gas per day; and

(3) such prohibition is consistent with the purposes of this chapter.

(c) Exemption

The Secretary shall exempt any person from any prohibition prescribed pursuant to subsection (a) or (b) of this section if such person demonstrates to the Secretary that an adequate and reliable source of petroleum is not likely to be available to such person during the period of the exemption.

(d) Definitions

(1) The term "new boiler" means any boiler for which there was not a commitment for construction or acquisition as of the date of the publication under section 8411(b) of this title of the proposed rule or order establishing the prohibition.

(2) The term "existing boiler" means any boiler other than a new boiler.

(e) Method of prohibition

(1)(A) Except to the extent authorized by paragraph (2), the Secretary shall prohibit boiler fuel use of natural gas under the authority granted him in subsection (a) or (b) of this section only by means of a final order issued by him which shall be limited to the particular boiler involved.

(B) The Secretary may issue such an order only with respect to a boiler which is not, at the time the proposed order is issued, covered by a final rule issued under paragraph (2).

(C) The Secretary shall not issue a final order under this subsection with respect to any boiler if it is demonstrated that an exemption under subsection (c) of this section would have been granted with respect to such boiler if such prohibition had been established by rule pursuant to paragraph (2) rather than by order.

(2)(A) The Secretary may, by rule, prohibit the use of natural gas under the authority of subsection (a) or (b) of this section in the case of any category of boilers identified in such rule.

(B) Any existing boiler to be covered by any rule issued under this subsection shall be specifically identified in the proposed rule published under section 8411(b) of this title.

(C) In prescribing any rule under this subsection, the Secretary shall take into account any special circumstances or characteristics of each category of boilers (such as the technical feasibility of burning petroleum and the size, age, or geographic location of such boilers). Any such final rule shall not apply in the case of any boiler—

(i) subject to such rule pending a resolution of any petition (including judicial review) for any exemption for such boiler which may be filed with the Secretary not later than 60 days after such rule is published under section 8411(b) of this title; or

(ii) with respect to which a comparable prohibition was issued by order (or was proposed but was not issued because it was demonstrated that it could qualify for an exemption under subsection (c) of this section).

(Pub. L. 95-620, title IV, § 401, Nov. 9, 1978, 92 Stat. 3314.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8302, 8411 of this title.

§ 8372. Prohibition on use of natural gas for decorative outdoor lighting

(a) Prohibition on installation of new outdoor lighting

Effective beginning on November 9, 1978, no local distribution company, or any industrial user of natural gas who obtains such gas under a contract between such user and a natural gas pipeline, or any agent thereof, shall install any outdoor lighting fixture using natural gas.

(b) Prohibition on selling natural gas to be used in outdoor lighting

(1) Not later than 180 days after November 9, 1978, the Secretary shall, by rule, prohibit any local distribution company (unless an exemption has been obtained under subsection (c) of this section) from providing natural gas service for use in outdoor lighting—

(A) effective on the date such final rule is issued, in the case of any residential, commercial, or industrial customer unless a later effective date is applicable under subparagraph (B) or (C) of this paragraph;

(B) effective beginning 180 days after the date such final rule is issued, in the case of any industrial or commercial structure for which natural gas was being provided by such company for outdoor lighting use on November 9, 1978; and

(C) effective beginning January 1, 1982, in the case of—

(i) any municipal outdoor lighting fixture, and

(ii) any outdoor lighting fixture used in connection with a residence,

for which natural gas was being provided by such company for outdoor lighting use on November 9, 1978.

(2) The rule prescribed under paragraph (1) shall provide that any industrial user of natural gas who obtains such natural gas under a con-

tract between such user and a natural gas pipeline shall be prohibited from using such natural gas for outdoor lighting (unless an exemption has been obtained under subsection (c) of this section)—

(A) effective 180 days after the date such final rule takes effect, if the industrial user was using natural gas for outdoor lighting on November 9, 1978; or

(B) beginning on the date such final rule takes effect, if such industrial user was not so using natural gas on such date.

(c) Exemptions

(1) The Secretary shall, by order—

(A) exempt from the prohibition under subsection (a) of this section the installation of a replacement lighting fixture for any memorial light or light of historical significance, and

(B) permanently exempt from a prohibition under subsection (b) of this section the use[1] natural gas in any memorial light or light of historical significance.[2]

if a petition for such exemption is made by a Federal, State, or local government agency or by any appropriate historical association.

(2) The Secretary shall, by order—

(A) exempt from the prohibition under subsection (a) of this section, upon a petition therefor, the installation of a replacement lighting fixture for any natural gas outdoor lighting, and

(B) permanently exempt from a prohibition under subsection (b) of this section, upon a petition therefor, use of natural gas for outdoor lighting,

which is used for commercial purposes, which is of a traditional nature, and which conforms with the cultural or architectural style of the area in which such light is located.

(3) The Secretary shall, by order, exempt any local distribution company or industrial user described in subsection (b)(2) of this section, from the rule required to be prescribed under subsection (b) of this section concerning the continuation of such service in effect on November 9, 1978, upon the filing of a petition therefor by such pipeline or company, or by any other interested person. Such exemption shall be for such period as, and to the extent that, the Secretary finds—

(A) such exemption is necessary to protect the safety of persons or property;

(B) such exemption is necessary to permit the installation of substitute lighting where no adequate outdoor lighting (other than that using natural gas) exists on November 9, 1978;

(C) compliance with such rule would entail substantial expense and would not be cost justified; or

(D) the issuance of the exemption is in the public interest and is consistent with the purposes of this chapter.

(4) Determinations on any petition for an exemption under this section shall be made under criteria which the Secretary shall establish by rule, which rule shall be prescribed not later than 180 days after the effective date of this chapter.

(d) Procedures

Rules and orders under this section shall be made in accordance with the provisions of section 553 of title 5, except that determinations on any petition for exemption under this section shall be made only after interested persons have been afforded an opportunity for a public hearing. Under rules prescribed by the Secretary, the Secretary may stay the application of any prohibition under subsection (b) of this section applicable to any person pending the resolution of any petition for an exemption for such person.

(e) Authority may be delegated to States

(1) Under regulations prescribed by the Secretary, the responsibility and authority of the Secretary with regard to outdoor lighting under this section may be delegated to the appropriate regulatory authority of a State if he determines that such delegation would be consistent with the purposes of this section.

(2) Any delegation under paragraph (1) shall be on terms and conditions prescribed by the Secretary and may be rescinded by the Secretary at any time by notifying the State authority of such rescission.

(3) Any State authority to which the Secretary has delegated authority under this subsection shall prepare and transmit reports to the Secretary on a periodic basis (as determined by the Secretary) on actions taken to carry out the purposes of this section.

(f) Definitions

As used in this section—

(1) The term "outdoor lighting" means lighting by any stationary source which is not located inside any building.

(2) The term "pipeline company" means any person engaged in the business of transporting natural gas by pipeline other than as a local distribution company.

(3) The term "local distribution company" means any person engaged in the business of transportation and local distribution of natural gas and the sale of natural gas for ultimate consumption.

(4) The term "residence" means any single or multiple family dwelling unit, including commonly held areas associated with any such unit.

(Pub. L. 95-620, title IV, § 402, Nov. 9, 1978, 92 Stat. 3315.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (c)(4), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as a note under section 8301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8411, 8432, 8433 of this title.

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[1] So in original. Probably should be "use of".

[2] So in original. Period should probably be a comma.

§ 8373. Conservation in federal facilities, contracts, and financial assistance programs

(a) Federal facilities

(1) Each Federal agency owning or operating any electric powerplant, major fuel-burning installation, or other unit shall comply with any prohibition, term, condition, or other substantial or procedural requirement under this chapter, to the same extent as would be the case if such powerplant, installation, or unit were owned or operated by a nongovernmental person.

(2) The President may, by order, exempt from the application of paragraph (1) any powerplant, installation, or other unit owned or operated by any Federal agency, if the President determines that—

(A) such use is in the paramount interest of the United States and that the powerplant, installation, or unit involved is a component of or is used solely in connection with any weaponry, equipment, aircraft, vessels, vehicles or other classes or categories of property which—

(i) are owned or operated by the Armed Forces of the United States (including the Coast Guard) or by the National Guard of any State; and

(ii) are uniquely military in nature; or

(B) there is a lack of appropriation for such use but only if the President specifically requested such appropriations as a part of the budgetary process and the Congress failed to make available such requested appropriation.

Such order shall not take effect until 60 days after a copy of such order has been transmitted to each House of the Congress. The President shall review each such determination every 2 years and submit a report to the Congress on the results of such review. Any powerplant, installation, or other unit permitted to use natural gas or petroleum under an exemption under this paragraph shall establish and carry out effective fuel conservation measures, as determined by the Secretary.

(3) Any powerplant, installation, or unit owned or operated by any such Federal agency shall be entitled to any exemption by the Secretary to the same extent, in the same manner, and under the same terms and conditions as would apply if it were owned or operated by a nongovernmental person.

(b) Federal contracts and financial assistance

(1) In order to implement the purposes of this chapter, the President shall, not later than 30 days after the effective date of this chapter, issue an order—

(A) requiring each Federal agency which is authorized to extend Federal assistance by way of grant, loan, contract, or other form of financial assistance, to promptly effectuate the purposes of this chapter relating to the conservation of petroleum and natural gas, by rule, in such contracting or assistance activities within 180 days after issuance of such order, and

(B) setting forth procedures, sanctions, penalties, and such other provisions as the President determines necessary to carry out such requirement effectively, including a requirement that each agency annually transmit to the President, and make available to the public, a report on the actions taken and to be taken to implement such order.

(2) The President may exempt by order any specific grant, loan, contract, or other form of financial assistance from all or part of the provisions of this subsection if he determines such exemption is in the national interest. The President shall notify the Congress in writing of such exemption at least 60 days before it is effective.

(3) The President or any Federal agency may not use the authority granted under paragraph (1) to require compliance, including the use of coal, by any person or facility with any prohibition under other sections of this chapter if such person or facility has been specifically determined by the Secretary as subject to such prohibition or has been exempted from the application of such prohibition.

(c) Annual report

The President shall annually submit a detailed report to each House of the Congress on the actions taken by the President and each Federal agency to implement this section, including the progress and problems associated with implementation of this section.

(Pub. L. 95–620, title IV, § 403, Nov. 9, 1978, 92 Stat. 3317.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (b)(1), is the effective date of Pub. L. 95–620. See section 901 of Pub. L. 95–620, set out as a note under section 8301 of this title.

EX. ORD. NO. 12185. EFFECTUATION OF CONSERVATION OF PETROLEUM AND NATURAL GAS BY RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE

Ex. Ord. No. 12185, Dec. 17, 1979, 44 F.R. 75093, provided:

By the authority vested in me as President of the United States of America by Section 403(b) of the Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3318; Public Law 95–620) [subsec. (b) of this section] and Section 301 of Title 3 of the United States Code, in order to encourage additional conservation of petroleum and natural gas by recipients of Federal financial assistance, it is hereby ordered as follows:

1–101. Each Federal agency, as that term is defined in Section 103(a)(25) of the Powerplant and Industrial Fuel Use Act of 1978 (92 Stat. 3297) [section 8302(a)(25) of this title], shall effectuate through its financial assistance programs the purposes of that Act relating to the conservation of petroleum and natural gas.

1–102. Each Federal agency which extends financial assistance shall review those programs of financial assistance and identify those which are most likely to offer opportunities for significant conservation of petroleum and natural gas.

1–103. Within two months, and annually thereafter, each agency shall publish for comment a list of those programs which it has identified as likely to offer significant opportunity for conservation. The public shall be given 60 days to submit comments, including suggestions for rules which would effectuate the conservation purposes of the Act [see Short Title note set out under section 8301 of this title].

1–104. After receiving public comment and suggestions, and after consulting with the Director of the Office of Management and Budget, each agency shall publish proposed rules designed to achieve conservation of petroleum and natural gas in connection with the receipt of financial assistance.

Proposed rules should be published within 30 days of the close of the comment period under Section 1-103.

1-105. Final rules shall be adopted by each agency in accordance with the provisions of Sections 102(b) [section 8301(b) of this title], 403(b) [subsec. (b) of this section] and 701(a) [section 8411(a) of this title] of the Powerplant and Industrial Fuel Use Act of 1978, and the provisions of this Order, not later than 180 days from the date of this Order.

1-106. No one shall be awarded any financial assistance unless that award complies with the provisions of the conservation rules adopted by the agency pursuant to this Order.

1-107. To the extent permitted by law and where not inconsistent with the financial assistance program, final rules may provide for the reduction or suspension of financial assistance under any award. Such reduction or suspension shall not be ordered until there has been an opportunity for a hearing on the record, and shall last for such time as the recipient fails to comply with the terms of the conservation rule.

1-108. No conservation rule shall be adopted which is inconsistent with the statutory provisions establishing the financial assistance program.

1-109. No conservation rule shall be used to enforce compliance with any prohibition under the Act [see Short Title note set out under section 8301 of this title] against any person or facility which has been specifically determined by the Secretary of Energy as subject to or exempt from a prohibition under the Act. The conservation rules shall be used to enforce other new ways of achieving the purposes of the Act related to the conservation of petroleum and natural gas.

1-110. In order to assess the effectiveness of this program, each agency shall annually prepare a report on its activities in accord with Section 403(b)(1)(B) of the Act [subsec. (b)(1)(B) of this section]. These reports shall be submitted to the President through the Secretary of Energy.

1-111. The Secretary of Energy shall prepare for the President's consideration and transmittal to the Congress the report required by Section 403(c) of the Act [subsec. (c) of this section].

1-112. The Director of the Office of Management and Budget may issue any rules, regulations, or orders he deems necessary to ensure the implementation of this Order. The Director may exercise any of the authority vested in the President by Section 403(b) of the Act [subsec. (b) of this section], and may redelegate such of that authority as he deems appropriate to the head of any other agency.

JIMMY CARTER.

§ 8374. Emergency authorities

(a) Coal allocation authority

(1) If the President—

(A) declares a severe energy supply interruption, as defined in section 6202(8) of this title, or

(B) finds, and publishes such finding, that a national or regional fuel supply shortage exists or may exist which the President determines—

(i) is, or is likely to be, of significant scope and duration, and of an emergency nature;

(ii) causes, or may cause, major adverse impact on public health, safety, or welfare or on the economy; and

(iii) results, or is likely to result, from an interruption in the supply of coal or from sabotage, or an act of God;

the President may, by order, allocate coal (and require the transportation thereof) for the use of any electric powerplant or major fuel-burning installation, in accordance with such terms and conditions as he may prescribe, to insure reliability of electric service or prevent unemployment, or protect public health, safety, or welfare.

(2) For purposes of this subsection, the term "coal" means anthracite and bituminous coal and lignite (but does not mean any fuel derivative thereof).

(b) Emergency prohibition on use of natural gas or petroleum

If the President declares a severe energy supply interruption, as defined in section 6202(8) of this title), the President may, by order, prohibit any electric powerplant or major fuel-burning installation from using natural gas or petroleum, or both, as a primary energy source for the duration of such interruption. Notwithstanding any other provision of this section, any suspension of emission limitations or other requirements of applicable implementation plans, as defined in section 7410(d) of this title, required by such prohibition shall be issued only in accordance with section 7410(f) of this title.

(c) Emergency stays

The President may, by order, stay the application of any provision of this chapter, or any rule or order thereunder, applicable to any new or existing electric powerplant, if the President finds, and publishes such finding, that an emergency exists, due to national, regional, or systemwide shortages of coal or other alternate fuels, or disruption of transportation facilities, which emergency is likely to affect reliability of service of any such electric powerplant.

(d) Duration of emergency orders

(1) Except as provided in paragraph (3), any order issued by the President under this section shall not be effective for longer than the duration of the interruption or emergency, or 90 days, whichever is less.

(2) Any such order may be extended by a subsequent order which the President shall transmit to the Congress in accordance with section 6421 of this title. Such order shall be subject to congressional review pursuant to such section.

(3) Notwithstanding paragraph (1), the effectiveness of any order issued under this section shall not terminate under this subsection during the 15-calendar-day period during which any such subsequent order described in paragraph (2) is subject to congressional review under section 6421 of this title.

(4) For purposes of this subsection, the provisions of this subsection supersede the provisions of subchapter II of chapter 34 of title 50.

(e) Delegation of authority prohibited

The authority of the President to issue any order under this section may not be delegated. This subsection shall not be construed to prevent the President from directing any Federal agency to issue rules or regulations or take such other action, consistent with this section, in the implementation of such order.

(f) Publication and reports to congress of orders

Any order issued under this section shall be published in the Federal Register. To the greatest extent practicable, the President shall, before issuing any order under this section, but in no event later than 5 days after issuing such order, report to the Congress of his intention to issue such order and state his reasons therefor.

(g) Emergency uses of natural gas or petroleum

(1) During a temporary emergency condition (other than emergency conditions provided for under section 8302(a)(15) of this title), any person operating a peakload powerplant or a major fuel-burning installation may, under rules prescribed by the Secretary, use natural gas or petroleum as a primary energy source in such powerplant or installation, notwithstanding any prohibition otherwise imposed by or pursuant to this chapter, if—

(A) such person notifies the Secretary within 24 hours after commencing such use; and

(B) the Secretary has not notified such person that in his judgment the emergency condition does not exist or does not warrant the use of natural gas or petroleum involved.

(2) Within 90 days after the effective date of this chapter, the Secretary shall, by rule, prescribe the form and content of such notices and the conditions which may constitute a temporary emergency.

(3) Hours of operation allowed under paragraph (1) shall not be included in the peakload powerplant's operating hours for the purposes of the penalties in section 8433(b) of this title.

(Pub. L. 95-620, title IV, § 404, Nov. 9, 1978, 92 Stat. 3319.)

REFERENCES IN TEXT

Subchapter II (§ 1621 et seq.) of chapter 34 of title 50, referred to in subsec. (d)(4), in the original read title II of the Act of September 14, 1976 (Public Law 94-412), which is known as the National Emergencies Act.

The effective date of this chapter, referred to in subsec. (g)(2), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as a note under section 8301 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8411, 8412, 8471 of this title.

§ 8375. Authority to restrict increased uses of petroleum by existing powerplants

The Secretary shall, by rule, require that, in the case of any existing electric powerplant which during calendar year 1977 uses coal or another alternate fuel as a primary energy source, petroleum may not be used in such powerplant as a primary energy source in excess of the quantities of petroleum used in such powerplant as a primary energy source during such year unless a permit is issued by the Secretary authorizing such increased use of petroleum. Such permit shall be issued if—

(1) the Administrator of the Environmental Protection Agency (or the appropriate State air pollution control agency) certifies to the Secretary (A) that the powerplant cannot comply with the requirements of the Clean Air Act [42 U.S.C. 7401 et seq.], including any applicable implementation plan, as defined in section 110(d) of the Clean Air Act [42 U.S.C. 7410(d)], without the issuance of such permit and (B) the petitioner has established the duration of the need for increased petroleum to comply with such plan; and

(2) the appropriate State regulatory authority has certified to the Secretary that the increased use of petroleum by such powerplant is necessary to prevent impairment of reliability of service.

Such permit shall be issued only for such period as the Secretary determines necessary under paragraph (1) or (2) for such increased use of petroleum.

(Pub. L. 95-620, title IV, § 405, Nov. 9, 1978, 92 Stat. 3320.)

REFERENCES IN TEXT

The Clean Air Act, referred to in text, is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8411 of this title.

SUBCHAPTER V—SYSTEM COMPLIANCE OPTION

§ 8391. Electric utility system compliance option

(a) General rule

Existing electric powerplants owned or operated by an electric utility shall be considered in compliance with any prohibition under subchapter III of this chapter relating to the use of natural gas if there is in effect a plan of system compliance for such utility approved by the Secretary under subsection (b) of this section. No exemption under subchapter III of this chapter relating to the use of natural gas shall be available for any powerplant which is, or has ever been, covered by such an approved plan (other than an exemption under section 8352(e) of this title).

(b) Requirements for plan approval

The Secretary shall, by order, approve any plan of system compliance submitted by an electric utility to the Secretary before January 1, 1980, if the Secretary finds that such plan—

(1) identifies all powerplants owned or operated by such electric utility and indicates which of the powerplants—

(A) would be subject to, or could be subject to, prohibitions under subchapter III of this chapter relating to the use of natural gas if such plan were not approved; and

(B) of those so indicated in subparagraph (A), would be, or in the opinion of such electric utility would be likely to be, entitled to an exemption under subchapter III of this chapter relating to the use of natural gas if such plan were not approved;

(2) contains a commitment that, if such plan is approved, no new electric powerplant

which is or is to be a base load powerplant owned or operated by such utility shall use natural gas or petroleum as its primary energy source (whether or not such powerplant could qualify for an exemption under subchapter II of this chapter for such use);

(3) contains a commitment (including a schedule for an orderly progression in satisfying such commitment) that, if such plan is approved, all existing electric powerplants owned or operated by such utility—

(A) subject to subparagraph (B), on and after January 1, 1995, would not use natural gas as a primary energy source, except in the case of an intermediate load powerplant or a peakload powerplant, and then only in accordance with rules prescribed by the Secretary; and

(B) on and after January 1, 2000, would not use natural gas as a primary energy source except in the case of a temporary extension obtained under subsection (d) of this section;

(4) contains a commitment that, if such plan is approved, natural gas will not, on and after January 1, 1990, be used by powerplants owned or operated by such utility in excess of—

(A) 20 percent (or such higher percentage as may be allowed under subsection (d)(2) of this section) of the electric utility's base period usage of natural gas, or, if lower,

(B) the electric utility's minimum peakload requirement for the calendar year;

(5) contains a commitment that, if such plan is approved, the natural gas used by such utility will be obtained only under—

(A) a contract entered into before November 9, 1978); (other than under an extension or renewal of such contract occurring on or after November 9, 1978); or

(B) a contract entered into on or after November 9, 1978, or an extension or renewal occurring on or after such date of a contract entered into before such date, but only if such contract, extension, or renewal has been approved by the Secretary under subsection (g) of this section; and

(6) contains a 10-year forecast of such utility's demand for electricity, a 10-year construction forecast, and a 10-year financial plan, which provide a reasonable basis for concluding that the commitments in such plan will be carried out.

Approval of the Secretary under this subsection shall be conditioned on the utility involved updating on an annual basis the information contained in such plan to the extent provided under rules prescribed by the Secretary.

(c) Plan revision

A plan under subsection (b) of this section may be revised but only if the Secretary, by order, approves such revision.

(d) Extension for emergency or peakload purposes

(1) For purposes of subsection (b)(3)(B) of this section, the Secretary may extend the date specified therein for not more than 5 years with respect to the use of natural gas by any powerplant if it is demonstrated that such use of natural gas is to be—

(A) for emergency purposes consistent with section 8352(e) of this title, or

(B) for peakload purposes, consistent with section 8352(f) of this title.

(2) The Secretary may exempt from the requirements of subsection (b)(4) of this section such quantities of natural gas as would otherwise exceed such requirement if it is demonstrated that such natural gas is used solely for emergency or peakload purposes described in paragraph (1)(A) or (B).

(e) Determination of base period usage

(1) For purposes of subsection (b)(4)(A) of this section, an electric utility's base period usage of natural gas shall be the sum of—

(A) the quantities of natural gas used in calendar year 1976 by powerplants which are owned or operated by such utility and which were placed in service on or before January 1, 1976; plus

(B) one-half of the quantities used during the first 24 calendar-months after being placed in service by powerplants which are owned or operated by such utility and which were placed in service after January 1, 1976, and before the effective date of this chapter.

(2) The Secretary may allow for the substitution of a higher percentage for the 20 percent specified in subparagraph (A) of subsection (b)(4) of this section if he determines that the utility has demonstrated that such higher percentage is necessary—

(A) because of delays which occurred, despite diligent good faith efforts, in the construction of powerplants which will use a primary energy source other than natural gas, or

(B) because it would not be feasible for such utility to comply with the requirements of such subsection (b)(4) in the absence of such higher percentage without impairing reliability of service.

(f) Determination of minimum peakload requirement

For purposes of subsection (b)(4)(B) of this section, an electric utility's minimum peakload requirement for any calendar year shall be defined as the total kilowatt hours generated during the calendar year by natural gas on the system of the applicant electric utility company. system divided by the aggregate capacity of all the electric powerplants in such system, but not to exceed 1,500 full-load hours per year.

(g) Approval of natural gas contracts

The Secretary shall approve any contract, or contract extension or renewal, for purposes of applying subsection (b)(5)(B) of this section with respect to any plan, if he determines that the electric utility which submitted such plan has demonstrated that the quantities available under such contract, or extension or renewal, do not exceed those which are necessary to meet the requirements of the powerplants under such plan. The Secretary may not approve any contract, or extension or renewal, which provides for the delivery of such natural gas after December 31, 1999.

(h) Terms and conditions

Any approval by the Secretary under subsection (b) of this section shall be on such terms and conditions as the Secretary determines appropriate, including terms and conditions requiring the use of effective fuel conservation measures which are practicable and consistent with the purposes of this chapter.

(Pub. L. 95-620, title V, § 501, Nov. 9, 1978, 92 Stat. 3321.)

References in Text

The effective date of this chapter, referred to in subsec. (e)(1)(B) is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as a note under section 8301 of this title.

Section Referred to in Other Sections

This section is referred to in section 8411 of this title.

SUBCHAPTER VI—FINANCIAL ASSISTANCE

§ 8401. Assistance to areas impacted by increased coal or uranium production

(a) Designation of impacted areas

(1) In accordance with such criteria and guidelines as the Secretary of Agriculture shall, by rule, prescribe, the Governor of any State may designate any area within such State for the purposes of this section, if he finds that—

(A) either (i) employment in coal or uranium production development activities in such area has increased for the most recent calendar year by 8 percent or more from the immediately preceding year or (ii) employment in such activities will increase 8 percent or more per year during each of the 3 calendar years beginning after the date of such finding;

(B) such employment increase has required or will require substantial increases in housing or public facilities and services or a combination of both in such area; and

(C) the State and the local government or governments serving such area lack the financial and other resources to meet any such increases in public facilities and services within a reasonable time.

The Secretary of Agriculture shall prescribe a rule containing criteria and guidelines for making a designation under this subsection, after consultation with the Secretary of Labor and the Secretary of Energy, not later than 180 days after the effective date of this chapter.

(2) For purposes of paragraph (1)(C), increased revenues, including severance tax revenues, royalties, and similar fees to the State and local governments which are associated with the increase in coal or uranium development activities and which are not prohibited from being used under provisions of law in effect on November 9, 1978, shall be taken into account in determining if a State or local government lacks financial resources.

(3) The Secretary shall, after consultation with the Secretary of Agriculture, approve any designation of an area under paragraph (1) only if—

(A) the Governor of the State making the designation provides the Secretary in writing with the data and information on which such designation was made, together with such additional information as the Secretary may require to carry out the purposes of this section; and

(B) the Secretary determines that the requirements of subparagraphs (A), (B), and (C) of paragraph (1) have been met.

(b) Planning grants

(1) The Secretary of Agriculture may make a grant to any State in which there is an area designated and approved under subsection (a) of this section for the purposes of developing a plan for such area which shall include determinations of—

(A) the anticipated level of coal or uranium production activities in such area;

(B) the socio-economic impacts which have occurred or which are reasonably projected to occur as a result of the increase in coal or uranium production activities;

(C) the availability and location of resources within such area to meet the increased needs resulting from socio-economic impacts determined under subparagraph (B) (such as any increased need for housing, or public facilities and services); and

(D) the nature and expense of measures necessary to meet within a reasonable time the increased needs resulting from such impact for which there are no resources reasonably available other than under this section.

(2)(A) Any grant for developing a plan under this subsection shall be for an amount equal to 100 percent of the costs of such plan, as determined by the Secretary of Agriculture.

(B) The aggregate amount granted under this subsection in any fiscal year may not exceed 10 percent of the total amount appropriated for purposes of this section for such year.

(3) The Governor of a State receiving a grant under this subsection for developing a plan shall submit a copy of such plan to the Secretary of Agriculture as soon as practicable after it has been prepared.

(c) Land acquisition and development grants

(1) In the case of any real property—

(A) within an area for which a plan meeting the requirements of subsection (b)(1) of this section has been approved;

(B) which is for housing or public facilities determined in such plan as necessary due to an increase in employment due to coal or uranium development activities;

(C) with respect to which the Secretary of Agriculture has determined that the State and the local governments serving such area do not have the financial resources to acquire or the legal authority to acquire by condemnation; and

(D) with respect to which there has been an approval in writing by the Governor of such State that the Secretary of Agriculture exercise his authority under this paragraph;

the Secretary of Agriculture may acquire such real property or interest therein, by purchase, donation, lease, or exchange. Property so acquired shall be transferred to the State under such terms and conditions as the Secretary of Agriculture deems appropriate. Such terms and conditions shall provide for the reimbursement to the Secretary of Agriculture for the fair market value of the property, as determined by the Secretary of Agriculture. The value of any improvement of such property made after such acquisition shall not be taken into account in determining the fair market value of such property under this subsection. Amounts so received by the Secretary of Agriculture shall be deposited in the Treasury of the United States as miscellaneous receipts.

(2) Any approval by a Governor of a State under paragraph (1)(D) shall constitute a binding commitment of such State to accept the property to be acquired and to provide reimbursement for the amount of the fair market value of such property, as determined under paragraph (1).

(3) The Secretary of Agriculture may acquire property under paragraph (1) by condemnation only if he finds that—

(A) such property is not available by means other than condemnation at a price which does not substantially exceed the fair market value of such property;

(B) other real property is not similarly available which is within the same designated area and which is suitable for the purposes to which the property involved is to be applied; and

(C) the State and the local governments serving such area lack the legal authority to acquire such property by condemnation.

(4)(A) In the case of any real property which meets the requirements of subparagraphs (A), (B), and (C) of paragraph (1), the Secretary of Agriculture may make a grant to the State in which such property is located for the purposes of acquiring such property, and for any site development which is consistent with the plan developed under subsection (b) of this section.

(B) In the case of property acquired by the Secretary of Agriculture under paragraph (1) and transferred to the State, the Secretary of Agriculture may make a grant to such unit of government for the purposes of site development which is consistent with such plan.

(C) Grants for real property acquisition or site development or both under this paragraph may not exceed 75 percent of the costs thereof, as determined by the Secretary of Agriculture.

(5) In the selection of real property for acquisition and in such acquisition under this subsection, preference shall be given to real property which the Secretary of Agriculture determines at such time to be unoccupied or previously mined and abandoned.

(6)(A) Property held by the United States in trust for Indians or any Indian tribe may not be acquired by condemnation under this section.

(B) No property within the National Forest System (as defined in section 1609 of title 16) may be exchanged by the Secretary in any acquisition under paragraph (1).

(d) General requirements regarding assistance

(1) Assistance under this section shall be provided only upon application, which application shall contain such information as the Secretary of Agriculture shall prescribe.

(2) The Secretary of Agriculture may make any grant under this section in whole or in part to the local government or governments serving an area designated and approved under subsection (a) of this section, or to a council of local governments which includes one or more local governments serving such area (in lieu of making such grant solely to the State), if he has determined, after consultation with the Governor of the State, that to do so would be appropriate.

(3) The Secretary of Agriculture shall prescribe, by rule, criteria for the allocation of assistance under this section. Such criteria shall give due weight to the magnitude of the employment increase involved, the financial resources of the designated area, and the ratio of the financial burden on the area to the resources available to such area.

(4) Assistance under this section shall be provide only if the Secretary of Agriculture is satisfied that—

(A) the amounts expended by the State and the local governments involved for the same purposes for which such assistance is provided will not be reduced; and

(B) the amount of such assistance does not reflect any amount for which other Federal financial assistance is provided or on proper application would be provided.

(e) Definitions

For the purposes of this section—

(1) The term "coal or uranium development activities" means the production, processing, or transportation of coal or uranium.

(2) The term "site development" means necessary off-site improvements, such as the construction of sewer and water connections, construction of access roads, and appropriate site restoration, but does not include any portion of the construction of housing or public facilities.

(f) Reports

Any person regularly engaged in any coal or uranium development activity within an area designated and approved under subsection (a) of this section shall prepare and transmit a report to the Secretary of Energy within 90 days after a written request to such person by the Governor of the State in which such area is located. Such report shall include—

(1) projected employment levels for such activity by such person within such area during each of the following 3 calendar years;

(2) the projected increase in employees in such area to engage in such activity during each of such calendar years;

(3) the projected quantity of coal (or uranium) to be produced, processed, or transported by such person during each of such calendar years; and

(4) actions such companies plan to take or are taking to provide needed housing and other facilities for their employees directly or by providing funds to the States or local communities for this purpose.

Copies of the report shall be provided to the Secretary of Energy and the Secretary shall, subject to the provisions of section 796(d) of title 15, provide the report to the Secretary of Agriculture, the Governor, and the appropriate county or local officials and make it available for public review.

(g) Administration

The Secretary of Agriculture shall carry out his responsibilities under this section through the Farmers Home Administration and such other agencies within the Department of Agriculture as he may determine appropriate.

(h) Appropriations authorization

(1) [1] There is hereby authorized to be appropriated to the Secretary of Energy for purposes of this section, $60,000,000 for fiscal year 1979 and $120,000,000 for fiscal year 1980. The Secretary of Energy and the Secretary of Agriculture shall enter into an agreement for the allocation of funds appropriated pursuant to this section for carrying out their respective responsibilities under this section, including the amounts for personnel and administrative costs, and upon such agreement, the Secretary of Energy shall transfer to the Secretary of Agriculture amounts determined under that agreement.

(i) Protection from certain hazardous actions

Federal agencies having responsibilities concerning the health and safety of any person working in any coal, uranium, metal, or nonmetallic mine regulated by any Federal agency shall interpret and utilize their authorities fully and promptly, including the promulgation of standards and regulations, to protect existing and future housing, property, persons, and public facilities located adjacent to or near active and abandoned coal, uranium, metal, and nonmetallic mines from actions occurring at such activities that pose a hazard to such property or persons.

(j) Reorganization

The authority of the Secretary of Agriculture and the authority of the Secretary of Energy under this section may not be transferred to any other Secretary or to any other Federal agency under chapter 9 of title 5 or under any other provision of law, other than under specific provisions of a law enacted after November 9, 1978. The preceding provisions of this subsection shall not preclude either Secretary from delegating any such authority to any officer, employee, or entity within such Secretary's department.

(Pub. L. 95-620, title VI, § 601, Nov. 9, 1978, 92 Stat. 3323.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a)(1), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as a note under section 8301 of this title.

CODIFICATION

Section 1609 of title 16, referred to in subsec. (c)(6)(B), was in the original "section 10 of the Forest and Rangeland Renewable Resources Planning Act of 1974". Such section 10 is classified to section 1608 of title 16 but has been editorially translated as section 1609 of title 16 as the probable intent of Congress in that the properties defined as being in the National Forest System appear in section 1609.

§ 8402. Loans to assist powerplant acquisitions of air pollution control equipment

(a) Authority to make loans

The Secretary may, in accordance with the provisions of this section and such rules and regulations as he shall prescribe, make a loan (and may make a commitment to loan) to any person who owns or operates any existing electric powerplant converting to coal or other alternate fuel as its primary energy source after the effective date of this chapter for the purpose of financing the purchase and installation of one or more certified air pollution control devices for such electric powerplant.

(b) Limitations and conditions

A loan made under this section shall—

(1) not exceed two-thirds of the cost of purchasing and installing the certified air pollution control devices;

(2) have a maturity date not extending beyond 10 years after the date such loan is made;

(3) bear interest at a rate not less than (A) a rate determined by the Secretary of the Treasury, taking into consideration the average market yield of outstanding Treasury obligations of comparable maturity, plus (B) 1 percent;

(4) be made on the condition of payment to the Secretary of a loan fee in an amount equal to (A) such insurance fee as the Secretary determines is necessary to avoid a Federal revenue loss under this section, plus (B) 1 percent of the loan amount; and

(5) be made only if the Secretary finds that—

(A) the financial assistance applied for is not otherwise available from other Federal agencies;

(B) the applicant is unable to obtain sufficient funds on reasonable terms and conditions from any other source;

(C) there is continued reasonable assurance of full repayment of the principal, interest, and fees; and

(D) competition among private entities for the provision of air pollution control devices for electric powerplants using coal as their primary energy source to be assisted under this section will be in no way limited or precluded.

(c) Allocation and priorities

In making loans or commitments to loan pursuant to this section, the Secretary shall—

(1) allocate a minimum of 25 percent of available financial assistance to existing small municipal and rural powerplants; and

(2) give priority consideration to requests for financial assistance by existing electric powerplants subject to any prohibition under subchapter III of this chapter (or under section 792 of title 15).

(d) Definitions

For purposes of this section—

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[1] So in original. Subsec. (h) enacted without par. (2).

(1) The term "certified pollution control device" means a new identifiable device which—

(A) is used, in connection with a powerplant, to abate or control atmospheric pollution by removing, altering, disposing, storing, or preventing the emission of pollutants;

(B) the appropriate State air pollution control agency has certified to the Administrator of the Environmental Protection Agency that such device is needed to meet, and is in conformity with, State requirements for abatement or control of atmospheric pollution or contamination;

(C) the Adminstrator of the Environmental Protection Agency has certified to the Secretary as not duplicating or displacing existing air pollution control devices with a remaining useful economic life in excess of 2 years and as otherwise being in furtherance of the requirements and purposes of the Clean Air Act [42 U.S.C. 7401 et seq.];

(D) does not constitute or include a building, or a structural component of a building, other than a building used exclusively for the purposes set forth in subparagraph (A); and

(E) the construction of which began after the effective date of this chapter.

(2) The term "small municipal or rural cooperative electric powerplant" means an electric generating unit, which—

(A) by design is not capable of consuming fuel at a fuel heat input rate in excess of a rate determined appropriate by the Secretary by rule; and

(B) is owned or operated by a municipality or a rural electric cooperative.

(e) Records

(1) The Secretary shall require all persons receiving financial assistance under this section to keep such records as the Secretary shall prescribe, including records which fully disclose the amount and disposition by such recipient of the proceeds of such assistance, the total cost of the project or undertaking in connection with which such assistance was given or used, the amount of that portion of the cost of the project or undertaking supplied by other sources, and such other records as will facilitate an effective audit.

(2) The Secretary and the Comptroller General of the United States, or any of their duly authorized representatives, shall, until the later of—

(A) the expiration of 3 years after completion of the project or undertaking referred to in subsection (a) of this section, or

(B) full repayment of interest and principal on a loan made under this section, occurs,

have access for the purposes of audit, evaluation, examination to any books, documents, papers, and records of such receipts which in the opinion of the Secretary or the Comptroller General may be related or pertinent to such loan.

(f) Default

(1) If there is a default in any payment by the obligor of interest or principal due under a loan entered into by the Secretary under this section and such default has continued for 90 days, the Secretary has the right to demand payment of such unpaid amount, unless the Secretary finds that such default has been remedied, or a satisfactory plan to remedy such default by the obligor has been accepted by the Secretary.

(2) In demanding payment of unpaid interest or principal by the obligor, the Secretary has all rights specified in the loan-related agreements with respect to any security which he held with respect to the loan, including the authority to complete, maintain, operate, lease, sell, or otherwise dispose of any property acquired pursuant to such loan or related agreements.

(3) If there is a default under any loan, the Secretary shall notify the Attorney General who shall take such action against the obligator or other parties liable thereunder as is, in his discretion, necessary to protect the interests of the United States. The holder of such loan shall make available to the United States all records and evidence necessary to prosecute any such suit.

(g) Deposit of receipts

Amounts received by the Secretary as principal, interest, fees, proceeds from security acquired following default, or other amounts received by the Secretary in connection with loans made under this section shall be paid into the Treasury of the United States as miscellaneous receipts.

(h) Authorization of appropriation

There are hereby authorized to be appropriated to the Secretary such sums as may be necessary to carry out the purposes of this section, but not to exceed $400,000,000 for fiscal year 1979 and $400,000,000 for fiscal year 1980. Authority granted to the Secretary under subsection (a) of this section may be exercised only to the extent as may be provided in advance in appropriation Acts.

(Pub. L. 95-620, title VI, § 602, Nov. 9, 1978, 92 Stat. 3327.)

References in Text

The effective date of this chapter, referred to in subsecs. (a) and (d)(1)(E), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as a note under section 8301 of this title.

The Clean Air Act, referred to in subsec. (d)(1)(C), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

SUBCHAPTER VII—ADMINISTRATION AND ENFORCEMENT

Part A—Procedures

§ 8411. Administrative procedures

(a) General rule making

Except to the extent otherwise provided in this section or other provisions of this chapter, rules prescribed under this chapter shall be made in accordance with the procedures set forth in section 553 of title 5.

(b) Notices of rules and orders imposing prohibitions

Before the Secretary prescribes any rule or issues any order imposing a prohibition under this chapter (other than under section 8372 of this title), he shall publish such proposed rule or order in the Federal Register, together with a statement of the reasons for such rule or order and, in the case of a rule, a detailed statement of any special circumstances or characteristics required to be taken into account in prescribing such rule. A copy shall be transmitted to the person who operates any such powerplant or installation required to be specifically identified in such rule or order.

(c) Petitions for exemptions

(1) Any petition for an exemption from any prohibition under this chapter or for any permit under section 8375 of this title, shall be filed at such time and shall be in such form as the Secretary shall by rule prescribe. The Secretary, upon receipt of such petition, shall publish a notice thereof in the Federal Register together with a statement of the reasons set forth in such a petition for requesting such exemption or permit, and provide a period of public comment of at least 45 days for written comments thereon. Rules required under this paragraph shall be prescribed not later than 120 days after November 9, 1978.

(2) The Secretary, upon receipt of such petition, shall notify the appropriate State agencies having primary authority to permit or regulate the construction or operation of the electric powerplant or, where appropriate, major fuel-burning installation which is the subject of such petition, and, to the maximum extent practicable, consult with such agencies.

(3) The Secretary, within 6 months after the period for public comment and hearing applicable to any petition for an exemption or permit, shall issue a final order granting or denying the petition for such exemption or permit, except that the Secretary may extend such period to a specified date if he publishes notice thereof in the Federal Register and includes with such notice a statement of the reasons for such extension.

(4) Any order for the approval of a system compliance plan under section 8391 of this title, and any petition for such an order, shall be treated for purposes of this subchapter the same as an order (or petition) for an exemption.

(d) Public comment on prohibitions and exemptions

(1) In the case of any proposed rule or order by the Secretary imposing a prohibition or any petition for any order granting an exemption (or permit) under this chapter (other than under section 8372 of this title), any interested person shall be afforded an opportunity to present oral data, views, and arguments at a public hearing. At such hearing any interested person shall have an opportunity to question—

(A) other interested persons who make oral presentations,

(B) employees and contractors of the United States who have made written or oral presentations or who have participated in the development of the proposed rule or order or in the consideration of such petition, and

(C) experts and consultants who have provided information to any person who makes an oral presentation and which is contained in or referred to in such presentation,

with respect to disputed issues of material fact, except that the Secretary may restrict questioning if he determines that such questioning is duplicative or is not likely to result in a timely and effective resolution of such issues. Any oral or documentary evidence may be received, but the Secretary as a matter of policy shall provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence.

(2) A rule or order subject to this section may not be issued except on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence.

(e) Transcript

A transcript shall be kept of any public hearing made in accordance with this section.

(f) Environmental Protection Agency comment

A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this chapter (other than under section 8372 or 8374 of this title), or a petition for an exemption (or permit) under this chapter (other than under section 8372 or 8374 of this title), shall be transmitted by the Secretary to the Administrator of the Environmental Protection Agency and the Secretary shall request such agency to comment thereon within the period provided to the public unless a longer period is provided under the Clean Air Act [42 U.S.C. 7401 et seq.]. In any such case, the Administrator of the Environmental Protection Agency shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d) of this section.

(g) Federal Trade Commission comment

A copy of any proposed rule or order to be prescribed or issued by the Secretary which imposes a prohibition under this chapter (other than under section 8372 or 8374 of this title) with respect to a major fuel-burning installation or a boiler subject to section 8371 of this title), or a petition by such installation or boiler for an exemption (or permit) under this chapter (other than under section 8372 or 8374 of this title), shall be transmitted by the Secretary to the Federal Trade Commission and the Secretary shall request such Commission to comment thereon within the period provided to the public. In any such case, the Federal Trade Commission shall be afforded the same opportunity to comment and question as is provided other interested persons under subsection (d) of this section.

(h) Coordination with other provisions of law

(1) Except as provided in sections 8412(c)(4), 8433(d)(5), and 8434 of this title, title V of the Department of Energy Organization Act (42 U.S.C. 7191, et seq.) shall not apply with respect to this chapter.

(2) The preceding provisions of this section shall not apply with respect to any exercise of authority under section 8374 of this title.

(3) The procedures applicable under this chapter shall not—

(A) be considered to be modified or affected by any other provision of law unless such other provision specifically amends this chapter (or provisions of law cited herein), or

(B) be considered to be superseded by any other provision of law unless such other provision does so in specific terms, referring to this chapter, and declaring that such provision supersedes, in whole or in part, the procedures of this chapter.

(Pub. L. 95-620, title VII, § 701, Nov. 9, 1978, 92 Stat. 3329.)

References in Text

The Clean Air Act, referred to in subsec. (f) is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7401 of this title and Tables.

The Department of Energy Organization Act, referred to in subsec. (h)(1), is Pub. L. 95-91, Aug. 4, 1977, 91 Stat. 567. Title V of the Department of Energy Organization Act is classified generally to subchapter V (§ 7191 et seq.) of chapter 84 of this title. For complete classification of this Act to the Code, see Short Title note set out under section 7101 of this title and Tables.

Section Referred to in Other Sections

This section is referred to in sections 8312, 8341, 8342, 8343, 8371 of this title.

§ 8412. Judicial review

(a) Publication and delay of prohibition or exemption to allow for review

Any final rule or order prescribed by the Secretary imposing a prohibition or granting an exemption (or permit) under this chapter shall be published in the Federal Register, and shall not take effect earlier than the 60th calendar day after such rule or order is published.

(b) Publication of denial of exemption or permit

Any final order issued by the Secretary denying any petition for an exemption or a permit under this chapter shall be published in the Federal Register, together with the reasons for such action.

(c) Judicial review

(1) Any person aggrieved by any final rule or order referred to in subsection (a) of this section or in section 8374 of this title, or by the denial of a petition for an order granting an exemption (or permit) referred to in subsection (b) of this section, may at any time before the 60th day after the date such rule, order, or denial is published under subsection (a) or (b) of this section, file a petition with the United States court of appeals for the circuit wherein such person resides, or has his principal place of business, for judicial review thereof. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the written submissions to, and transcript of, the written or oral proceedings on which the rule or order was based as provided in section 2112 of title 28.

(2) Upon the filing of the petition referred to in paragraph (1), the court shall have jurisdiction to review the rule, order, or denial in accordance with chapter 7 of title 5, and to grant appropriate relief as provided in such chapter. No rule or order (or denial thereof) may be affirmed unless supported by substantial evidence.

(3) The judgment of the court affirming or setting aside, in whole or in part, any such rule, order, or denial shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28.

(4) Subject to the direction and control of the Attorney General, as provided in section 519 of title 28, attorneys appointed by the Secretary may appear for and represent the Secretary in any proceeding instituted under this section in accordance with section 7192(c) of this title.

(Pub. L. 95-620, title VII, § 702, Nov. 9, 1978, 92 Stat. 3331.)

Section Referred to in Other Sections

This section is referred to in sections 8312, 8343, 8411 of this title.

Part B—Information and Reporting

§ 8421. Information

(a) Authority of Secretary

For purposes of carrying out his responsibilities under this chapter, the Secretary may require, under the authority of this chapter or any other authority administered by him, any person owning, operating or controlling any electric powerplant or major fuel-burning installation, or any other person otherwise subject to this chapter to submit such information and reports of any kind or nature directly to the Secretary necessary to implement the provisions of this chapter, and insure compliance with the provisions of this chapter, and any rule or order thereunder. The provisions of section 796(d) of title 15 shall apply with respect to information obtained under this section to the same extent and in the same manner as it applies with respect to energy information obtained under section 796 of title 15.

(b) Authority of President and Federal Energy Regulatory Commission

In the case of responsibilities expressly given by this chapter to the President or the Federal Energy Regulatory Commission, subsection (a) of this section shall be applied as if the references to the Secretary were references to the President or the Federal Energy Regulatory Commission, as the case may be.

(Pub. L. 95-620, title VII, § 711, Nov. 9, 1978, 92 Stat. 3332.)

§ 8422. Compliance report

Any person owning, operating, or proposing to operate one or more existing electric powerplants required to come into compliance with the prohibitions of this chapter shall on or before January 1, 1980, and annually thereafter, submit to the Secretary a report identifying all such existing electric powerplants owned or operated by such person. Such report shall—

(1) set forth the anticipated schedule for compliance with the applicable requirements and prohibitions by each such electric powerplant;

(2) indicate proposed or existing contracts or other commitments or good faith negotiations for such contracts or commitments for coal or another alternate fuel, equipment, or combinations thereof, which would enable such powerplant to comply with such prohibitions; and

(3) identify those electric powerplants, if any, for which application for temporary or permanent exemption from the prohibitions of this chapter may be filed.

(Pub. L. 95-620, title VII, § 712, Nov. 9, 1978, 92 Stat. 3332.)

PART C—ENFORCEMENT

§ 8431. Notice of violation; other general provisions

(a) Notice of violation

(1) Whenever, on the basis of any information available, the Secretary finds that any person is in violation of any provision of this chapter, or any rule or order thereunder, the Secretary shall issue notice of such violation. Any notice issued under this subsection shall be in writing and shall state with reasonable specificity the nature of the violation.

(2) Paragraph (1) shall not be construed to relieve any person of liability under the other provisions of this chapter for any act or omission occurring before the issuance of notice.

(b) Individual liability of corporate personnel

Any individual director, officer, or agent of a corporation who willfully authorizes, orders, or performs any of the acts or practices constituting in whole or in part a violation of this chapter, or any rule or order thereunder, shall be subject to penalties under this section without regard to any penalties to which the corporation may be subject, except that no such individual director, officer, or agent shall be subject to imprisonment under section 8432 of this title, unless he also knew of noncompliance by the corporation or had received from the Secretary notice of noncompliance by the corporation.

(c) Liability for certain peakload operation

No person shall be subject to any penalty under this part with respect to the operation of any powerplant in excess of that allowed by an exemption granted on the basis of the operation of such powerplant as a peakload powerplant if it is demonstrated to the Secretary that such operation was necessary to meet peakload demand and that other peakload powerplants within the same system as such powerplant—

(1) were unavailable for service—

(A) due to unit or system outages; or

(B) because operation of such other powerplants would result in their exceeding the hours of operation allowed under an exemption; and

(2) have not been operated other than to meet peakload demand.

(d) Federal agencies

The provisions of sections 8432 and 8433 of this title shall not be construed to apply to any Federal agency or officer or employee thereof acting in his official capacity.

(Pub. L. 95-620, title VII, § 721, Nov. 9, 1978, 92 Stat. 3333.)

§ 8432. Criminal penalties

Any person who willfully violates any provision of this chapter (other than section 8372 of this title), or any rule or order thereunder, shall be subject to a fine of not more than $50,000, or to imprisonment for not more than one year, or both, for each violation.

(Pub. L. 95-620, title VII, § 722, Nov. 9, 1978, 92 Stat. 3333.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8431 of this title.

§ 8433. Civil penalties

(a) General civil penalty

Any person who violates any provision of this chapter (other than section 8372 of this title), or rule or order thereunder, shall be subject to a civil penalty, which shall be assessed by the Secretary, of not more than $25,000 for each violation. Each day of violation shall constitute a separate violation.

(b) Civil penalties for operation or use of fuels in excess of exemption

(1) In the case of any electric powerplant granted an exemption, any person who operates such powerplant during any 12-calendar-month period in excess of that authorized in such exemption, shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum or $3 per Mcf of natural gas used in operation of such powerplant in excess of that authorized in such exemption.

(2) Any person operating a major fuel-burning installation granted an exemption which, for any 12-calendar-month period, uses petroleum or natural gas, or both, in excess of that use allowed by such exemption shall be liable for a civil penalty, which shall be assessed by the Secretary. The amount of such civil penalty may not exceed $10 per barrel of petroleum or $3 per Mcf of natural gas which was used in excess of that use allowed by such exemption.

(c) Penalties for violation of section 8372 of this title

(1) Any person who violates any prohibition under subsection (b)(1) of section 8372 of this title with respect to providing of natural gas service to any person for use in outdoor lighting shall be subject to a civil penalty, which shall be assessed by the Secretary and which shall not exceed $500 for each outdoor lighting fixture involved.

(2) Any industrial user who violates prohibition under subsection (b)(2) of section 8372 of this title shall be subject to a civil penalty, which shall be assessed by the Secretary and which shall not exceed $500 per day of violation for each outdoor lighting fixture involved which was used by an industrial customer, but not to exceed $5,000 per outdoor lighting fixture involved.

(3) The penalties under this subsection shall only apply in the case of a violation by any person who at the time of the violation had knowledge or reasonably should have had knowledge that the action involved was prohibited under section 8372 of this title.

(d) Assessment

(1) Before issuing an order assessing a civil penalty against any person under this chapter, the Secretary shall provide to such person notice of the proposed penalty. Such notice shall inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) Unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Secretary shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of title 5 before an administrative law judge appointed under section 3105 of such title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Secretary assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the order of the Secretary, or the court may remand the proceeding to the Secretary for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Secretary shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Secretary shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Secretary.

(4) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Secretary under paragraph (3), the Secretary shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(5)(A) Notwithstanding the provisions of title 28, or of section 7192(c) of this title, the Secretary shall be represented by the general counsel of the Department of Energy (or any attorney or attorneys within the Department of Energy designated by the Secretary) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (4)) in a court of the United States or in any other court, except the Supreme Court. However, the Secretary or the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) Subject to the provisions of section 7192(c) of this title, the Secretary shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

(C) Section 7172(d) of this title shall not apply with respect to the functions of the Secretary under this subsection.

(Pub. L. 95-620, title VII, § 723, Nov. 9, 1978, 92 Stat. 3333.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8374, 8411, 8431 of this title.

§ 8434. Injunctions and other equitable relief

Whenever it appears to the Secretary that any person has engaged, is engaged, or is about to engage in acts or practices constituting a violation of this chapter, or any rule or order thereunder, a civil action,[1] may be brought, in accordance with section 7192(c) of this title, in the appropriate district court of the United States to enjoin such acts or practices, and, upon a proper showing, the court shall grant, without bond, mandatory or prohibitive injunctive relief, including interim equitable relief.

(Pub. L. 95-620, title VII, § 724, Nov. 9, 1978, 92 Stat. 3335.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8411 of this title.

§ 8435. Citizens suits

(a) General rule

Except as otherwise provided in subsection (b) of this section, any aggrieved person may commence a civil action for mandatory or prohibitive injunctive relief, including interim equitable relief, against the Secretary or the head of any Federal agency which has a responsibility under this chapter if there is an alleged failure of the Secretary or such agency head to perform any act or duty under this chapter which is not discretionary. The United States district courts shall have jurisdiction over actions brought under this section, without regard to the amount in controversy or the citizenship of the parties.

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[1] So in original. The comma probably should not appear.

(b) Notice to Secretary or agency head

No action may be commenced under subsection (a) of this section before the 60th calendar day after the date on which the plaintiff has given notice of such action to the Secretary or the agency head involved. Notice under this subsection shall be given in such manner as the Secretary shall prescribe by rule.

(c) Authority of Secretary to intervene

In any action brought under subsection (a) of this section, the Secretary, if not a party, may intervene as a matter of right.

(d) Costs of litigation

The court, in issuing any final order in any action brought under subsection (a) of this section, may award costs of litigation (including reasonable attorney and expert witness fees) to any party, whenever the court determines such award is appropriate.

(e) Other remedies to remain available

Nothing in this section shall restrict any right which any aggrieved person (or class of aggrieved persons) may have under any statute or common law to seek enforcement of this chapter or any rule thereunder, or to seek any other relief (including relief against the Secretary or the agency head involved).

(Pub. L. 95-620, title VII, § 725, Nov. 9, 1978, 92 Stat. 3335.)

PART D—PRESERVATION OF CONTRACTUAL RIGHTS

§ 8441. Preservation of contractual interest

(a) Right to transfer contractual interests

(1) If any person receives natural gas, the use of which is prohibited by the provisions of subchapter II or III of this chapter or any rule or order thereunder, and if such natural gas is received pursuant to a contract in effect on April 20, 1977, between such person and any other person, such person receiving such natural gas may transfer all or any portion of such person's contractual interests under such contract and receive consideration from the person to whom such contractual interests are transferred. The consideration authorized by this subsection shall not exceed the maximum consideration established as just compensation under this section.

(2) Any person who would have transported or distributed the natural gas subject to a contract with respect to which contractual interests are transferred pursuant to paragraph (1) shall be entitled to receive just compensation (as determined by the Commission) from the person to whom such contractual interests are transferred.

(b) Determination of consideration

(1) The Commission shall, by rule, establish guidelines for the application on a regional or national basis (as may be appropriate) of the criteria specified in subsection (e)(1) of this section to determine the maximum consideration permitted as just compensation under this section.

(2) The person transferring contractual interests pursuant to subsection (a)(1) of this section and the person to whom such interests are transferred may agree on the amount of, or method of determining, the consideration to be paid for such transfer and certify such consideration to the Commission. Except as provided in paragraph (4), such agreed-upon consideration shall not exceed the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1).

(3) In the event the person transferring contractual interests pursuant to subsection (a)(1) of this section and the person to whom such interests are to be transferred fail to agree, under paragraph (2), on the amount of, or method of determining, the consideration to be paid for such transfer, the Commission may, at the request of both such persons, prescribe the amount of, or method of determining, such consideration. Upon the request of either such person, the Commission shall make such determination on the record, after an opportunity for agency hearing. In any such latter case, the determination of the Commission shall be binding upon the party requesting that such determination be made on the record of the agency hearing. The consideration prescribed by the Commission shall not exceed the maximum consideration permitted as just compensation under this section. In prescribing the amount of, or 'method of determining, consideration under this paragraph, to the maximum extent practicable, the Commission shall utilize any liquidated damages provision set forth in the applicable contract, but in no event may the Commission prescribe consideration in excess of the maximum consideration permitted as just compensation under this section.

(4) In the event that the consideration agreed upon under paragraph (2) exceeds the consideration determined by application of the guidelines prescribed by the Commission under paragraph (1), the Commission may approve such agreed-upon consideration if the Commission determines such agreed-upon consideration does not exceed the maximum consideration permitted as just compensation under this section.

(5) If consideration is agreed upon under paragraph (2) and such consideration exceeds the consideration determined by application of the guidelines prescribed under paragraph (1), but does not exceed the maximum consideration permitted as just compensation under this section, the Commission may not require a refund of any portion of the agreed-upon consideration paid with respect to deliveries of natural gas occurring prior to the Commission's action under paragraph (4) approving or disapproving such consideration unless the Commission determines—

(A) such agreed-upon consideration was fraudulently established;

(B) the processing of the request for approval of such agreed-upon consideration under paragraph (4) was willfully delayed by a party to the transfer; or

(C) such agreed-upon consideration exceeds the maximum consideration permitted as just compensation under this section.

(c) Restrictions on transfers unenforceable

(1) Any provision of any contract, which prohibits any transfer authorized by subsection (a)(1) of this section or terminates such contract on the basis of such transfer, shall be unenforceable in any court of the United States and in any court of any State.

(2) No State may enforce any prohibition on any transfer authorized by subsection (a)(1) of this section.

(d) Contractual obligations unaffected

The person acquiring contractual interests transferred pursuant to subsection (a)(1) of this section shall assume the contractual obligations which the person transferring such contractual interests has under such contract. This subsection shall not relieve the person transferring such contractual interests from any contractual obligation of such person under such contract if such obligation is not performed by the person acquiring such contractual interests.

(e) Definitions

For purposes of this section—

(1) The term "just compensation", when used with respect to any transfer of contractual intersts authorized by subsection (a)(1) of this section, means the maximum amount of, or method of determining, consideration which does not exceed the amount by which—

(A) the reasonable costs (excluding capital costs) incurred, during the remainder of the period of the contract with respect to which contractual interests are transferred under subsection (a)(1) of this section, in direct association with the use of a fuel, other than natural gas, as a primary energy source by the applicable existing electric powerplant or major fuel-burning installation, exceed

(B) the price of natural gas under such contract during such period.

For purposes of subparagraph (A), the reasonable costs associated with the use of a fuel, other than natural gas, as a primary energy source shall include an allowance for the amortization, over the remaining useful life, of the undepreciated value of depreciable assests located on the premises containing such electric powerplant or major fuel burning installation, which assets were directly associated with the use of natural gas and are not usable in connection with the use of such other fuel.

(2) The term "just compensation", when used with respect to subsection (a)(2) of this section, means an amount equal to any loss of revenue, during the remaining period of the contract with respect to which contractual interests are transferred pursuant to subsection (a)(1) of this section, to the extent such loss (A) is directly incurred by reason of the discontinuation of the transportation or distribution of natural gas resulting from the transfer of contractual interests pursuant to subsection (a)(1) of this section, and (B) is not offset by revenues derived from other transportation or distribution which would not have occurred if such contractual interests had not been transferred.

(3) The term "contractual interests", with respect to a contract described in subsection (a)(1) of this section, includes the right to receive natural gas as affected by any applicable curtailment plan filed with the Commission or the appropriate State regulatory authority.

(4) The term "State" means each of the several States, the District of Columbia, Puerto Rico, any territory or possession of the United States, and any political subdivision of any of the foregoing.

(5) The term "interstate pipeline" means any person engaged in the transportation of natural gas in interstate commerce subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.].

(6) The term "Commission" means the Federal Energy Regulatory Commission.

(7) The term "contract", when used with respect to a contract for receipt of natural gas, which contract was in existence on April 20, 1977, does not include any renewal or extension occurring after such date unless such renewal or extension occurs pursuant to the exercise of an option by the person receiving natural gas under such contract.

(f) Coordination with the Natural Gas Act

(1) Consideration paid by any interstate pipeline pursuant to this section shall be deemed just and reasonable for purposes of section 4, 5, and 7 of the Natural Gas Act [15 U.S.C. 717c, 717d, 717f]. The Commission shall not deny a passthrough by such interstate pipeline of such consideration based upon the amount of such consideration paid pursuant to this section.

(2) No person shall be subject to the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] or to regulation as a common carrier under any provision of Federal or State law solely by reason of making any sale, or engaging in any transportation, of natural gas with respect to which the transfer of contractual interests is authorized under subsection (a)(1) of this section.

(3) Nothing in this section shall exempt from the jurisdiction of the Commission under the Natural Gas Act [15 U.S.C. 717 et seq.] any transportation in interstate commerce of natural gas, any sale in interstate commerce for resale of natural gas, or any person engaged in such transportation or such sale to the extent such transportation, sale or person is subject to the juridiction[1] of the Commission under such Act without regard to the transfer of contractual interests under subsection (a)(1) of this section.

(4) Nothing in this section shall exempt any person from any obligation to obtain a certificate of public convenience and necessity for the transportation by an interstate pipeline of natural gas with respect to which the transfer of contractual interests is authorized under sub-

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[1] So in original. Probably should be "jurisdiction".

section (a)(1) of this section. The Commission shall not deny such a certificate for the transportation in interstate commerce of natural gas based upon the amount of consideration paid pursuant to this section.

(g) Volume limitation

No supplier of natural gas under any contract, with respect to which contractual interests have been transferred under subsection (a)(1) of this section, shall be required to supply natural gas during any relevant period in volume amounts which exceed the lesser of—

(1) the volume determined by reference to the maximum delivery obligations specified in such contract;

(2) the volume which such supplier would have been required to supply, under the curtailment plan in effect for such supplier, to the person, who transferred contractual interests under subsection (a)(1) of this section, if no such transfer had occurred;

(3) the volume which would have been delivered, or for which payment would have been made, pursuant to such contract but for the prohibition on the use of such natural gas under subchapter II or subchapter III of this chapter or any rule or order thereunder; and

(4) the volume actually delivered or for which payment would have been made pursuant to such contract during the 12-calendar-month period ending immediately before such transfer of contractual interests pursuant to this section.

(h) Judicial review

Any action by the Commission under this section is subject to judicial review in accordance with chapter 7 of title 5.

(Pub. L. 95-620, title VII, § 731, Nov. 9, 1978, 92 Stat. 3336.)

REFERENCES IN TEXT

The Natural Gas Act, referred to in subsecs. (e)(5) and (f)(2), (3), is act June 21, 1938, ch. 556, 52 Stat. 821, as amended, which is classified generally to chapter 15B (§ 717 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see section 717w of Title 15 and Tables.

PART E—STUDIES

§ 8451. National coal policy study

(a) Study

The President, acting through the Secretary and the Administrator of the Environmental Protection Agency, shall make a full and complete investigation and study of the alternative national uses of coal available in the United States to meet the Nation's energy requirements consistent with national policies for the protection and enhancement of the quality of the environment and for economic recovery and full employment. In particular the study should identify and evaluate—

(1) current and prospective coal requirements of the United States;

(2) current and prospective voluntary and mandatory energy conservation measures and their potential for reduction of the United States coal requirements;

(3) current and prospective coal resource production, transportation, conversion, and utilization requirements;

(4) the extent and adequacy of coal research, development, and demonstration programs being carried out by Federal, State, local, and nongovernmental entities (including financial resources, manpower, and statutory authority);

(5) programs for the development of coal mining technologies which increase coal production and utilization while protecting the health and safety of coal miners;

(6) alternative strategies for meeting anticipated United States coal requirements, consistent with achieving other national goals, including national security and environmental protection;

(7) existing and prospective governmental policies and laws affecting the coal industry with the view of determining what, if any, changes in and implementation of such policies and laws may be advisable in order to consolidate, coordinate, and provide an effective and equitable national energy policy consistent with other national policies; and

(8) the most efficient use of the Nation's coal resources considering economic (including capital and consumer costs, and balance of payments), social (including employment), environmental, technological, national defense, and other aspects.

(b) Report

Within 13 months after the effective date of this chapter, the President shall submit to the Congress a report with respect to the studies and investigations, together with findings and recommendations in order that the Congress may have such information in a timely fashion. Such report shall include the President's determinations and recommendations with respect to—

(1) the Nation's projected coal needs nationally and regionally, for the next 2 decades with particular reference to electric power;

(2) the coal resources available or which must be developed to meet those needs, including, as applicable, the programs for research, development, and demonstration necessary to provide technological advances which may greatly enhance the Nation's ability to efficiently and economically utilize its fuel resources, consistent with applicable environmental requirements;

(3) the air, water, and other pollution created by coal requirements, including any programs to overcome promptly and efficiently any technological or economic barriers to the elimination of such pollution;

(4) the existing policies and programs of the Federal Government and of State and local governments, which have any significant impact on the availability, production or efficient and economic utilization of coal resources and on the ability to meet the Nation's energy needs and environmental requirements; and

(5) the adequacy of various transportation systems, including roads, railroads, and waterways to meet projected increases in coal production and utilization.

Before submitting a report to the Congress under subsection (b) of this section the President shall publish in the Federal Register a notice and summary of the proposed report, make copies of such report available, and accord interested persons an opportunity (of not less than 90 days' duration) to present written comments; and shall make such modifications of such report as he may consider appropriate on the basis of such comments.

(c) Authorization of appropriations

There is hereby authorized to be appropriated to the Secretary for allocation between the Department of Energy and the Environmental Protection Agency for fiscal years 1979 and 1980, not to exceed $18,000,000, for use in carrying out the purposes of this section.

(Pub. L. 95-620, title VII, § 741, Nov. 9, 1978, 92 Stat. 3339.)

References in Text

The effective date of this chapter, referred to in subsec. (b), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8452. Coal industry performance and competition study

(a) Study

The Secretary shall make a complete investigation of the performance and competition of the coal industry. The study shall be an interagency effort under the direction of the Secretary and shall include participation by—

(1) the Federal Trade Commission,
(2) the Department of Justice,
(3) the Department of Energy,
(4) the Federal Energy Regulatory Commission,
(5) the Department of the Interior,
(6) the Department of Transportation,
(7) the Department of Commerce,
(8) the Department of Labor,
(9) the Department of State,
(10) the Department of the Treasury,
(11) the Interstate Commerce Commission,
(12) the Council on Wage and Price Stability,
(13) the Tennessee Valley Authority, and
(14) the Appalachian Regional Commission.

(b) Coverage of study

The study shall consider the following elements relating to competition:

(1) interests in, or ownership or production of, coal reserves by firms which—

(A) own or have an interest in commodity transportation systems by rail, water, or pipeline,

(B) own or produce oil, natural gas, or uranium, or

(C) use significant amounts of coal in their processes, including electrical generation and steelmaking,

(2) prices, profitability, and levels of concentration in sales of various identifiable submarket structures in the coal industry, including the market for—

(A) steam and metallurgical coal,
(B) low-sulfur coal,
(C) lignite, anthracite, bituminous and subbituminous coal,
(D) spot sales and long-term delivery contracts, and
(E) exports,

(3) overall profitability of coal operations,
(4) captial requirements, sources and uses of funds,
(5) vertical integration of production, cleaning, processing, gasification, liquefaction, transportation, marketing, distribution, combustion, and other phases of the coal fuel cycle,
(6) the effect of interfuel ownership, vertical integration, and market concentration upon innovation, efficiency, prices and profits,
(7) costs of production, transportation, processing, and other components of coal prices for different regions and different types of mines,
(8) responsiveness of coal supply to market demand,
(9) productive capacity,
(10) productivity,
(11) economies and diseconomies of scale,
(12) distribution and flow of executive, managerial, and technical personnel between the various coal producers,
(13) management and directorate interlocks,
(14) relationships to financial institutions,
(15) government-industry relationships, including lease bidding, technology, research, development, demonstration and transfer, and personnel movement,
(16) joint ventures, consortia, and cross-ownership,
(17) identification of the major owners of coal industry stock,
(18) control of patents and technologies,
(19) barriers to greater competition in the market for coal, and
(20) Federal income tax policies.

(c) Impacts on coal-producing counties and states

The study shall evaluate the economic and social impacts upon coal-producing counties and States of present and prospective land ownership patterns and levels of income, property, severance and other taxes paid by coal producers.

(d) Export of metallurgical coal

The study shall identify and evaluate national policies toward the export of metallurgical coal as they relate to—

(1) national security,
(2) national energy goals,
(3) balance of payments,
(4) comparative advantage in world trade,
(5) materials policy,
(6) United States and international reserves and resources, and
(7) likely future metallurgical technologies.

(e) Reports

(1) Pursuant to the provisions of the preceding subsections of this section, the Secretary shall submit to the President for transmittal to the Congress such interim reports as he deems advisable and, not later than 18 months after

the effective date of this chapter, a comprehensive and final report to the Congress containing the findings with respect to such study and investigation. Such report may include such legislative and administrative recommendations as the President deems advisable.

(2) Before submitting a report to the Congress under paragraph (1), the President shall—

(A) publish in the Federal Register a notice and summary of the proposed report and make copies of such report available and afford interested persons an opportunity (of not less than 90 days' duration) to present written comments; and

(B) make such modifications of such report as he may consider appropriate on the basis of such comments.

(f) Authorization of appropriations

There is authorized to be appropriated to the Secretary for allocation between the Department of Energy and the other agencies participating in the study under this section for the fiscal years 1979 and 1980, not to exceed $18,000,000 to carry out the provisions of this section.

(Pub. L. 95-620, title VII, § 742, Nov. 9, 1978, 92 Stat. 3341.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (e)(1), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8453. Impact on employees

(a) Evaluation

The Secretary shall conduct continuing evaluations of potential loss or shifts of employment which may result from any prohibition under this chapter, including, if appropriate, investigating threatened plant closures or reductions in employment allegedly resulting from such prohibition. The results of such evaluations and each investigation shall promptly be made available to the public.

(b) Investigation and hearings

On a written request filed with the Secretary by or on behalf of any employee who is discharged or laid off, threatened with discharge or layoff, or otherwise discriminated against, by any person because of the alleged effects of any such prohibition, the Secretary shall investigate the matter and, at the request of any party, shall hold public hearings, after not less than 30 days notice, at which the Secretary shall require the parties, including any employer involved, to present information on the actual or potential effect of such prohibition on employment and on any alleged employee discharge, layoff, or other discrimination relating to prohibitions and the detailed reasons or justification therefor. At the completion of such investigation, the Secretary shall make findings of fact as to the effect of such prohibition on employment and on the alleged employee discharge, layoff, or discrimination and shall make such recommendations as he deems appropriate. Such report, findings, and recommendations shall be available to the public. The Secretary of Labor shall participate in each such investigation.

(c) Rule of construction

Nothing in this section shall be construed to require or authorize the Secretary to modify or withdraw any prohibition under this chapter.

(Pub. L. 95-620, title VII, § 743, Nov. 9, 1978, 92 Stat. 3342.)

§ 8454. Study of compliance problem of small electric utility systems

(a) Study

The Secretary shall conduct a study of the problems of compliance with this chapter experienced by those electric utility systems which have a total system generating capacity of less than 2,000 megawatts. The Secretary shall report his findings and his recommendations to the Congress not later than 2 years after the effective date of this chapter.

(b) Authorization of appropriations

There is authorized to be appropriated to the Secretary for the fiscal year 1979 not to exceed $500,000 to carry out the provisions of this section.

(Pub. L. 95-620, title VII, § 744, Nov. 9, 1978, 92 Stat. 3343.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8455. Emissions monitoring

(a) Monitoring program

The Administrator of the Environmental Protection Agency shall conduct, on a continuing basis, a program of monitoring, to the greatest extent possible and in accordance with the applicable authorities and provisions of the Clean Air Act [42 U.S.C. 7401 et seq.], the emissions from new and existing electric powerplants and major fuel-burning installations required to use coal or other alternate fuels by reason of this chapter or otherwise using coal or other alternate fuels and the effect thereof on the public health, safety, and welfare and the movement of such emissions in the atmosphere and their impact on land and water and other resources and the public health in various regions of the Nation. Such Administrator shall submit an annual report to the Congress on such program. In carrying out his responsibilities under this section, the Administrator of the Environmental Protection Agency shall consult with the other Federal and State agencies concerned with the health effects of such emissions.

(b) Appropriations authorizations

There is authorized to be appropriated to the Administrator of the Environmental Protection Agency $2,000,000 in fiscal year 1979 for the report required under section 8482 of this title.

(Pub. L. 95-620, title VII, § 745, Nov. 9, 1978, 92 Stat. 3343.)

REFERENCES IN TEXT

The Clean Air Act, referred to in subsec. (a), is act July 14, 1955, ch. 360, as amended generally by Pub. L. 88-206, Dec. 17, 1963, 77 Stat. 392, and later by Pub. L. 95-95, Aug. 7, 1977, 91 Stat. 685. The Clean Air Act was originally classified to chapter 15B (§ 1857 et seq.) of this title. On enactment of Pub. L. 95-95, the Act was reclassified to chapter 85 (§ 7401 et seq.) of this title. For complete classification of this Act to the Code, see short Title note set out under section 7401 of this title and Tables.

§ 8456. Socioeconomic impacts of increased coal production and other energy development

(a) Committee

There is hereby established an interagency committee composed of the heads of the Departments of Energy, Commerce, Interior, Transportation, Housing and Urban Development, and Health, Education, and Welfare, the Environmental Protection Agency, the Appalachian Regional Commission, the Farmers' Home Administration, the Office of Management and Budget, and such other Federal agencies as the Secretary shall designate. In carrying out its functions the committee shall consult with the National Governors' Conference and interested persons, organizations, and entities. The chairman of the committee shall be designated by the President. The committee shall terminate 90 days after the submission of its report under subsection (c) of this section.

(b) Functions of committee

It is the function of the committee to conduct a study of the socioeconomic impacts of expanded coal production and rapid energy development in general, on States, including local communities, and on the public, including the adequacy of housing and public, recreational, and cultural facilities for coal miners and their families and the effect of any Federal or State laws or regulations on providing such housing and facilities. The committee shall gather data and information on—

(1) the level of assistance provided under this chapter and any other programs related to impact assistance,

(2) the timeliness of assistance in meeting impacts caused by Federal decisions on energy policy as well as private sector decisions, and

(3) the obstacles to effective assistance contained in regulations of existing programs related to impact assistance.

(c) Report

Within 1 year after the effective date of this chapter, the committee shall submit a detailed report on the results of such study to the Congress, together with any recommendations for additional legislation it may consider appropriate.

(Pub. L. 95-620, title VII, § 746, Nov. 9, 1978, 92 Stat. 3344.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (c), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as a note under section 8301 of this title.

CHANGE OF NAME

The Department of Health, Education, and Welfare was redesignated the Department of Health and Human Services by section 3508 of Title 20, Education.

§ 8457. Use of petroleum and natural gas in combustors

The Secretary shall conduct a detailed study of the uses of petroleum and natural gas as a primary energy source for combustors and installations not subject to the prohibitions of this chapter. In conducting such study, the Secretary shall—

(1) identify those categories of major fuel-burning installations in which the substitution of coal or other alternate fuels for petroleum and natural gas is economically and technically feasible, and

(2) determine the estimated savings of natural gas and petroleum expected from such substitution.

Within 1 year after the effective date of this chapter, the Secretary shall submit a detailed report on the results of such study to the Congress, together with any recommendations for legislation he may consider appropriate.

(Pub. L. 95-620, title VII, § 747, Nov. 9, 1978, 92 Stat. 3344.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in text, is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as a note under section 8301 of this title.

PART F—APPROPRIATIONS AUTHORIZATION

§ 8461. Authorization of appropriations

There is authorized to be appropriated to the Secretary for fiscal year 1979 $11,900,000, to carry out the provisions of this chapter (other than provisions for which an appropriations authorization is otherwise expressly provided in this chapter and section 792 of title 15.

(Pub. L. 95-620, title VII, § 751, Nov. 9, 1978, 92 Stat. 3344.)

PART G—COORDINATION WITH OTHER PROVISIONS OF LAW

§ 8471. Effect on environmental requirements

(a) Compliance with applicable environmental requirements

Except as provided in section 8374 of this title, nothing in this chapter shall be construed as permitting any existing or new electric powerplant or major fuel-burning installation to delay or avoid compliance with applicable environmental requirements.

(b) Local environmental requirements

In the case of any new or existing facility—

(1) which is subject to any prohibition under this chapter, and

(2) which is also subject to any requirement of any local environmental requirement which may be stricter than any Federal or State environmental requirement,

the existence of such local requirement shall not be construed to affect the validity or applicability of such prohibition to such facility, except to the extent provided under section 8322(b) or section 8352(b) of this title; and the existence of such prohibition shall not be construed to preempt such local requirement with respect to that facility.

(Pub. L. 95-620, title VII, § 761, Nov. 9, 1978, 92 Stat. 3345.)

§ 8472. Effect of orders under section 2 of ESECA

(a) Effect of construction orders

Any electric powerplant or major fuel-burning installation issued an order pursuant to section 792(c) of title 15 that is pending on the effective date of this chapter shall, notwithstanding the provisions of such section 792(c) or any other provision of this chapter, be subject to the provisions of this chapter, as if it were a new electric powerplant or new major fuel-burning installation, as the case may be, except that if such order became final before such date, the provisions of subchapter II of this chapter shall not apply to such powerplant or installation.

(b) Effect of prohibition orders

The provisions of subchapters II and III of this chapter shall not apply to any powerplant or installation for which an order issued pursuant to section 792(a) of title 15 before the effective date of this chapter is pending or final or which, on review, was held unlawful and set aside on the merits; except that any installation issued such an order under such section 792(a) which is pending on the effective date of this chapter may elect to be covered by subchapter II or III of this chapter (as the case may be) rather than such section 792. Such an election shall be irrevocable and shall be made in such form and manner as the Secretary shall, within 90 days after November 9, 1978, prescribe. Such an election shall be made not later than 60 days after the date on which the Secretary prescribes the form and manner of making such election.

(c) Validity of orders

The preceding provisions of this chapter shall not affect the validity of any order issued under subsection (a), or any final order under subsection (c), of section 792 of title 15, and the authority of the Secretary to amend, repeal, rescind, modify, or enforce any such order, or rules applicable thereto, shall remain in effect notwithstanding any limitation of time otherwise applicable to such authority. Except as provided in this section, the authority of the Secretary under section 792 of title 15 shall terminate on the effective date of this chapter.

(Pub. L. 95-620, title VII, § 762(a)-(c), Nov. 9, 1978, 92 Stat. 3345.)

References in Text

The effective date of this chapter, referred to in text, is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8473. Environmental impact statements under NEPA

The following actions are not deemed to be major Federal actions for purposes of section 4332(2)(C) of this title:

(1) the grant or denial of any temporary exemption under this chapter for any electric powerplant or major fuel-burning installation;

(2) the grant or denial of any permanent exemption under this chapter for any existing electric powerplant or major fuel-burning installation, other than an exemption—

(A) under section 8352(c) of this title, relating to cogeneration;

(B) under section 8352(*l*) of this title, relating to scheduled equipment outages;

(C) under section 8352(b) of this title, relating to certain State or local requirements;

(D) under section 8352(g) of this title, relating to certain intermediate load powerplants; and

(3) the grant or denial of any exemption under this chapter for any powerplant or major fuel-burning installation for which the Secretary finds, in consultation with the appropriate Federal agency, and publishes such finding that an environmental impact statement is required in connection with another Federal action and such statement will be prepared by such agency and will reflect the exemption adequately.

Except as provided in the preceding provisions of this section, any determination of what constitutes or does not constitute a major Federal action shall be made under section 4332 of this title.

(Pub. L. 95-620, title VII, § 763, Nov. 9, 1978, 92 Stat. 3346.)

SUBCHAPTER VIII—MISCELLANEOUS PROVISIONS

§ 8481. Coal reserves disclosure

(a) Disclosure

Within 2 years after the effective date of this chapter, and annually thereafter, the Secretary shall require the disclosure, pursuant to section 796 of title 15, of the extent, characteristics, and productive capacity of coal reserves, or interest therein, within the United States held by any person or governmental entity, as necessary, and shall publish a summary of such information.

(b) Exemption for small reserves

The Secretary may exempt small reserves from the requirements of this section if the Secretary finds that the imposition of the requirements of this section would impose an unreasonable economic burden on such person (or entity) or would not be of significant aid to achievement of the purposes of this chapter, and publishes such findings in the Federal Register.

(Pub. L. 95-620, title VIII, § 801, Nov. 9, 1978, 92 Stat. 3346.)

REFERENCES IN TEXT

The effective date of this chapter, referred to in subsec. (a), is the effective date of Pub. L. 95-620. See section 901 of Pub. L. 95-620, set out as a note under section 8301 of this title.

§ 8482. Annual report

The Secretary shall submit to the Congress on March 1 of each year a detailed report prepared by him in conjunction with the Administrator of the Environmental Protection Agency of the actions taken under this chapter and under section 792 of title 15 during the preceding calendar year, and the actions to be taken. Each such report shall include data on the effectiveness of this chapter in achieving the purposes of this chapter.

(Pub. L. 95-620, title VIII, § 806, Nov. 9, 1978, 92 Stat. 3348.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8455 of this title.

§ 8483. Submission of reports

Copies of any report required by this chapter to be submitted to the Congress shall be separately submitted to the Committee on Interstate and Foreign Commerce of the House of Representatives and the Committee on Energy and Natural Resources of the Senate.

(Pub. L. 95-620, title VIII, § 807, Nov. 9, 1978, 92 Stat. 3348.)

CHAPTER 93—EMERGENCY ENERGY CONSERVATION [NEW]

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SUBCHAPTER III—STUDIES

8531. Study and report.
  (a) Study of commercial and industrial storage of fuel.
  (b) Contents of report.
8532. Middle distillate monitoring program.
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SUBCHAPTER IV—ADMINISTRATIVE PROVISIONS

8541. Administration.
  (a) Information.
  (b) Effect on other laws.
  (c) Termination.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 6261 of this title.

§ 8501. Congressional findings and purposes

(a) Findings

The Congress finds that—

(1) serious disruptions have recently occurred in the gasoline and diesel fuel markets of the United States;

(2) it is likely that such disruptions will recur;

(3) interstate commerce is significantly affected by those market disruptions;

(4) an urgent need exists to provide for emergency conservation and other measures with respect to gasoline, diesel fuel, home heating oil, and other energy sources in potentially short supply in order to cope with market disruptions and protect interstate commerce; and

(5) up-to-date and reliable information concerning the supply and demand of gasoline,

diesel fuel, and other related data is not available to the President, the Congress, or the public.

(b) Purposes

The purposes of this chapter are to—

(1) provide a means for the Federal Government, States, and units of local government to establish emergency conservation measures with respect to gasoline, diesel fuel, home heating oil, and other energy sources which may be in short supply;

(2) establish other emergency measures to alleviate disruptions in gasoline and diesel fuel markets;

(3) obtain data concerning such fuels; and

(4) protect interstate commerce.

(Pub. L. 96-102, title II, § 201, Nov. 5, 1979, 93 Stat. 757.)

EFFECTIVE DATE

Chapter effective Nov. 5, 1979, see section 302 of Pub. L. 96-102, set out as an Effective Date of 1979 Amendment note under section 6261 of this title.

SHORT TITLE

Section 1(a) of Pub. L. 96-102 provided that: "This Act [which enacted this chapter, amended sections 6261, 6262, 6263, and 6422 of this title, and enacted provisions set out as notes under sections 6261 and 8501 of this title] may be cited as the 'Emergency Energy Conservation Act of 1979'."

FUNDING FOR FISCAL YEARS 1979 AND 1980

Section 301 of Pub. L. 96-102 provided that: "For purposes of any law relating to appropriations or authorizations for appropriations as such law relates to the fiscal year ending September 30, 1979, or the fiscal year ending September 30, 1980, the provisions of this Act [see Short Title note above] (including amendments made by this Act) shall be treated as if it were a contingency plan under section 202 or 203 of the Energy Policy and Conservation Act [sections 6262 and 6263 of this title] which was approved in accordance with the procedures under that Act [see Short Title note set out under section 6201 of this title] or as otherwise provided by law, and funds made available pursuant to such appropriations shall be available to carry out the provisions of this Act and the amendments made by this Act."

§ 8502. Definitions

For purposes of this chapter—

(1) The term "severe energy supply interruption", when used with respect to motor fuel or any other energy source, means a national energy supply shortage of such energy source which the President determines—

(A) is, or is likely to be, of significant scope and duration;

(B) may cause major adverse impact on national security or the national economy; and

(C) results, or is likely to result, from an interruption in the energy supplies of the United States, including supplies of imported petroleum products, or from sabotage or an act of God.

(2) The term "international energy program" has the meaning given that term in section 6202(7) of this title.

(3) The term "motor fuel" means gasoline and diesel fuel.

(4) The term "person" includes (A) any individual, (B) any corporation, company, association, firm, partnership, society, trust, joint venture, or joint stock company, and (C) the government or any agency of the United States or any State or political subdivision thereof.

(5) The term "vehicle" means any vehicle propelled by motor fuel and manufactured primarily for use on public streets, roads, and highways.

(6) The term "Secretary" means the Secretary of Energy.

(7) The term "Governor" means the chief executive officer of a State.

(8) The term "State" means a State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States.

(Pub. L. 96-102, title II, § 202, Nov. 5, 1979, 93 Stat. 757.)

SUBCHAPTER I—EMERGENCY ENERGY CONSERVATION PROGRAM

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8541 of this title.

§ 8511. National and State emergency conservation targets

(a) Determination and publication of targets

(1) Whenever the President finds, with respect to any energy source for which the President determines a severe energy supply interruption exists or is imminent or that actions to restrain domestic energy demand are required in order to fulfill the obligations of the United States under the international energy program, the President, in furtherance of the purposes of this chapter, may establish monthly emergency conservation targets for any such energy source for the Nation generally and for each State.

(2) Any finding of the President under paragraph (1) shall be promptly transmitted to the Congress, accompanied by such information and analysis as is necessary to provide the basis for such finding, and shall be disseminated to the public.

(3)(A) The State conservation target for any energy source shall be equal to (i) the State base period consumption reduced by (ii) a uniform national percentage.

(B) For the purposes of this subsection, the term "State base period consumption" means, for any month, the product of the following factors, as determined by the President:

(i) the consumption of the energy source for which a target is established during the corresponding month in the 12-month period prior to the first month for which the target is established; and

(ii) a growth adjustment factor, which shall be determined on the basis of the trends in the use in that State of such energy source during the 36-month period prior to the first month for which the target is established.

(C)(i) The President shall adjust, to the extent he determines necessary, any State base period consumption to insure that achievement of a target established for that State under this subsection will not impair the attainment of the objectives of section 753(b)(1) of title 15.

(ii) The President may, to the extent he determines appropriate, further adjust any State base period consumption to reflect—

(I) reduction in energy consumption already achieved by energy conservation programs;

(II) energy shortages which may affect energy consumption; and

(III) variations in weather from seasonal norms.

(D) For purposes of this subsection, the uniform national percentage shall be designed by the President to minimize the impact on the domestic economy of the projected shortage in the energy source for which a target is established by saving an amount of such energy source equivalent to the projected shortage, taking into consideration such other factors related to that shortage as the President considers appropriate.

(b) Notification and publication of targets

The President shall notify the Governor of each State of each target established under subsection (a) of this section for that State, and shall publish in the Federal Register, the targets, the base period consumption for each State and other data on which the targets are based, and the factors considered under subsection (a)(3) of this section.

(c) Establishment of targets for Federal agencies

In connection with the establishment of any national target under subsection (a) of this section the President shall make effective an emergency energy conservation plan for the Federal Government, which plan shall be designed to achieve an equal or greater reduction in use of the energy source for which a target is established than the national percentage referred to in subsection (a)(3)(D) of this section. Such plan shall contain measures which the President will implement, in accordance with other applicable provisions of law, to reduce on an emergency basis the use of energy by the Federal Government. In developing such plan the President shall consider the potential for emergency reductions in energy use—

(1) by buildings, facilities, and equipment owned, leased, or under contract by the Federal Government; and

(2) by Federal employees and officials through increased use of car and van pooling, preferential parking for multipassenger vehicles, and greater use of mass transit.

(d) Review of targets

(1) From time to time, the President shall review and, consistent with subsection (a) of this section, modify to the extent the President considers appropriate the national and State energy conservation targets established under this subsection.

(2) Any modification under this paragraph shall be accompanied by such information and analysis as is necessary to provide the basis therefor and shall be available to the Congress and the public.

(3)(A) Before the end of the 12th month following the establishment of any conservation target under this section, and annually thereafter while such target is in effect, the President shall determine, for the energy source for which that target was established, whether a severe energy supply interruption exists or is imminent or that actions to restrain domestic energy demand are required in order to fulfill the obligations of the United States under the international energy program. The President shall transmit to the Congress and make public the information and other data on which any determination under this subparagraph is based.

(B) If the President determines such an energy supply interruption does not exist or is not imminent or such actions are not required, the conservation targets established under this section with respect to such energy source shall cease to be effective.

(e) Determination and publication of actual consumption nationally and State-by-State

Each month the Secretary shall determine and publish in the Federal Register (1) the level of consumption for the most recent month for which the President determines accurate data is available, nationally and for each State, of any energy source for which a target under subsection (a) of this section is in effect, and (2) whether the targets under subsection (a) of this section have been substantially met or are likely to be met.

(f) Presidential authority not to be delegated

Notwithstanding any other provision of law, the authority vested in the President under this section may not be delegated.

(Pub. L. 96–102, title II, § 211, Nov. 5, 1979, 93 Stat. 758.)

CROSS REFERENCES

State energy conservation plans, see section 6321 et seq. of this title.

State energy conservation goals, see section 6324 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8512, 8513, 8514, 8541 of this title.

§ 8512. State emergency conservation plan

(a) State emergency conservation plans

(1)(A) Not later than 45 days after the date of the publication of an energy conservation target for a State under section 8511(b) of this title, the Governor of that State shall submit to the Secretary a State emergency conservation plan designed to meet or exceed the emergency conservation target in effect for that State under section 8511(a) of this title. Such plan shall contain such information as the Secretary may reasonably require. At any time, the Governor may, with the approval of the Secretary, amend a plan established under this section.

(B) The Secretary may, for good cause shown, extend to a specific date the period for the submission of any State's plan under subparagraph (A) if the Secretary publishes in the Federal Register notice of that extension together with the reasons therefor.

(2) Each State is encouraged to submit to the Secretary a State emergency conservation plan

as soon as possible after November 5, 1979, and in advance of such publication of any such target. The Secretary may tentatively approve such a plan in accordance with the provisions of this section. For the purposes of this subchapter such tentative approval shall not be construed to result in a delegation of Federal authority to administer or enforce any measure contained in a State plan.

(b) Conservation measures under State plans

(1) Each State emergency conservation plan under this section shall provide for emergency reduction in the public and private use of each energy source for which an emergency conservation target is in effect under section 8511 of this title. Such State plan shall contain adequate assurances that measures contained therein will be effectively implemented in that State. Such plan may provide for reduced use of that energy source through voluntary programs or through the application of one or more of the following measures described in such plan:

(A) measures which are authorized under the laws of that State and which will be administered and enforced by officers and employees of the State (or political subdivisions of the State) pursuant to the laws of such State (or political subdivisions); and

(B) measures—

(i) which the Governor requests, and agrees to assume, the responsibility for administration and enforcement in accordance with subsection (d) of this section;

(ii) which the attorney general of that State has found that (I) absent a delegation of authority under Federal law, the Governor lacks the authority under the laws of the State to invoke, (II) under applicable State law, the Governor and other appropriate State officers and employees are not prevented from administering and enforcing under a delegation of authority pursuant to Federal law; and (III) if implemented, would not be contrary to State law; and

(iii) which either the Secretary determines are contained in the standby Federal conservation plan established under section 8513 of this title or are approved by the Secretary, in his discretion.

(2) In the preparation of such plan (and any amendment to the plan) the Governor shall, to the maximum extent practicable, provide for consultation with representatives of affected businesses and local governments and provide an opportunity for public comment.

(3) Any State plan submitted to the Secretary under this section may permit persons affected by any measure in such plan to use alternative means of conserving at least as much energy as would be conserved by such measure. Such plan shall provide an effective procedure, as determined by the Secretary, for the approval and enforcement of such alternative means by such State or by any political subdivision of such State.

(c) Approval of State plans

(1) As soon as practicable after the date of the receipt of any State plan, but in no event later than 30 days after such date, the Secretary shall review such plan and shall approve it unless the Secretary finds—

(A) that, taken as a whole, the plan is not likely to achieve the emergency conservation target established for that State under section 8511(a) of this title for each energy source involved,

(B) that, taken as a whole, the plan is likely to impose an unreasonably disproportionate share of the burden of restrictions of energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof,

(C) that the requirements of this subchapter regarding the plan have not been met, or

(D) that a measure described in subsection (b)(1) of this section is—

(i) inconsistent with any otherwise applicable Federal law (including any rule or regulation under such law),

(ii) an undue burden on interstate commerce, or

(iii) a tax, tariff, or user fee not authorized by State law.

(2) Any measure contained in a State plan shall become effective in that State on the date the Secretary approves the plan under this subsection or such later date as may be prescribed in, or pursuant to, the plan.

(d) State administration and enforcement

(1) The authority to administer and enforce any measure described in subsection (b)(1)(B) of this section which is in a State plan approved under this section is hereby delegated to the Governor of the State and the other State and local officers and employees designated by the Governor. Such authority includes the authority to institute actions on behalf of the United States for the imposition and collection of civil penalties under subsection (e) of this section.

(2) All delegation of authority under paragraph (1) with respect to any State shall be considered revoked effective upon a determination by the President that such delegation should be revoked, but only to the extent of that determination.

(3) If at any time the conditions of subsection (b)(1)(B)(ii) of this section are no longer satisfied in any State with respect to any measure for which a delegation has been made under paragraph (1), the attorney general of that State shall transmit a written statement to that effect to the Governor of that State and to the President. Such delegation shall be considered revoked effective upon receipt by the President of such written statement and a determination by the President that such conditions are no longer satisfied, but only to the extent of that determination and consistent with such attorney general's statement.

(4) Any revocation under paragraph (2) or (3) shall not affect any action or pending proceedings, administrative or civil, not finally determined on the date of such revocation, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such revocation.

(e) Civil penalty

(1) Whoever violates the requirements of any measure described in subsection (b)(1)(B) of this section which is in a State plan in effect under this section shall be subject to a civil penalty of not to exceed $1,000 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided in paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of measures the authority for which is delegated under subsection (d) of this section.

(Pub. L. 96-102, title II, § 212, Nov. 5, 1979, 93 Stat. 759.)

CROSS REFERENCES

State energy conservation plans, see section 6322 of this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8513, 8514 of this title.

§ 8513. Standby Federal conservation plan

(a) Establishment of standby conservation plan

(1) Within 90 days after November 5, 1979, the Secretary, in accordance with section 7191 of this title, shall establish a standby Federal emergency conservation plan. The Secretary may amend such plan at any time, and shall make such amendments public upon their adoption.

(2) The plan under this section shall be consistent with the attainment of the objectives of section 753(b)(1) of title 15, and shall provide for the emergency reduction in the public and private use of each energy source for which an emergency conservation target is in effect or may be in effect under section 8511 of this title.

(b) Implementation of standby conservation plan

(1) If the President finds—

(A) after a reasonable period of operation, but not less than 90 days, that a State emergency conservation plan approved and implemented under section 8512 of this title is not substantially meeting a conservation target established under section 8511(a) of this title for such State and it is likely that such target will continue to be unmet; and

(B) a shortage exists or is likely to exist in such State for the 60-day period beginning after such finding that is equal to or greater than 8 percent of the projected normal demand, as determined by the President, for an energy source for which such conservation target has been established under section 8511(a) of this title;

then the President shall, after consultation with the Governor of such State, make effective in such State all or any part of the standby Federal conservation plan established under subsection (a) of this section for such period or periods as the President determines appropriate to achieve the target in that State.

(2) If the President finds after a reasonable period of time, that the conservation target established under section 8511(a) of this title is not being substantially met and it is likely that such target will continue to be unmet in a State which—

(A) has no emergency conservation plan approved under section 8512 of this title; or

(B) the President finds has substantially failed to carry out the assurances regarding implementation set forth in the plan approved under section 8512 of this title,

then the President shall, after consultation with the Governor of such State, make effective in such State all or any part of the standby Federal conservation plan established under subsection (a) of this section for such period or periods as the President determines appropriate to achieve the target in that State.

(c) Basis for findings

Any finding under subsection (b) of this section shall be accompanied by such information and analysis as is necessary to provide a basis therefor and shall be available to the Congress and the public.

(d) Submission of State emergency conservation plan

(1) The Governor of a State in which all or any portion of the standby Federal conservation plan is or will be in effect may submit at any time a State emergency conservation plan, and if it is approved under section 8512(c) of this title, all or such portion of the standby Federal conservation plan shall cease to be effective in that State. Nothing in this paragraph shall affect any action or pending proceedings, administrative or civil, not finally determined on such date, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such cessation of effectiveness.

(e) State substitute emergency conservation measures

(1) After the President makes all or any part of the standby Federal conservation plan effective in any State or political subdivision under subsection (b) of this section, the Secretary shall provide procedures whereby such State or any political subdivision thereof may submit to the Secretary for approval one or more measures under authority of State or local law to be implemented by such State or political subdivision and to be substituted for any Federal measure in the Federal plan. The measures may include provisions whereby persons affected by such Federal measure are permitted to use alternative means of conserving at least as much energy as would be conserved by such Federal measure. Such measures shall provide effective procedures, as determined by the Secretary, for the approval and enforcement of such alternative means by such State or by any political subdivision thereof.

(2) The Secretary may approve the measures under paragraph (1) if he finds—

(A) that such measures when in effect will conserve at least as much energy as would be conserved by such Federal measure which would have otherwise been in effect in such State or political subdivision;

(B) such measures otherwise meet the requirements of this paragraph; and

(C) such measures would be approved under section 8512(c)(1)(B), (C), and (D) of this title.

(3) If the Secretary approves measures under this subsection such Federal measure shall cease to be effective in that State or political subdivision. Nothing in this paragraph shall affect any action or pending proceedings, administrative or civil, not finally determined on the date the Federal measure ceases to be effective in that State or political subdivision, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such cessation of effectiveness.

(4) If the Secretary finds after a reasonable period of time that the requirements of this subsection are not being met under the measures in effect under this subsection he may reimpose the Federal measure referred to in paragraph (1).

(f) State authority to administer plan

At the request of the Governor of any State, the President may provide that the administration and enforcement of all or a portion of the standby Federal conservation plan made effective in that State under subsection (b) of this section be in accordance with section 8512(d)(1), (2), and (4) of this title.

(g) Presidential authority not to be delegated

Notwithstanding any other provision of law (other than subsection (f) of this section), the authority vested in the President under this section may not be delegated.

(h) Requirements of plan

The plan established under subsection (a) of this section shall—

(1) taken as a whole, be designed so that the plan, if implemented, would be likely to achieve the emergency conservation target under section 8511 of this title for which it would be implemented,

(2) taken as a whole, be designed so as not to impose an unreasonably disproportionate share of the burden of restrictions on energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof, and

(3) not contain any measure which the Secretary finds—

(A) is inconsistent with any otherwise applicable Federal law (including any rule or regulation under such law),

(B) is an undue burden on interstate commerce,

(C) is a tax, tariff, or user fee, or

(D) is a program for the assignment of rights for end-user purchases of gasoline or diesel fuel, as described in section 6263(a)(1)(A) and (B) of this title.

(i) Plan may not authorize weekend closings of retail gasoline stations

(1) Except as provided in paragraph (2), the plan established under subsection (a) of this section may not provide for the restriction of hours of sale of motor fuel at retail at any time between Friday noon and Sunday midnight.

(2) Paragraph (1) shall not preclude the restriction on such hours of sale if that restriction occurs in connection with a program for restricting hours of sale of motor fuel each day of the week on a rotating basis.

(j) Civil penalties

(1) Whoever violates the requirements of such a plan implemented under subsection (b) of this section shall be subject to a civil penalty not to exceed $1,000 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided under paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of that portion of the standby Federal conservation plan for which authority is delegated to that State under subsection (f) of this section.

(Pub. L. 96-102, title II, § 213, Nov. 5, 1979, 93 Stat. 762.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 8512, 8514, 8541 of this title.

§ 8514. Judicial review

(a) State actions

(1) Any State may institute an action in the appropriate district court of the United States, including actions for declaratory judgment, for judicial review of—

(A) any target established by the President under section 8511(a) of this title;

(B) any finding by the President under section 8513(b)(1)(A) of this title, relating to the achievement of the emergency energy conservation target of such State, or 8513(b)(2) of this title, relating to the achievement of the emergency energy conservation target of such State or the failure to carry out the assurances regarding implementation contained in an approved plan of such State; or

(C) any determination by the Secretary disapproving a State plan under section 8512(c) of this title, including any determination by the Secretary under section 8512(c)(1)(B) of this title that the plan is likely to impose an unreasonably disproportionate share of the burden of restrictions of energy use on any specific class of industry, business, or commercial enterprise, or any individual segment thereof.

Such action shall be barred unless it is instituted within 30 calendar days after the date of publication of the establishment of a target referred to in subparagraph (A), the finding by the President referred to in subparagraph (B), or the determination by the Secretary referred to in subparagraph (C), as the case may be.

(2) The district court shall determine the questions of law and upon such determination certify such questions immediately to the United States court of appeals for the circuit involved, which shall hear the matter sitting en banc.

(3) Any decision by such court of appeals on a matter certified under paragraph (2) shall be reviewable by the Supreme Court upon attainment of a writ of certiorari. Any petition for such a writ shall be filed no later than 20 days after the decision of the court of appeals.

(b) Court of appeals docket

It shall be the duty of the court of appeals to advance on the docket and to expedite to the greatest possible extent the disposition of any matter certified under subsection (a)(2) of this section.

(c) Injunctive relief

With respect to judicial review under subsection (a)(1)(A) of this section, the court shall not have jurisdiction to grant any injunctive relief except in conjunction with a final judgment entered in the case.

(Pub. L. 96-102, title II, § 214, Nov. 5, 1979, 93 Stat. 764.)

§ 8515. Reports

(a) Monitoring

The Secretary shall monitor the implementation of State emergency conservation plans and of the standby Federal conservation plan and make such recommendations to the Governor of each affected State as he deems appropriate for modification to such plans.

(b) Annual report

The President shall report annually to the Congress on any activities undertaken pursuant to this subchapter and include in such report his estimate of the energy saved in each State and the performance of such State in relation to this subchapter. Such report shall contain such recommendations as the President considers appropriate.

(Pub. L. 96-102, title II, § 215, Nov. 5, 1979, 93 Stat. 765.)

SUBCHAPTER II—OTHER AUTOMOBILE FUEL PURCHASE MEASURES

Subchapter Referred to in Other Sections

This subchapter is referred to in section 8541 of this title.

§ 8521. Minimum automobile fuel purchase measures

(a) General rule

If the provisions of this subsection are made applicable under subsection (c) of this section, no person shall purchase motor fuel from a motor fuel retailer in any transaction for use in any automobile or other vehicle unless—

(1) the price for the quantity purchased and placed into the fuel tank of that vehicle equals or exceeds $5.00; or

(2) in any case in which the amount paid for the quantity of motor fuel necessary to fill the fuel tank of that vehicle to capacity is less than $5.00, such person pays to the retailer an additional amount so that the total amount paid in that transaction equals $5.00.

Any person selling motor fuel in transactions to which the provisions of this subsection apply shall display at the point of sale notice of such provisions in accordance with regulations prescribed by the Secretary.

(b) $7.00 to be applicable in the case of 8-cylinder vehicles

In applying subsection (a) of this section in the case of any vehicle with an engine having 8 cylinders (or more), "$7.00" shall be substituted for "$5.00".

(c) Applicability

(1) Unless applicable pursuant to paragraph (2), the requirements of subsection (a) of this section shall apply in any State and shall be administered and enforced as provided in subsection (g) of this section only if—

(A) the Governor of that State submits a request to the Secretary to have such requirements applicable in that State; and

(B) the attorney general of that State has found that (i) absent a delegation of authority under a Federal law, the Governor lacks the authority under the laws of the State to invoke comparable requirements, (ii) under applicable State law, the Governor and other appropriate State officers and employees are not prevented from administering and enforcing such requirements under a delegation of authority pursuant to Federal law, and (iii) if implemented such requirements would not be contrary to State law.

Subject to paragraph (2), such provisions shall cease to apply in any State if the Governor of the State withdraws any request under subparagraph (A).

(2) The requirements of subsection (a) of this section shall apply in every State if there is in effect a finding by the President that nationwide implementation of such requirements would be appropriate and consistent with the purposes of this chapter.

(3) Such requirements shall take effect in any State beginning on the 5th day after the Secretary or the President (as the case may be) publishes notice in the Federal Register of the applicability of the requirements to the State pursuant to paragraph (1) or (2).

(4) Notwithstanding any other provision of law, the authority vested in the President under paragraph (2) may not be delegated.

(d) Exemptions

The requirements of subsection (a) of this section shall not apply to any motorcycle or motorpowered bicycle, or to any comparable vehicle as may be determined by the Secretary by regulation.

(e) Adjustment of minimum levels

The Secretary may increase the $5.00 and $7.00 amounts specified in subsections (a) and (b) of this section if the Secretary considers it appropriate. Adjustments under this subsection shall be only in even dollar amounts.

(f) Civil penalties

(1) Whoever violates the requirements of subsection (a) of this section shall be subject to a civil penalty of not to exceed $100 for each violation.

(2) Any penalty under paragraph (1) may be assessed by the court in any action under this section brought in any appropriate United States district court or any other court of competent jurisdiction. Except to the extent provided in paragraph (3), any such penalty collected shall be deposited into the general fund of the United States Treasury as miscellaneous receipts.

(3) The Secretary may enter into an agreement with the Governor of any State under which amounts collected pursuant to this subsection may be collected and retained by the State to the extent necessary to cover costs incurred by that State in connection with the administration and enforcement of the requirements of subsection (a) of this section the authority for which is delegated under subsection (g) of this section.

(g) Administration and enforcement delegated to States

(1) There is hereby delegated to the Governor of any State, and other State and local officers and employees designated by the Governor, the authority to administer and enforce, within that State, any provision of this subchapter which is to be administered and enforced in accordance with this section. Such authority includes the authority to institute actions on behalf of the United States for the imposition and collection of civil penalties under subsection (f) of this section.

(2)(A) All delegation of authority under paragraph (1) with respect to any State shall be considered revoked effective (i) upon the receipt of a written waiver of authority signed by the Governor of such State or (ii) upon a determination by the President that such delegation should be revoked, but only to the extent of that determination.

(B) If at any time the conditions of subsection (c)(1)(B) of this section are no longer satisfied in any State to which a delegation has been made under paragraph (1), the attorney general of that State shall transmit a written statement to that effect to the Governor of that State and to the President. Such delegation shall be considered revoked effective upon receipt by the President of such written statement and a determination by the President that such conditions are no longer satisfied, but only to the extent of that determination and consistent with such attorney general's statement.

(C) Any revocation under subparagraph (A) or (B) shall not affect any action or pending proceedings, administrative or civil, not finally determined on the date of such revocation, nor any administrative or civil action or proceeding, whether or not pending, based on any act committed or liability incurred prior to such revocation.

(D) The Secretary shall administer and enforce any provision of this subchapter which has been made effective under subsection (c)(2) of this section and for which a delegation of authority is considered revoked under subparagraph (A).

(h) Coordination with other law

The charging and collecting of amounts referred to in subsection (a)(2) of this section under the requirements of subsection (a) of this section, or similar amounts collected under comparable requirements under any State law, shall not be considered a violation of—

(1) the Emergency Petroleum Allocation Act of 1973 [15 U.S.C. 751 et seq.] or any regulation thereunder; or

(2) any Federal or State law requiring the labeling or disclosure of the maximum price per gallon of any fuel.

(Pub. L. 96–102, title II, § 221, Nov. 5, 1979, 93 Stat. 765.)

REFERENCES IN TEXT

The Emergency Petroleum Allocation Act of 1973, referred to in subsec. (h)(1), is Pub. L. 93–159, Nov. 27, 1973, 87 Stat. 628, as amended, which is classified generally to chapter 16A (§ 751 et seq.) of Title 15, Commerce and Trade. For complete classification of this Act to the Code, see Short Title note set out under section 751 of Title 15 and Tables.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 8541 of this title.

§ 8522. Out-of-State vehicles to be exempted from odd-even motor fuel purchase restrictions

(a) General rule

Notwithstanding any provision of any Federal, State, or local law, any odd-even fuel purchase plan in effect in any State may not prohibit the sale of motor fuel to any person for use in a vehicle bearing a license plate issued by any authority other than that State or a State contiguous to that State.

(b) Definitions

For purposes of this section the term "odd-even fuel purchase plan" means any motor fuel sales restriction under which a person may purchase motor fuel for use in any vehicle only on days (or other periods of time) determined on the basis of a number or letter appearing on the license plate of that vehicle (or on any similar basis).

(Pub. L. 96–102, title II, § 222, Nov. 5, 1979, 93 Stat. 767.)

SUBCHAPTER III—STUDIES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 8541 of this title.

§ 8531. Study and report

(a) Study of commercial and industrial storage of fuel

Not later than 180 days after November 5, 1979, the Secretary shall conduct a study and report to the Congress regarding the commercial and industrial storage of gasoline and middle distillates (other than storage in facilities which have capacities of less than 500 gallons or storage used exclusively and directly for agricultural, residential, petroleum refining, or pipeline transportation purposes).

(b) Contents of report

Such report shall—

(1) indicate to what extent storage activities have increased since November 1, 1978, and what business establishments (including utilities) have been involved;

(2) the estimated amount of gasoline and middle distillates (in the aggregate and by type and region) which are in storage within the United States at the time of the study, the amounts which were in storage at the same time during the calendar year preceding the study, and the purposes for which such storage is maintained; and

(3) contain such findings and recommendations for legislation and administrative action as the Secretary considers appropriate, including recommendations for improving the availability and quality of data concerning such storage.

(Pub. L. 96-102, title II, § 241, Nov. 5, 1979, 93 Stat. 768.)

§ 8532. Middle distillate monitoring program

(a) Monitoring program

(1) Not later than 60 days after November 5, 1979, the Secretary shall establish and maintain a data collection program for monitoring, at the refining, wholesale, and retail levels, the supply and demand levels of middle distillates on a periodic basis in each State.

(2) The program to be established under paragraph (1) shall provide for—

(A) the prompt collection of relevant demand and supply data under the authority available to the Secretary under other law; and

(B) the submission to Congress of periodic reports each containing a concise narrative analysis of the most recent data which the Secretary determines are accurate, and a discussion on a State-by-State basis of trends in such data which the Secretary determines are significant.

(3) All data and information collected under this program shall be available to the Congress and committees of the Congress, and, in accordance with otherwise applicable law, to appropriate State and Federal agencies and the public.

(4) Nothing in this subsection authorizes the direct or indirect regulation of the price of any middle distillate.

(5) For purposes of this section, the term "middle distillate" has the same meaning as given that term in section 211.51 of title 10, Code of Federal Regulations, as in effect on November 5, 1979.

(b) Report

Before December 31, 1979, the President shall submit a report to Congress in which the President shall examine the middle distillate situation, summarizing the data, information, and analyses described in subsection (a) of this section and discussing in detail matters required to be addressed in findings made pursuant to section 760a(d)(1) of title 15.

(Pub. L. 96-102, title II, § 242, Nov. 5, 1979, 93 Stat. 768.)

SUBCHAPTER IV—ADMINISTRATIVE PROVISIONS

Subchapter Referred to in Other Sections

This subchapter is referred to in section 8541 of this title.

§ 8541. Administration

(a) Information

(1) The Secretary shall use the authority provided under section 796 of title 15 for the collection of such information as may be necessary for the enforcement of the provisions of subchapters I and II of this chapter.

(2) In carrying out his responsibilities under this chapter, the Secretary shall insure that timely and adequate information concerning the supplies, pricing, and distribution of motor fuels (and other energy sources which are the subject of targets in effect under section 8511 of this title) is obtained, analyzed, and made available to the public. Any Federal agency having responsibility for collection of such information under any other authority shall cooperate fully in facilitating the collection of such information.

(b) Effect on other laws

No State law or State program in effect on November 5, 1979, or which may become effective thereafter, shall be superseded by any provision of this chapter, or any rule, regulation, or order thereunder, except insofar as such State law or State program is in conflict with any such provision of section 8513 or 8521 of this title (or any rule, regulation, or order under this subchapter relating thereto) in any case in which measures have been implemented in that State under the authority of section 8513 or 8521 of this title (as the case may be).

(c) Termination

(1) The provisions of subchapters I, II, III, and IV of this chapter, including any actions taken thereunder, shall cease to have effect on July 1, 1983.

(2) Such expiration shall not affect any action or pending proceeding, administrative or civil, not finally determined on such date, nor any administrative or civil action or proceeding, whether or not pending, based upon any act committed or liability incurred prior to such expiration date.

(Pub. L. 96-102, title II, § 251, Nov. 5, 1979, 93 Stat. 769.)

[illegible]